

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

May 10, 2024

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE DIVISION OF FORESTRY AND WILDLIFE AND PACIFIC RIM CONSERVATION FOR RARE SPECIES PROTECTION MANAGEMENT IN THE PUU O UMI NATURAL AREA RESERVE, HAWAII, TAX MAP KEYS: (3) 4-9:013:001, (3) 6-1:001:001, (3) 6-2:001:001, (3) 6-2:001:002, (3) 6-3:001:002, (3) 6-3:001:004, (3) 6-3:001:005, (3) 6-3:001:007

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION FROM CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE PROJECT

AND

REQUEST A DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO NEGOTIATE, APPROVE, AND EXECUTE A MEMORANDUM OF UNDERSTANDING, RIGHT-OF-ENTRY, AND RELEASE OF LIABILITY AGREEMENTS FOR PACIFIC RIM CONSERVATION FOR RARE SPECIES PROTECTION MANAGEMENT IN THE SUBJECT PARCELS

BACKGROUND:

Pacific Rim Conservation (PRC) is partnering with the Division of Forestry and Wildlife (Division) on a seabird protection project in the Puu O Umi Natural Area Reserve. PRC has received a grant to construct a predator-proof fence, remove predators, and monitor seabirds. Puu O Umi Natural Area Reserve (Reserve) is a strategic place to build this fence because of its high-quality habitat and existing seabird populations. This action is consistent with the Division's management plan for the Reserve (1989). PRC has entered into similar MOUs with the Division for constructing predator-proof fences and has implemented successful projects for seabird protection. A draft MOU is attached.

TERM OF MEMORANDUM OF UNDERSTANDING:

The term of the Memorandum of Understanding shall be for twenty years.

DISCUSSION:

The Division is interested in a twenty-year Memorandum of Understanding with PRC to continue managing this area. An MOU would further establish the long-term Division/PRC partnership to implement the management plans for this area.

This MOU would not be exclusive as other community organizations are interested in also implementing the management plans for this large area in a complementary way.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the requirements of Chapter 343, HRS, Hawaii Administrative Rule Section 11-200-8(6), the Exemption List for the Division of Forestry and Wildlife, Department of Land and Natural Resources as reviewed and concurred upon by the Environmental Council on November 10, 2020, the subject project is exempt from the preparation of an environmental assessment under the following exemption classes:

From the DLNR November 10, 2020 Exemption List:

General Exemption Type 1, Part 1, #4, "*Operation, repair, and maintenance of existing structures and facilities, including base yards, offices, cabins, sheds, and fencing.*"

General Exemption Type 3, Part 2, #1. "*Natural resource management actions that the Department declares are designed specifically to monitor, conserve, or enhance the status of native species or native species' habitats, such as fences around or to manage rare, threatened or endangered plants. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.*"

General Exemption Type 4, Part 1, #3, "*Removal of invasive vegetation utilizing cutting, mowing, application of federal and state approved herbicides... and other approved methods.*" and #9 "*Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; and other approved methods;*" and #5. "*Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, native wildlife habitat, native ecosystem restoration, and rare plant preservation...*"

RECOMMENDATIONS:

That the Board:

1. Approve in concept a Memorandum of Understanding between the State of

Hawai'i Division of Forestry and Wildlife and Pacific Rim Conservation for rare species protection management in the Puu O Umi Natural Area Reserve, Hawaii, Tax Map Keys: (3) 4-9:013:001, (3) 6-1:001:001, (3) 6-2:001:001, (3) 6-2:001:002, (3) 6-3:001:002, (3) 6-3:001:004, (3) 6-3:001:005, (3) 6-3:001:007

2. Declare that, after considering the potential effects of the proposed actions provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will likely have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Delegate to the Chairperson the authority to negotiate, approve, and execute the final MOU with PRC and periodic Memorandum of Understanding, Right-Of-Entries, and Release of Liability Agreements, as appropriate, between the State of Hawai'i Division of Forestry and Wildlife and Pacific Rim Conservation for rare species protection management in the subject parcels, further subject to the following:
 - a. Review and approval as to form by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



DAVID G. SMITH
Administrator

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

MEMORANDUM OF UNDERSTANDING
BETWEEN
PACIFIC RIM CONSERVATION
AND THE
STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
FOR COOPERATIVE CONSERVATION EFFORTS IN THE PUU O UMI NATURAL
AREA RESERVE

This Memorandum of Understanding (MOU), made and entered into on _____, by and between Pacific Rim Conservation, a Hawaii nonprofit corporation and 501(c)(3) organization for federal taxation purposes (hereinafter referred to as "PRC") and the State of Hawaii, Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), by its Board of Land and Natural Resources to engage in cooperative conservation and natural resource management efforts in the Puu O Umi Natural Area Reserve, Island of Hawaii, State of Hawaii.

WITNESSETH

WHEREAS the PRC is a 501(c)(3) non-profit foundation whose mission is to maintain and restore native bird diversity, populations, and habitats in Hawaii and across the Pacific region; and the PRC organization is administered by an elected Board of Directors and Officers; and

WHEREAS, the PRC has successfully worked with the DLNR to assist with the ongoing management of and research of Newell's Shearwaters and Hawaiian Petrels across the state since 2006 and

WHEREAS, the PRC has assisted in raising funds in support of Newell's Shearwater and Hawaiian Petrel management and

WHEREAS, under section 183D-2, Hawaii Revised Statutes (HRS), the DLNR is charged with the responsibility of managing and administering the wildlife and wildlife resources of the State and

WHEREAS, under section 195D-1, HRS, the State is charged with the responsibility of ensuring "*the continued perpetuation of indigenous aquatic life, wildlife, land plants, and their habitats for human enjoyment, for scientific purposes, and as members of ecosystems*"; and

WHEREAS, the State, through DLNR/DOFAW, is the landowner charged with the responsibility of managing lands at Puu O Umi Natural Area Reserve on the island of Hawaii and

WHEREAS the DLNR's mission includes restoring and managing nesting habitat for Newell's Shearwater and Hawaiian Petrels and

WHEREAS alien species are present at Puu O Umi Natural Area Reserve, including pigs, cats, dogs, mongooses, and rodents, and

WHEREAS these alien species cause continuing environmental damage to native species and habitats, and the removal of alien species will benefit all native species, including Newell's Shearwater and Hawaiian Petrels present in the Puu O Umi Natural Area Reserve and

WHEREAS the construction of a predator-proof fence enclosure and removal of alien predatory mammals inside this fence will benefit the ecosystems at Puu O Umi Natural Area Reserve and provide improved opportunities for Hawaiian Petrel conservation,

NOW, THEREFORE, the above parties agree to engage as partners in a cooperative effort to support habitat restoration, natural resource protection, and predator exclusion fence construction in the Puu O Umi Natural Area Reserve on the island of Hawaii. Both parties hereto deem it mutually advantageous and desirable to cooperate and agree to the following provisions:

I. DLNR Responsibilities:

The DLNR agrees to undertake the following responsibilities under this MOU:

1. Secure all necessary permits for the construction of the fence.
2. Conduct botanical surveys of fence lines to ensure threatened and endangered plants are not present in the immediate path of the fence line.

II. PRC Responsibilities:

The PRC agrees to undertake the following responsibilities under this MOU:

1. Provide funds to construct a 1640-foot-long predator exclusion fence in the Puu O Umi Natural Area Reserve.
2. Order all necessary materials.
3. Select and manage an experienced fence contractor to construct a fence at Puu O Umi Natural Area Reserve according to DOFAW specifications.

4. Assist the contractor and the DOFAW with fence construction and management activities.
5. Conduct final fence construction assessments and perform quality control inspections of the contractor.
6. Upon final approval of the fence, transfer ownership and responsibility for the completed fences to the DLNR.

III. Term, Evaluation, and Modification.

- A. *Term.* This agreement for this project under the MOU is executed as of the last date shown below, which shall be the commencement date. This MOU will remain in effect for two (2) years upon commencement, after which it may be renewable only at the option of both Parties.
- B. *Evaluation.* The project agreement may be reviewed, evaluated, and updated at any time but no later than annually. A record of the evaluation will be appended to the agreement.
- C. *Modification.* This MOU and any portion of the project agreement may be modified by mutual agreement between the parties before termination. Modifications shall be in writing and executed by the authorized officers representing the PRC and the Board, respectively. For this modification provision, such authorized officers are Pacific Rim Conservation officers and the Board of Land and Natural Resources for all substantive changes. The Chairperson of the Board may authorize non-substantive changes on behalf of the DLNR to facilitate the processing of such changes.

IV. Termination.

Either party may terminate the MOU in whole or in part, in writing, at any time before the termination date. Unless mutually agreed upon otherwise, 90 days advance notice shall be provided before termination.

V. Principal Contacts.

The principal contacts for administering this Agreement are:

- A. Pacific Rim Conservation
Executive Director
P.O. Box 61827
Honolulu, HI, 96839

- B. State of Hawaii/ Department of Land and Natural Resources
Division of Forestry and Wildlife – Hawaii Branch

61 E. Kawili St.
Hilo, HI, 96720

VI. Miscellaneous Provisions.

A. *Disclaimers.* Nothing in this MOU shall be construed as affecting the delegated authority or responsibilities of the Board of Land and Natural Resources. This Agreement shall not supersede any agreements currently in effect between the State and the PRC.

B. *Additional Parties.* By Modification of this MOU by the Parties, additional governmental, non-profit organizations, and other entities may be made party thereto on such terms and conditions as the Board and the PRC may agree.

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the last date written below.

PACIFIC RIM CONSERVATION
a Hawaii nonprofit Corporation

By: _____

Title: _____

Date: _____

*Approved by the Board
of Land and Natural Resources
at its meeting on

October 11, 2019

STATE OF HAWAII
DEPARTMENT OF LAND AND
NATURAL RESOURCES

By: _____

Chairperson
Board of Land and Natural Resources

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General