

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

December 12, 2008

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

Land Board Members:

SUBJECT: REQUEST TO AMEND PRIOR BOARD ACTION OF JUNE 13, 2008 UNDER ITEM C-3: "REQUEST APPROVAL OF CONTRACT WITH PATRICK AND SHEILA CONANT TO PARTICIPATE IN THE STATE FOREST STEWARDSHIP PROGRAM".

**BACKGROUND:**

On June 13, 2008, under item C-3, the Board approved a Forest Stewardship Agreement (Agreement) with Patrick and Sheila Conant to participate in the State Forest Stewardship Program subject to availability of funds, and review of the contract and approval as to form by the Department of Attorney General (Exhibit A). Upon review of the agreement document, the Department of Attorney General has advised the Division that the land offered for enrollment in the State Forest Stewardship Program is under ownership by multiple parties, and not solely by Patrick and Sheila Conant. Under the State Forest Stewardship Program, applicants entering into a Forest Stewardship Agreement must have controlling interest in the land to enroll in the program thus all owners must be included in the Agreement.

The Department of Attorney General further recommended that the Agreement be revised to reflect the standard contract format currently utilized by the State. The Department of Attorney General has provided preliminary review of this new contract structure prior to this Board meeting.

**DISCUSSION:**

In order to legally enter into an Agreement for the Patrick and Sheila Conant Forest Stewardship project, the Agreement must reflect the agreement of all of the owners, whom in this case include:

- Patrick Conant, Trustee of the Patrick Conant Self Trusteed Trust dated February 23, 1994, as amended;
- Stephanie E. Nagata;
- Sheila Conant, Trustee of Sheila Conant Self Trusteed Trust dated August 10, 1994, as

amended; and

- David P. McCauley, Trustee of David P. McCauley Trust dated June 21, 1996, as amended.

The Agreement and the corresponding contractual documents have been amended to reflect the land interest in the subject property; additional signatures have been incorporated into the Agreement to reflect all of the Trustees' interest and commitment to the Agreement (Exhibit B). There are no additional changes to the project management plan, project maps, or Forest Stewardship approval letter as included in Exhibit A of the Agreement.

In order to better administer agreements under the State Forest Stewardship Program, the Division and the Department of Attorney General have consulted on a new Forest Stewardship Agreement format, and are recommending that the Board approve an updated Agreement for the Patrick and Sheila Conant Forest Stewardship project. This updated Agreement will allow for future amendments, as needed, under the Forest Stewardship Program, and incorporates the State standard contract templates. This Agreement, upon review and approval, will serve as the template for future Forest Stewardship Agreements.

RECOMMENDATIONS:

That the Board:

1. Approve the amended Forest Stewardship Agreement, with Patrick Conant, Trustee of the Patrick Conant Self Trusteed Trust dated February 23, 1994, as amended; Stephanie E. Nagata; Sheila Conant, Trustee of Sheila Conant Self Trusteed Trust dated August 10, 1994, as amended; and David P. McCauley, Trustee of David P. McCauley Trust dated June 21, 1996, as amended; to participate in the State Forest Stewardship Program subject to the following:
  - A. Availability of State Forest Stewardship funds.
  - B. Review of the amended agreement and approval as to form by the Department of the Attorney General.
2. Authorize the Chairperson to finalize and execute the agreement.
3. Approve the form of this Agreement as a template for future Forest Stewardship contracts.

Respectfully submitted,



Paul J. Conry, Administrator  
Division of Forestry and Wildlife

Attachment  
(Exhibit A & B)

APPROVED FOR SUBMITTAL:



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Laura H. Thielen, Chairperson

**STATE OF HAWAII  
FOREST STEWARDSHIP AGREEMENT**

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and Patrick Conant, Trustee of Patrick Conant Self Trusteed Trust dated February 23, 1994, as amended; Stephanie E. Nagata whose addresses and federal and state taxpayer identification numbers are as follows: P.O. Box 1172 Volcano, HI 96785 and Sheila Conant, Trustee of Sheila Conant Self Trusteed Trust dated August 10, 1994, as amended; and David P. McCauley, Trustee of David P. McCauley Trust dated June 21, 1996, as amended whose addresses and federal and state taxpayer identification numbers are as follows: 3663 Alani Drive, Honolulu, HI 96822 \_\_\_\_\_ (collectively referred to as "LANDOWNER").

**RECITALS**

WHEREAS, Chapter 195F, Hawaii Revised Statutes (HRS), provides for the establishment of a forest stewardship program to encourage and assist private landowners in managing, protecting, and restoring important watersheds, native vegetation, fish and wildlife habitats, isolated populations of rare and endangered plants, and other forest lands that are not recognized as potential natural area reserves; and

WHEREAS, in accordance with HRS Chapter 195F and Title 13, Subtitle 5, Part 1, Chapter 109 of the Hawaii Administrative Rules (HAR), the LANDOWNER has applied, and qualifies, for participation in the forest stewardship program; and

WHEREAS, the LANDOWNER has submitted a forest stewardship management plan, as set forth in Attachment 1 hereto, that the STATE agrees is consistent with the policies, goals, and objectives of the forest stewardship program; and

WHEREAS, the STATE desires to assist the LANDOWNER in implementing the forest stewardship management plan with financial and other assistance; and

WHEREAS, money is available to fund this agreement pursuant to: Act 195, SLH 1993, Hawaii Revised Statutes, Section 247-7.

NOW, THEREFORE, in consideration of the promises contained in this AGREEMENT, the STATE and the LANDOWNER agree as follows:

**A. SCOPE OF SERVICES**

The LANDOWNER hereby agrees to implement the forest stewardship management plan set forth in Exhibit A and the project described in the "Scope of Services" set forth in Attachment S1 in proper and satisfactory manner as determined by the STATE, both of which are hereby made a part of this AGREEMENT. The STATE hereby agrees to assist the LANDOWNER in implementing the forest stewardship management plan, all in accordance with the terms and conditions set forth in Attachments S1, S2, S3, S4, S5, and 6, attached hereto.

**B. COMPENSATION**

The LANDOWNER shall be compensated for performance of the project under this AGREEMENT according to the "Compensation and Payment Schedule," set forth in Attachment S2, which is hereby made a part of this Agreement.

**C. TIME OF PERFORMANCE**

The performance required of the LANDOWNER under this AGREEMENT shall be completed in accordance with the "Time of Performance" set forth in Attachment S3, which is hereby made a part of this AGREEMENT.

**D. CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE**

The "State of Hawaii Certificate of Exemption from Civil Service," set forth in Attachment S4, is hereby made a part of the AGREEMENT.

**E. OTHER TERMS AND CONDITIONS**

The "State of Hawaii Special Conditions for Forest Stewardship Agreements" set forth in Attachment S5, and the General Conditions attached hereto, are hereby made a part of this AGREEMENT. For the purposes of this AGREEMENT the term "CONTRACTOR" in the "General Conditions" shall mean the LANDOWNER.

**F. STANDARDS OF CONDUCT DECLARATION**

The "Standards of Conduct Declaration" by LANDOWNER, set forth in Attachment S6, is hereby made a part of this AGREEMENT. For the purposes of this AGREEMENT the term "CONTRACTOR" in the "Standards of Conduct Declaration" shall mean the LANDOWNER.

IN WITNESS WHEREOF, the parties execute this AGREEMENT by their signatures to be effective as of the date first above written.

STATE

By \_\_\_\_\_  
Chairperson of the Board of Land and Natural  
Resources

\_\_\_\_\_  
Print Name

Date \_\_\_\_\_

LANDOWNER

By \_\_\_\_\_

Patrick Conant, Trustee  
Print Name

Date \_\_\_\_\_

By \_\_\_\_\_

Stephanie E. Nagata  
Print Name

Date \_\_\_\_\_

By \_\_\_\_\_

Sheila Conant, Trustee  
Print Name

Date \_\_\_\_\_

By \_\_\_\_\_

David P. McCauley, Trustee  
Print Name

Date \_\_\_\_\_

Approved by the Board of  
Land and Natural Resources on

\_\_\_\_\_.

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

LANDOWNER'S ACKNOWLEDGMENT

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say the he/she is the \_\_\_\_\_, the LANDOWNER named in the foregoing instrument, and the he/she is authorized to sign said instrument on behalf of the LANDOWNER, and acknowledges that he/she executed said instrument as the free act and deed of the LANDOWNER.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Date of the Notarized Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Identification or Description of the Document being Notarized: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_ Circuit

\_\_\_\_\_  
Notary's Signature and Notary's Official Stamp or Seal Date



STATE OF HAWAII  
SCOPE OF SERVICES

SECTION 1 - SCOPE OF WORK

- 1.1 MANAGEMENT AREA - The project area to be managed is the Patrick and Sheila Conant Forest Stewardship project area; TMK NUMBERS 3-1-9-011:021 and 3-1-9-011:070 as designated on maps found in Exhibit A to this AGREEMENT.
- 1.2 THE PRIMARY OBJECTIVES - The STATE and LANDOWNER shall direct their efforts under this AGREEMENT to do the following: fund the management of and manage the natural resources of the seven (7) acres Patrick and Sheila Conant Forest Stewardship project area ("Forest Stewardship project area") in accordance with the MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, and all approved amendments thereto, with the intention of restoring native forest conditions and reducing feral ungulate damage via fence construction in the Volcano community.
- 1.3 SCOPE OF WORK - The LANDOWNER shall perform the following technical and professional services:
- (a) Management plan. The LANDOWNER shall carry out the management activities outlined in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT.
  - (b) Consultation. The LANDOWNER shall be available for consultation regarding progress, upon request by the STATE.
- 1.4 AUTHORITY TO CARRY OUT MANAGEMENT PLAN - The LANDOWNER hereby represents that it has authority to carry out the MANAGEMENT PLAN and that it is the landowner of the "Forest Stewardship project area" as defined in Section 195F-2, Hawaii Revised Statutes, as amended.
- 1.5 NO INCONSISTENT ACTIVITIES - The LANDOWNER shall not take any action on the "Forest Stewardship project area", which will undermine or conflict with the approved MANAGEMENT PLAN.



STATE OF HAWAII  
SCOPE OF SERVICES

II. SECTION 2 - CONTROL AND PROGRESS OF THE WORK

2.1 REPORTS - The LANDOWNER shall submit to the STATE, reports showing work accomplished at the following times:

- (a) Progress Reports. A progress report shall be due on December 31 of each year under this AGREEMENT for which funding has been approved. This report shall include a description of the approved MANAGEMENT PLAN accomplishments and activities, areas needing technical advice, an accounting of expenditures with documentation, and proposed modifications to the current year's management activities. This report shall be submitted to the STATE within 30 days following the due date. If the LANDOWNER would like more than 2 reimbursements per year, a progress report shall accompany each reimbursement request and the "Forest Stewardship project area" shall be made available for a site visit by Department of Land and Natural Resources personnel.
- (b) Annual Report. An annual report shall be due on or before June 30 of each year under this AGREEMENT for which funding has been approved in order to ascertain the need to amend the contract for the following year. In the event the contract is executed less than 6 months prior to June 30, then no annual report is due on June 30. This report shall include a description of MANAGEMENT PLAN accomplishments and activities, areas needing technical advice, and proposed modifications to the next year's approved management objectives, projects and budget. This report shall also include a detailed accounting of expenditures for the preceding 12-month period to provide the basis for the annual reconciliation of the STATE's and the LANDOWNER's respective shares of funding as determined pursuant to Attachment S3, Section 2.1. This report shall be submitted to the STATE within 60 days of due date. This report may also request, subject to approval by the STATE, changes to the management plan, for either or both the practice implementation schedule and/or the budget/payment schedule in order to best consolidate and rectify the past year's outcomes or lack thereof.



STATE OF HAWAII  
SCOPE OF SERVICES

2.2 DELEGATION OF AUTHORITY - As used herein and throughout this AGREEMENT, unless the context clearly indicates otherwise, the STATE shall include the State of Hawaii Department of Land and Natural Resources and its authorized employees, agents and representatives.



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

SECTION I – PAYMENT

1.1 SCOPE OF PAYMENT -

- (a) STATE's Payment. In full satisfaction of the STATE's funding share of the approved MANAGEMENT PLAN, which is contingent upon satisfactory completion by the LANDOWNER of the management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, the STATE agrees to pay the LANDOWNER a total sum not to exceed Six thousand eight hundred eighty three dollars and 00 /100 Dollars (\$6,883.00) according to the schedule outlined below that includes fiscal year 2009 through 2039 for completion of the management activities described in the approved MANAGEMENT PLAN. Payments shall be made by the STATE to the LANDOWNER as partial annual reimbursements for actual expenditures made by the LANDOWNER in completing the management activities described in the approved MANAGEMENT PLAN only after the corresponding progress or annual report has been reviewed by the STATE and all reported management activity accomplishments have been approved following an inspection of the "Forest Stewardship project area" by the STATE. Actual expenditures may include but are not limited to in-kind services such as heavy equipment operation and sources of labor. All funds to be paid by the STATE to the LANDOWNER shall be encumbered on an annual basis for the forthcoming fiscal year provided that the STATE has approved the continuation of management activities outlined in Exhibit A of this AGREEMENT for the forthcoming fiscal year.

If the allocated annual funds are encumbered but not fully utilized/reimbursed due to the LANDOWNER not completing all of the management activities described in the MANAGEMENT PLAN for that year, the LANDOWNER may request that these funds be incorporated in the following year's encumbrance to complete the management activities which were not completed, if there are sufficient STATE funds to accommodate this request. If approved by the STATE, this will be incorporated in a written amendment to the AGREEMENT.



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

If in any fiscal year the STATE does not appropriate, and/or the STATE does not approve the expenditure of funds sufficient to meet the STATE's funding share of the approved MANAGEMENT PLAN, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated and approved, subject to Attachment S5, Section 4.1, regarding partial State funding.

- (b) LANDOWNER's Share. In full satisfaction of the LANDOWNER's funding share of the approved MANAGEMENT PLAN, the LANDOWNER agrees to fully complete the management activities described in the approved MANAGEMENT PLAN, and to initially assume all corresponding actual annual expenditures in expectation of the STATE's partial reimbursement for satisfactory completion of these management activities. Expenditures for implementation of the approved MANAGEMENT PLAN which are less than the amounts allocated in the approved budget may be made by the LANDOWNER in its discretion so long as the quality of materials and work as called for in the approved MANAGEMENT PLAN are not adversely affected.



STATE OF HAWAII  
**COMPENSATION AND PAYMENT SCHEDULE**

**PATRICK & SHEILA CONANT FOREST STEWARDSHIP  
PROJECT BUDGET/PAYMENT SCHEDULE:**

<b>YEAR</b>	<b>Total Budget</b>	<b>Land Owner share</b>	<b>State Share</b>
1	\$15,823.00	\$9,424.00	\$6,400.00
2	\$3,192.00	\$3,192.00	\$0.00
3	\$3,024.00	\$3,024.00	\$0.00
4	\$3,192.00	\$3,192.00	\$0.00
5	\$3,660.00	\$3,560.00	\$0.00
6	\$3,624.00	\$3,458.00	\$407.00
7	\$3,192.00	\$3,192.00	\$0.00
8	\$3,192.00	\$3,192.00	\$0.00
9	\$3,192.00	\$3,192.00	\$0.00
10	\$3,324.00	\$3,258.00	\$0.00
<b>Total</b>	<b>\$45,415</b>	<b>\$38,684</b>	<b>\$6,833</b>

1.2 PAYMENT SCHEDULE –

- (a) Progress Payment. Within 30 days following receipt of the progress report as provided in Attachment 1, Section 2.1(a) for each year for which the STATE has agreed to pay the LANDOWNER as outlined in the schedule above and for which funding has been appropriated, the STATE shall pay to the LANDOWNER a portion of the STATE's annual funding share of the approved MANAGEMENT PLAN as a partial reimbursement of actual expenditures made to complete approved management activities. This payment shall be subject to the LANDOWNER's satisfactory completion of the corresponding approved management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, and calculated on the basis of actual expenditures made by the LANDOWNER. This payment shall also be subject to the STATE's approval of such progress report.
- (b) Annual/Final Payment. Within 30 days of receipt of the annual report as provided in Attachment S1, Section 2.1(b), the STATE shall pay to the LANDOWNER the balance of the STATE's approved annual funding share. This payment shall be subject to the LANDOWNER's satisfactory completion of the corresponding annual management activities described in the approved MANAGEMENT PLAN,



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

attached as Exhibit A to this AGREEMENT, and calculated on the basis of actual expenditures made by the LANDOWNER.

- (1) Annual or Final Acceptance and Payment - Annual or final acceptance means a written notice from the STATE to the LANDOWNER advising the LANDOWNER of the satisfactory fulfillment of the AGREEMENT's annual or final requirements.

- 1.3 UNAUTHORIZED WORK - The LANDOWNER shall not receive matching STATE funds for management activities not designated in the approved MANAGEMENT PLAN. All work completed by the LANDOWNER prior to receipt of a fully-executed copy of this AGREEMENT, and prior to STATE approval of funding for any subsequent years and prior to STATE approval of any subsequent amendments to the approved MANAGEMENT PLAN, shall be at the LANDOWNER's own volition and risk, including work performed during the period of any deliberations by the STATE in anticipation of approval; provided, however, that if funding and/or amendments applicable to such work are subsequently approved, the LANDOWNER may be paid for such work even if performed prior to such approval.

SECTION 2 - FISCAL RECORDS MAINTENANCE, RETENTION, AND ACCESS

- 2.1 The LANDOWNER shall maintain, in accordance with generally acceptable accounting practices, fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices materially related to the LANDOWNER's performance of services paid for by State funds under this AGREEMENT.
  - (a) The STATE, the Comptroller of the State of Hawaii, and any of their authorized representatives, the committees (and their staff) of the Legislature of the State of Hawaii, and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other records of the LANDOWNER that is materially related to the performance by the LANDOWNER of services



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

funded by the STATE under this AGREEMENT, in accordance with generally accepted audit procedures, for the purposes of monitoring and evaluating the LANDOWNER's performance of services and the LANDOWNER's management program and fiscal practices to assure the proper and effective expenditure of funds under this AGREEMENT; provided, however, that no party conducting any such audit or examination shall copy, distribute, or retain any of such information or records, with the understanding that it is not the intention that the LANDOWNER's financial and other records and information be made public.

- (b) The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The LANDOWNER shall retain all records related to the LANDOWNER's performance of services funded under this AGREEMENT for at least 3 years after the date of submission of the LANDOWNER's annual reports for any designated period and payment for such expenditures by the STATE in accordance with its matching share, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been started before the expiration of the 3-year period, the LANDOWNER shall retain the records until completion of the action and resolution of all issues that arise from it or until the end of the regular 3-year retention period, whichever occurs later.



STATE OF HAWAII  
**TIME OF PERFORMANCE**

SECTION 1 - EXECUTION OF AGREEMENT

- 1.1 EXECUTION OF AGREEMENT - This AGREEMENT shall be promptly executed by the STATE and the LANDOWNER upon approval by each party.
- 1.2 CERTIFICATION AND APPROVAL OF AGREEMENT - This AGREEMENT shall not be considered binding upon the STATE, unless the availability of the funds therefore has been duly certified as prescribed by Section 103-39, Hawaii Revised Statutes, as amended. Further, this AGREEMENT shall not be considered to be fully executed unless the Department of the Attorney General of the State of Hawaii has approved this AGREEMENT as to form.

SECTION 2 - TERM

- 2.1 INITIAL TERM - The initial term will be for a minimum of Twenty (20) years following the completion of any and all management practices for which the LANDOWNER has received cost-share assistance. Accordingly, this AGREEMENT shall commence on the date of full execution hereof and shall be in effect until 20; subject, however to earlier termination as provided in this AGREEMENT.
- 2.2 STATE FUNDING CONDITION - This AGREEMENT is subject to continued funding of the STATE's share of the approved management budget as outlined in Attachment S2, Section 1.1. Annual funding is provided by the Conveyance Tax pursuant to Act 195, SLH 1993, Section 247-7, Hawaii Revised Statutes, whereby twenty-five percent of the amount collected from this tax shall be paid into the natural area reserve fund from which funds are dispersed to the natural area partnership and forest stewardship programs, and by way of Act 269, SLH 2000 to projects undertaken in accordance with watershed management plans. Payments are then made through the forest stewardship program to reimburse landowners for implementing approved stewardship management practices. Any balance remaining in this fund at the end of any fiscal year shall be carried forward



**STATE OF HAWAII**  
**TIME OF PERFORMANCE**

into the fund for the next fiscal year. If in any fiscal year the STATE does not appropriate, and/or the STATE does not approve the expenditure of, funds sufficient to meet its share of the approved management budget, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated and approved, subject to Attachment S5, Section 4.1, regarding partial State funding.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").\*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature) \_\_\_\_\_

(Date) \_\_\_\_\_

(Print Name) \_\_\_\_\_

(Print Title) \_\_\_\_\_

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

**NOTE:** Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature) \_\_\_\_\_

(Date) \_\_\_\_\_

(Print Name) \_\_\_\_\_

(Print Title, if designee of the Director of DHRD) \_\_\_\_\_



STATE OF HAWAII  
SPECIAL CONDITIONS

SECTION 1 – INSPECTIONS

1.1 The STATE shall have the right to make inspections of the “Forest Stewardship project area” after prior notice to the LANDOWNER. In addition to the annual inspection indicated in Attachment S2, §1.1, the STATE may make more frequent inspections in the case of a LANDOWNER default as provided in Section 4.1(d) below or when the LANDOWNER makes more than 2 reimbursement requests per year as provided in Attachment S1, Section 2.1. The STATE shall notify the LANDOWNER within a reasonable time of any perceived defaults in the LANDOWNER's implementation of the approved MANAGEMENT PLAN. The LANDOWNER hereby represents that it has authority to allow access to the “Forest Stewardship project area” by the STATE in connection with this AGREEMENT.

SECTION 2 - AMENDMENTS

- 2.1 The LANDOWNER may propose for approval by the STATE, and the STATE may approve, minor alterations to the approved MANAGEMENT PLAN, which will not have a material adverse impact on the achievement of the overall management objectives of the approved MANAGEMENT PLAN. This includes minor changes to the practice implementation schedule and/or changes in the budget/payments schedule so long as the total management activities do not subtract from or exceed the total scope of the approved MANAGEMENT PLAN and the budget/payments schedule does not exceed the total annual budget allocations up to and including the budget request for that year, and so long as the STATE has sufficient funding available to accommodate such a request.
- 2.2 The LANDOWNER may propose for approval by the STATE, and the STATE may approve, significant changes to the approved MANAGEMENT PLAN or budget to adapt to current conditions. Significant amendments to the approved MANAGEMENT PLAN shall include an amended budget, which may increase the overall STATE's funding share above the total amount set forth in the approved budget/payment schedule. The STATE shall make the proposed amendments available for public review prior to final approval.



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SPECIAL CONDITIONS

- 2.3 The proposed amendments may include, without limitation, re-establishment of management priorities, increase or reduction of the specified work, increases to the budget/payments schedule, or time for performance of specified tasks, all as determined considering the natural conditions of the “Forest Stewardship project area,” existing management priorities, threats, potential for decline of the natural resource during any period under consideration, availability of specialized labor or technical expertise, permitting requirements and time needed to obtain permits, and other material factors.
- 2.4 Any proposed expenditures which will increase the overall STATE's funding share above the amount set forth in the approved budget of the approved MANAGEMENT PLAN, which are proposed either as a result of additional costs required to implement the approved MANAGEMENT PLAN or as a result of amendments to the approved MANAGEMENT PLAN, must be mutually agreed upon in advance by and between the STATE and the LANDOWNER. If so agreed upon the approval of these expenditures shall be incorporated in written amendment to this AGREEMENT.
- 2.5 Economic Hardship. Notwithstanding other provisions of this AGREEMENT, in the event that the LANDOWNER determines in good faith that it is financially unable without undue economic hardship to fulfill its funding share as provided in Attachment S2, Section 1.1(b), or to carry out fully the management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, within the budget and time period established thereby, the LANDOWNER may apply to the STATE to renegotiate the terms thereof.
- (a) Negotiation of Amendment. In such event, the STATE and the LANDOWNER shall meet and negotiate in good faith an acceptable amendment to the approved MANAGEMENT PLAN that seeks to accomplish the significant objectives of the approved MANAGEMENT PLAN reasonably within the LANDOWNER's financial means. The amendment may include, without limitation, re-establishment of management priorities and reduction and/or deferral of the



STATE OF HAWAII  
SPECIAL CONDITIONS

specified work, involving significant costs, and/or extension of time for performance of specified tasks, all as determined considering the natural conditions of the “Forest Stewardship project area,” existing management priorities, threats, potential for decline of the natural resource during any period under consideration, other potential sources of funding, and other material factors.

- (b) Disputes. If the STATE and the LANDOWNER are unable to agree reasonably and in good faith on a suitable amendment to the approved MANAGEMENT PLAN, the parties shall refer any such disputes to arbitration as provided in Attachment S5, the General Conditions, Section 11.
  
- (c) No Termination for Economic Hardship. This provision shall not be construed to allow the LANDOWNER or the STATE to terminate this AGREEMENT for economic hardship; it is rather intended to provide a mechanism for reasonable revisions to the approved MANAGEMENT PLAN for economic hardship.

SECTION 3 - PAYBACK OF STATE FUNDS

- 3.1 In the event that the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER’s right, title, or interest in the “Forest Stewardship project area,” or any portion thereof, during the initial term of this AGREEMENT as defined in Attachment S3, Section 2.1, the LANDOWNER shall within 90 days of the sale, conveyance or transfer of title or interest in the “Forest Stewardship project area,” pay back to the STATE a portion of the amount paid by the STATE to the LANDOWNER pursuant to this AGREEMENT. The amount to be paid back to the STATE shall be that fraction of the total matching funds received by the LANDOWNER under this AGREEMENT that is equal to the fraction of the “Forest Stewardship project area” that is sold, conveyed or otherwise transferred by the LANDOWNER.



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3.2 In the event that the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER's right, title, or interest in the "Forest Stewardship project area," or any portion thereof, during the initial term of this AGREEMENT as defined in Attachment S3, Section 2.1, the LANDOWNER will not be required to reimburse the STATE as set forth in Attachment S5, Section 3.1 for the cost-share assistance received if the person(s) who acquire the property contractually agree to assume full responsibility for this AGREEMENT for the initial term of the AGREEMENT, including but not limited to management and financial responsibilities and penalties contained herein. See Agenda Item C-3, as amended, approved at the Board of Land and Natural Resources June 13, 2008 meeting. Nothing in this provision shall relieve the LANDOWNER of its obligations under this AGREEMENT.

SECTION 4 - TERMINATION; DEFAULT; PENALTY PAYBACK

- 4.1 TERMINATION OF THE AGREEMENT - It is mutually agreed that this AGREEMENT may be terminated for any one of the following reasons on the following terms:
- (a) No State Funding. This AGREEMENT shall be terminated if the STATE does not approve funding for the forthcoming fiscal year of the approved MANAGEMENT PLAN. In such event, this AGREEMENT shall automatically terminate without penalty at the end of the funding period then in effect.
  - (b) Partial State Funding. This AGREEMENT may be terminated by the LANDOWNER if the STATE approves only a portion of its share of funding for the forthcoming fiscal year as outlined in the budget provided in the approved MANAGEMENT PLAN.
    - (1) In such event, the LANDOWNER shall elect, by written notice to the STATE, either:
      - (A) to terminate this AGREEMENT without penalty at the end of the funding period then in effect; or



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- (B) to revise the approved MANAGEMENT PLAN and budget in the LANDOWNER's reasonable discretion to accomplish significant management goals which can reasonably be funded with the amount of STATE funding actually approved.
- (c) Transfer to Government Agency. This AGREEMENT may be terminated without penalty if the "Forest Stewardship project area" is transferred or sold to a government agency committed to forest stewardship and that possesses the technical and professional skills to manage the "Forest Stewardship project area" natural resources.
- (d) LANDOWNER Default. This AGREEMENT may be terminated by the STATE upon substantial evidence that progress being made by the LANDOWNER in carrying out the approved MANAGEMENT PLAN is inadequate, incorrect, or insufficient to substantially complete on a timely basis the work called for in the approved MANAGEMENT PLAN subject to the lack of performance notification provisions set forth below.
- (1) Penalties Apply. In the event of termination for default in accordance with these provisions, the penalty payback provisions set forth below shall apply.
- (2) Lack of Performance Notification. In such event, the STATE may terminate for default, provided the STATE adheres to the following procedures for notice and opportunity to cure prior to termination:
- (A) The STATE shall first notify the LANDOWNER in writing of any perceived inadequacy, incorrectness or insufficient progress. The STATE and the LANDOWNER shall meet within two weeks thereafter, and every three months thereafter until one year



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following the date of the notice, and discuss in good faith the perceived failure and the reasons therefore and any subsequent progress or lack thereof. If the reason for the failure is a good faith inability of the LANDOWNER to carry out the terms of the MANAGEMENT PLAN for reasons beyond the LANDOWNER's reasonable control, including without limitation economic hardship as described in Attachment S5, Section 2.5 above, the STATE and the LANDOWNER shall specifically consider the need to amend the approved MANAGEMENT PLAN, including extending the time to carry out the work called for in the approved MANAGEMENT PLAN and/or revising the budget established in the approved MANAGEMENT PLAN, subject to the provisions of Attachment S1, Section 1.5 and Attachment S4, Section 2 of this AGREEMENT regarding amendments to this AGREEMENT and the approved MANAGEMENT PLAN. Following the date of the notice, the STATE shall be obligated to inspect the "Forest Stewardship project area" once each quarter after notifying the LANDOWNER, to determine the updated status of the perceived default.

- (B) Following the expiration of the one year period following notice of default given by the STATE to the LANDOWNER and failure of the LANDOWNER to remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within one year, the STATE may elect to notify the LANDOWNER of its intention to terminate this AGREEMENT for default. Such notice shall be in writing, shall state that the STATE will terminate the AGREEMENT for default on a date not less than 3 months thereafter if the LANDOWNER does not remedy the default, or to make significant progress to



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remedy the default if by its nature the default cannot reasonably be remedied within 3 months, and shall specify that penalties as provided under this AGREEMENT shall apply.

- (C) If the LANDOWNER fails to remedy the default within 3 months thereafter, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3 months, the STATE may terminate this AGREEMENT effective immediately for default by written notice thereof to the LANDOWNER.
  - (D) The STATE shall be deemed to have complied with these provisions if it attempts in good faith to meet with the LANDOWNER and to inspect the "Forest Stewardship project area" as provided above, whether or not the LANDOWNER cooperates in such procedures.
- (3) All disputes regarding default and termination under this AGREEMENT, which cannot be resolved by the parties, shall be referred to arbitration as provided in Attachment S5, the General Conditions, Section 11.
  - (4) If the LANDOWNER has not fully performed its work under this AGREEMENT on expiration or termination of this AGREEMENT, the STATE may withhold the final payment to the LANDOWNER pending full completion of the LANDOWNER's work. This withheld payment shall be paid by the STATE to the LANDOWNER on final acceptance and tax clearance as provided in Attachment S2, Section 1.2 (b) and Attachment S5, Section 17.



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- (a) Payback and Penalties. In the event that the LANDOWNER defaults on this AGREEMENT as provided in Attachment S5, Section 4.1(d) above and the STATE has followed the Lack of Performance Notification procedures as outlined in Attachment S5, Section 4.1(d)(2) above, the LANDOWNER shall promptly pay to the STATE the following payback and penalty monies:

Refund of State Funds - 3 Years. All funds paid from the initial date of this AGREEMENT by the STATE to the LANDOWNER in the previous 3 years (or such portion thereof as STATE shall have funded if this AGREEMENT shall have been in effect for less than 3 years) shall be returned to the STATE. In the event that this AGREEMENT shall have been in effect for more than 3 years, the LANDOWNER shall be liable to pay back State funds for the immediately preceding 3 years. In addition, the LANDOWNER shall pay to the STATE a penalty of two percent of the total of funds that are returned to the STATE.

- (b) No Other Party Liable. Only the LANDOWNER receiving State funding under the FOREST STEWARDSHIP PROGRAM shall be liable to the STATE under this AGREEMENT for the payback and penalty.
- (c) Disputes. The LANDOWNER shall have the right to submit any disputes as outlined in Attachment S5, Section 11 if it feels that the imposition of payback, and/or additional penalties is unwarranted.

4.3 VIOLATIONS OF AGREEMENT - It is expressly understood and agreed that violations which are not caused by the LANDOWNER shall not constitute or give rise to a default by the LANDOWNER under this AGREEMENT and no penalty provisions shall apply to the LANDOWNER.

4.4 EFFECT OF EMINENT DOMAIN -



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- (a) Full Condemnation. If any action in eminent domain for the condemnation of the fee title of the entire “Forest Stewardship project area” described herein is filed, or if the “Forest Stewardship project area” is acquired in lieu of eminent domain for a public improvement by a public agency or person or whenever there is any such action or acquisition by the federal government or the state government or any person, instrumentality or agency acting under authority or power of the federal government or the state government, this AGREEMENT shall be deemed null and void without penalty as to the land actually being condemned or so acquired as of the date the action is filed, and upon the termination of such a proceeding, this AGREEMENT shall be null and void without penalty for all land actually taken or acquired.
  
- (b) Partial Condemnation. When such an action to condemn or acquire less than all the entire “Forest Stewardship project area” is filed, this AGREEMENT shall be deemed null and void without penalty as to the portion so condemned or acquired.
  
- (c) Adjustment of approved MANAGEMENT PLAN. The land actually taken by the means set forth above in this Section shall be removed from this AGREEMENT and the approved MANAGEMENT PLAN and budget adjusted accordingly on a reasonable basis by the STATE and the LANDOWNER.

SECTION 5 - INCORPORATION OF CHAPTER 195F, HAWAII REVISED STATUTES

- 5.1 Incorporation. The provisions of chapter 195F, Hawaii Revised Statutes, as amended, are incorporated by reference into this AGREEMENT. In the event that there is any conflict between the provisions of this AGREEMENT and the provisions of chapter 195F, Hawaii Revised Statutes, the latter shall be controlling.



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5.2 Renumbering. In the event that chapter 195F, or any of the sections under chapter 195F, Hawaii Revised Statutes, are renumbered, any references to the chapter or sections in this AGREEMENT shall be deemed renumbered accordingly.

**EXHIBIT A**

Patrick and Sheila Conant Forest Stewardship Management Plan.

# GENERAL CONDITIONS

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- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 3. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.



- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR;

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.



STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

- 1. CONTRACTOR [ ] is [ ] is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

\*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By \_\_\_\_\_ (Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_

## **Forest Stewardship Management Plan**

**13 December 2007**

**Name: Patrick and Sheila Conant**

**Address: P.O. Box 1172 Volcano HI 96785**

**Email: [pat.conant@hawaii.gov](mailto:pat.conant@hawaii.gov) and [conant@hawaii.edu](mailto:conant@hawaii.edu)**

**Phone:**

**P. Conant: 967-7346 home, 974-4140 work**

**S. Conant 988-3960 home, 956-8617 work, Fax: 956-9812**

**Tax Map Key number and property acreage:**

**3-1-9-11-21 and 1-9-11-70 (adjacent), 3.5 acres each**

**Landowner name: Sheila Conant and David P. McCauley (lot 21) and Patrick Conant and Stephanie Nagata (lot 70), respectively**

**Lessee name: N.A.**

**State and County Zone designation: 2 acres of lot 21 is zoned Agricultural (A-5a), and the remaining 5 acres are zoned Urban (RS-10). See map for details.**

**Acres of proposed stewardship management area: 6.5 acres (excluding clearings and buildings)**

**No consultant used. Plan completed on 14 December 2007.**

**Forest Stewardship Plan Signature Page**

Professional Resource Consultant Certification: I have prepared this Forest Stewardship Plan. Resource Professionals have been consulted and/or provided input as appropriate during the preparation of this plan.

Prepared by: Patrick Conant in consultation with Sheila Conant, Ph.D.

Sheila Conant  
Professional Resource Consultant's Signature

April 25, 2008  
Date

Professional Resource Consultant's Name: Sheila Conant, Ph. D.

Applicant Certification: I have reviewed this Forest Stewardship and hereby certify that I concur with the recommendations contained within. We agree that resource management activities implemented on the lands described shall be done in a manner consistent with the practices recommended herein.

Prepared for: Patrick Conant and Sheila Conant of Patrick Conant Self Trusteed Trust and Sheila Conant Self Trusteed Trust, respectively.

Patrick Conant  
Applicant's Signature

April 29, 2008  
Date

Sheila Conant  
Applicant's Signature

April 25, 2008  
Date

Applicants' Names: Patrick Conant and Sheila Conant , Trustees

State Forester's Approval: This plan meets the criteria established for Forest Stewardship Plans by Hawaii's Forest Stewardship Advisory Committee. The practices recommended in the plan are eligible for funding according to State of Hawaii Forest Stewardship Program guidelines and administrative rules.

Approved by: Sheila Conant August 22, 2008  
Cooperative Resource Management Forester

Paul J. Conry  
State Forester's Signature

June 4, 2008  
Date

Paul J. Conry

State Forester's Name: \_\_\_\_\_

### **III. Introduction**

#### **Description and Management Objectives**

The property lies in the Northwest section of Volcano Village at 3900 ft elev. in the Puna District. Total land area is 7 acres comprised of 2 separate ownership lots belonging to Patrick Conant and Sheila Conant. The parcel is "L" shaped, with the bottom of the L (the Northwest end) zoned A-5a (2 acres) and the remaining portion, or 5 acres zoned RS-10. Zoning of lot 21 is split (1.5 A is RS-10 and 2 A is A-5a) zoning while lot 70 (3 A, Southeast end) is all RS-10. See maps (Figures 1 and 2) and photos (Figures 3 and 4) for details. Any subsequent references such as "the property" or "the site" will be in reference to the entire combined 7 acre area.

Our long term goal for the property is to restore the native ohia/hapuu plant community forest and manage it to conserve native Hawaiian biodiversity. This will be accomplished via finishing the perimeter fence line, ongoing alien weed control and periodic planting of native species in the remaining light gaps. Manageable alien animal species such as western yellow jacket (*Vespula pennsylvannica*) and coqui frogs (*Eleutherodactylis coqui*), which do not presently occur on the property, will be eliminated when found. No commercial harvesting of any timber, hapuu or other plant material will occur.

#### **History of land use and present conditions**

The general area the property is in was probably cleared in the 1920's for a golf course that was never actually built (Warshauer 2002). Existing vegetation is probably 2<sup>nd</sup> growth, either Ohia/hapuu (*Metrosideros/Cibotium*) or Ohia/uluhe (*Metrosideros/Dicranopteris*) montane wet forest plant community, with olapa (*Cheirodendron trigynum*), kawau (*Ilex anomala*), pilo (*Comprosmia rynchocarpa* and *C. ochracea*), kolea (*Myrsine lessertiana*), amauu (*Sadleria cyatheoides* and *S. pallida*) and other species, in the canopy or understory. The northwest end (lot 21) is more open (three clearings have been made for two buildings and a lawn) and more restoration planting (with native plants) has been started on that end than the southeastern end. The northwest end (lot 21) is more open; clearings have been made for a driveway, house, garage and lawn. The southeastern end (lot 70) has about an acre of uluhe fern cover in patches and the percentage of vegetation cover is higher on lot 70. There are clearings for a driveway, house, garage and vehicle turn-around clearings on the southeastern parcel. The area covered by this management plan (6.5 acres) does not include the clearings.

### **IV. Land and Resource Description**

#### **Existing vegetation/cover types**

The area proposed for management is comprised essentially of two native plant communities, either Ohia/hapuu or Ohia/uluhe montane wet forest plant community (Wagner et al 1990). The latter occupies roughly 1/3 of the Southeast half of the property. The dominant tree fern is *Cibotium glaucum* with scattered *C. menziesii*. A lower layer of tree ferns is occupied by amauu. Other trees less common than ohia include olapa, kawau, pilo, and kolea. Understory shrubs are not diverse and include primarily ohelo (*Vaccinium calycinum*), manono (*Hedyotis terminalis*), two small patches of Haiwale (*Cyrtandra platyphlla*), less than 20 specimens each of akia

(*Wikstroemea phillyreifolia*) kanawao (*Broussaisia arguta*), pukiawe, (*Styphelia tameiameia*) and *Hedyotis centranthoides*. There are roughly 20 strawberry guava (*Psidium cattleianum*) trees marked for removal. Seedlings of woody weeds such as faya tree (*Morella faya*), Himalayan raspberry (*Rubus ellipticus*) or strawberry guava constantly appear and are removed. Planted shrubs include oha wai (*Clermontia parviflora* and *C. hawaiiense*) aalii (*Dodonaea viscosa*) and mamake (*Pipturus albidus*) and none number more than about 25. Cover in the herb layer is sparse but includes uki (*Machaerina angustifolia*), painiu (*Astelia menziesiana*), *Lycopodium venustulum* and three small patches of ohe (*Isachne distichophylla*). Alien species in the herb layer include carpet grass (*Axonopus fissifolius*), *Hypericum parvulum*, woodland strawberry (*Fragaria vesca*), and kahili ginger (*Hedychium gardnerianum*). Trees that have been planted to date include fewer than 20 each of koa (*Acacia koa*) and naio (*Myoporum sandwicense*), and fewer than ten alien fruit trees.

A restoration effort has been ongoing over the last 10 years so that virtually all kahili ginger larger than seedlings are gone, except on two boundary lines. Strawberry guava is the only alien weed left that is not in the herb layer. During the rainy winters, many hapuu (and a few pilo) have been taken from dense areas and moved to fill light gaps over the years with very good survival. No more than roughly about 30 each of mamake, naio, koa, aalii and manono seedlings have been planted with excellent survival.

About 3 years ago two large (90 ft tall) Mexican cypress trees (*Cupressus lusitanica*), were cut down next to a neighbor's house and most of the smaller branches were chipped. These were spread throughout our 7 acre parcel (by very many wheelbarrow loads) on any exposed soil in sunny areas to discourage weeds. As the chips began to compost, they proved highly attractive to pigs (probably to find earthworms) and most of these areas were thoroughly disturbed, not only negating the effort, but exacerbating the problem.

### Existing Forest Health and Function

Since the property appears to have been mostly clearcut (presumably in 1924 for a golf course), few of the ohia trees are larger than 18 inches DBH and most appear to be in good health. Consequently, cover of this species is high except where uluhe fern dominates. There is nothing to suggest that "ohia decline" phenomenon has occurred in the area recently. No disease problems on any of the native plants appear to be significant. Cerambycid beetle (presumably native sp) damage can be seen on the odd dying tree. Australian fern weevil, (*Syagrus fulvitaris*) damage to the *Sadleria* spp. is common and probably shortens the life span of these species (Fullaway 1921).

By far the biggest problem with regeneration of the native plants is wild pigs, which have been coming through every few weeks only since the latter half of 2007. Signs of feral pigs on the property have not been evident in the last 30 years, but in only about the last six months, feral pigs have removed much of the amauu understory and damaged many of the terrestrial painiu patches. Both uprooted amauu and painiu have proved difficult to salvage and transplant. A few planted koa and naio seedlings have been snapped off or partially girdled by pigs and one planted loulu (*P. baccariana*) was killed and another badly damaged.

During drought, the uluhe fern can be considered something of a fire hazard, although it has always remained green in even the driest weather. In case of fire, a fire hydrant on the access road is connected to a 10,000 gallon water tank on the property.

### **Soils**

Soil on the property is primarily ash from the 1790 Keanakakoi eruption and typically less than two feet deep. The dominant soil type is ashy ferrihydritic, non-acid, isothermic, udic ustorthents. Fertility is low to medium (Bruce Mathews, University of Hawaii at Hilo-College of Agriculture, Forestry and Natural Resource Management, pers comm.). The "A" horizon is generally no more than 8 inches deep but may be deeper in low spots. The terrain is undulating and slopes from the Northwest corner to the East and Southeast. pH is typically acidic, particularly where ferns are abundant as they are on this property (John Lockwood, U.S. Geological Survey, retired, pers comm.).

### **Water Resources**

There are no water resources on the property. Rainfall in the Volcano Village area is 130 inches per year.

### **Timber Resources.**

The North and East sides are lined with mature Mexican cypress trees (*Cupressus lusitanica*), some of which are over 80 feet tall. Two mature redwood trees (*Sequoia* sp.) occur on the property also. Ohia is the only other tree (and the dominant one) that can be considered a timber resource. The Mexican cypress blow over easily and are left in place if they do not block any access. Some fallen trees have continued to grow while the dead ones are used for firewood. No one interested in milling the wood could be found locally. Some ohia poles from house pad clearings have been given away and the rest used for firewood. The dead cypress are being replaced with sugi cedar (*Cryptomeria japonica*) to maintain the windbreak.

### **Wetland Resources**

There are no wetland resources on the property

### **Significant Historic and Cultural Resources**

The only known possible historic resource is the two redwood trees that may have been planted as part of the proposed golf course (Hawaii Country Club Ltd.) in 1924 (Warshauer Hawaii Tribune Herald 2002). No archaeological survey has been made at this site. The entire project area has been thoroughly explored over the last 10 years and no evidence of archaeological features or possible grave sites have ever been seen on the site. If any archaeological features or remains are found during this project, all activities will cease and the appropriate agencies, including the State Historic Preservation Division, will be alerted.

Plan, Hakalau National Wildlife Refuge 1996). Outplanting in light gaps should both improve native plant survival and discourage weeds that require more sunlight.

### **Site preparation**

“Brushing” for the perimeter fence line has already begun so that additional clearing by the fencing contractor will be minimal. Some large tree trunks, root masses, rare plants etc, have been left since the exact line of the fence needs to be negotiated between the landowner and the contractor. Necessary clearing done by the contractor has been factored into the fencing cost.

### **Weed control**

No invasive alien shrubs or trees remain on the property with the exception of a few strawberry guava (*Psidium cattleianum*) most of which are marked with flagging tape for herbicide treatment (roughly 20+ saplings; all less than 2 in. DBH). These will be killed by notching and application of herbicide (Motooka et al 2003).. None are mature enough to produce fruit. Seedlings of woody weeds such as faya tree (*Morella faya*), Himalayan raspberry (*Rubus ellipticus*) or strawberry guava, as well as incipient grasses and herbs, such as yellow foxtail (*Setaria gracilis*), glenwood grass (*Sacciolepis indica*) and *Kyllinga brevifolia*, are hand pulled.

In the herb layer, carpet grass, the iris *Tritonia crocosmiflora*, (only in a 20 x 20 ft. area) English ivy (*Hedera helix*) and knot weed (*Polygonum capitatum*) will be controlled with herbicide, (the latter 2 are only on the SE edge of the property). Kahili ginger seedlings will be controlled by either hand pulling or herbicide. No large rhizomes remain on the property, except on the edge of the SE and NW boundaries. These will be removed in Year 2 or sooner. Starting in Year 5 (through Year 10), carpet grass will be eliminated in annual increments of roughly 1 acre. Up to this point in time, it has been left in some areas to prevent other invasive species from moving into light gaps. However, weed control in the herb layer (including woody seedlings) is always ongoing and practiced at about ½ day or more on most weekends via weed surveys over the entire 7 acres (labor supplied by landowner as listed in annual implementation schedule).

### **Seedling acquisition**

Native seedlings for planting will either be thinned from dense understory areas or purchased from Kulani Prison, Plant Native Nursery or Grow Native Nursery. Forty purchased seedlings should be adequate., with another 15 purchased later to account for mortality. The seedlings desired are not common in the trade and there may be some delay in finding them or seed to grow them from.

### **Planting**

Naio, olomea (*Perrotettia sandwicensis*), kopiko (*Psychotria*), *Cyanea pilosa* and loulu (*Pratichardia baccariana*) will be the preferred species since these are uncommon on the property or absent. These less common species are preferred, to serve as seed sources for this and other restoration projects in the Volcano area. They may be more difficult to obtain and cost could be higher than common species, but we can closely monitor protection of fruit from slugs, rats and other predators. If cost is considered too high, more common species could be substituted. Light

### **Fertilization and soil amendments**

Foliar fertilizer will be applied to seedlings by owners (cost covered by landowner) every 2 weeks until well established and healthy.

### **Intensive revegetation and special areas**

N.A.

### **Trail construction**

N.A.

### **Non-commercial thinning**

N.A.

## **VI. Practice Implementation Schedule**

See Attachment 1

## **VII. Budget Summary**

See Attachment 2

## **VIII. Required Maps**

See Figures 1, 2 and 4

## **IX. Monitoring activities**

Monitoring of weed incursions is done routinely by owner (cost covered by landowner) on most weekends and weeds are treated with herbicide or hand pulled prior to setting seed whenever possible. If *Vespula* nests are detected during the weed surveys, they will be destroyed. Coqui will be listened for on Spring through Fall nights and any frogs will be removed. Planted seedlings will be checked for insect damage and treated if necessary. During drought, seedlings will be hand watered if necessary to ensure survival.

## **X. Appendices: air photos, new pig damage, landscape, etc.**

Appendix 1. Photos

Appendix 2. Letters of Support

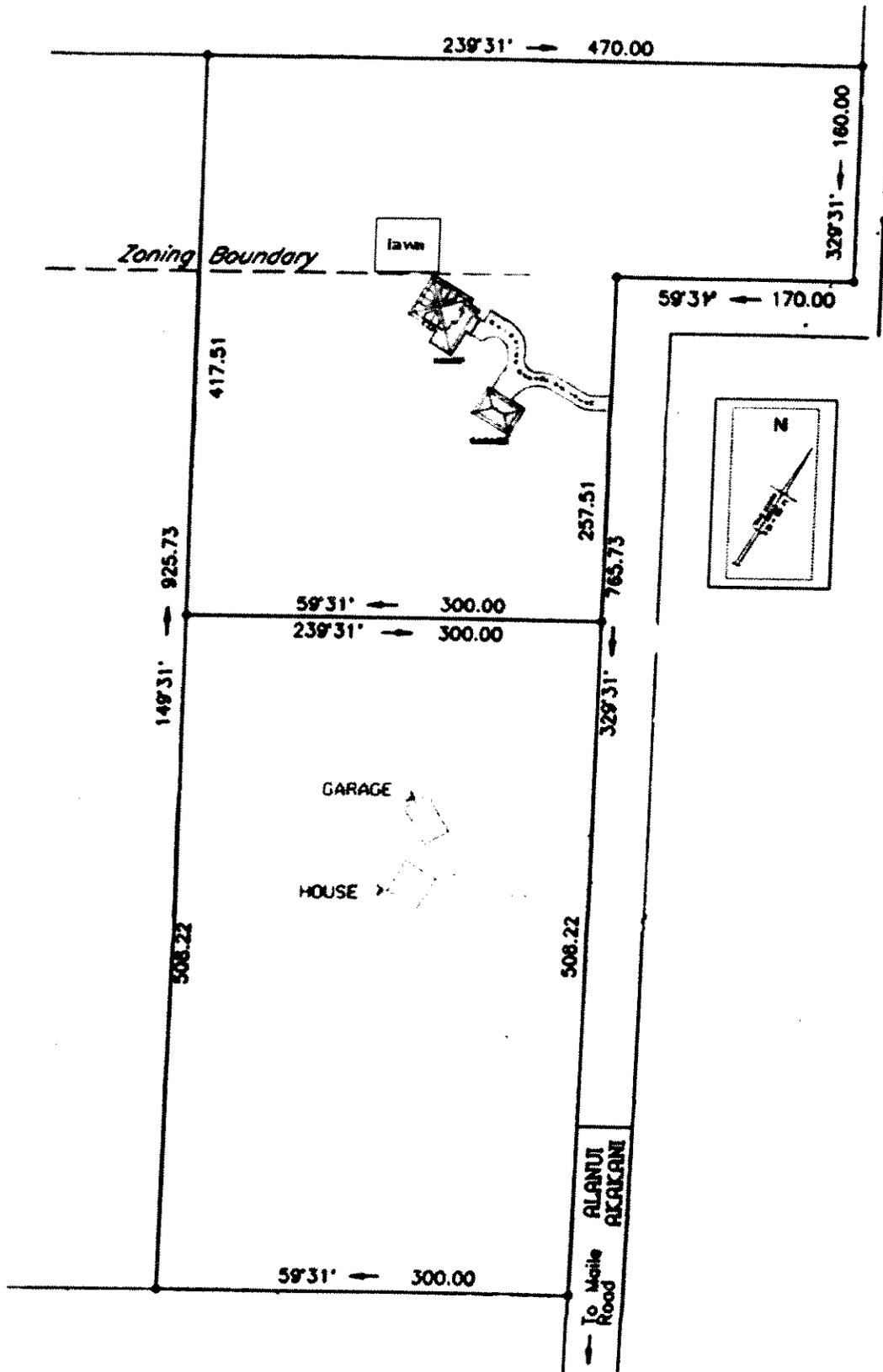


Figure 1. Property plot plan. Fenceline will follow outer property lines.

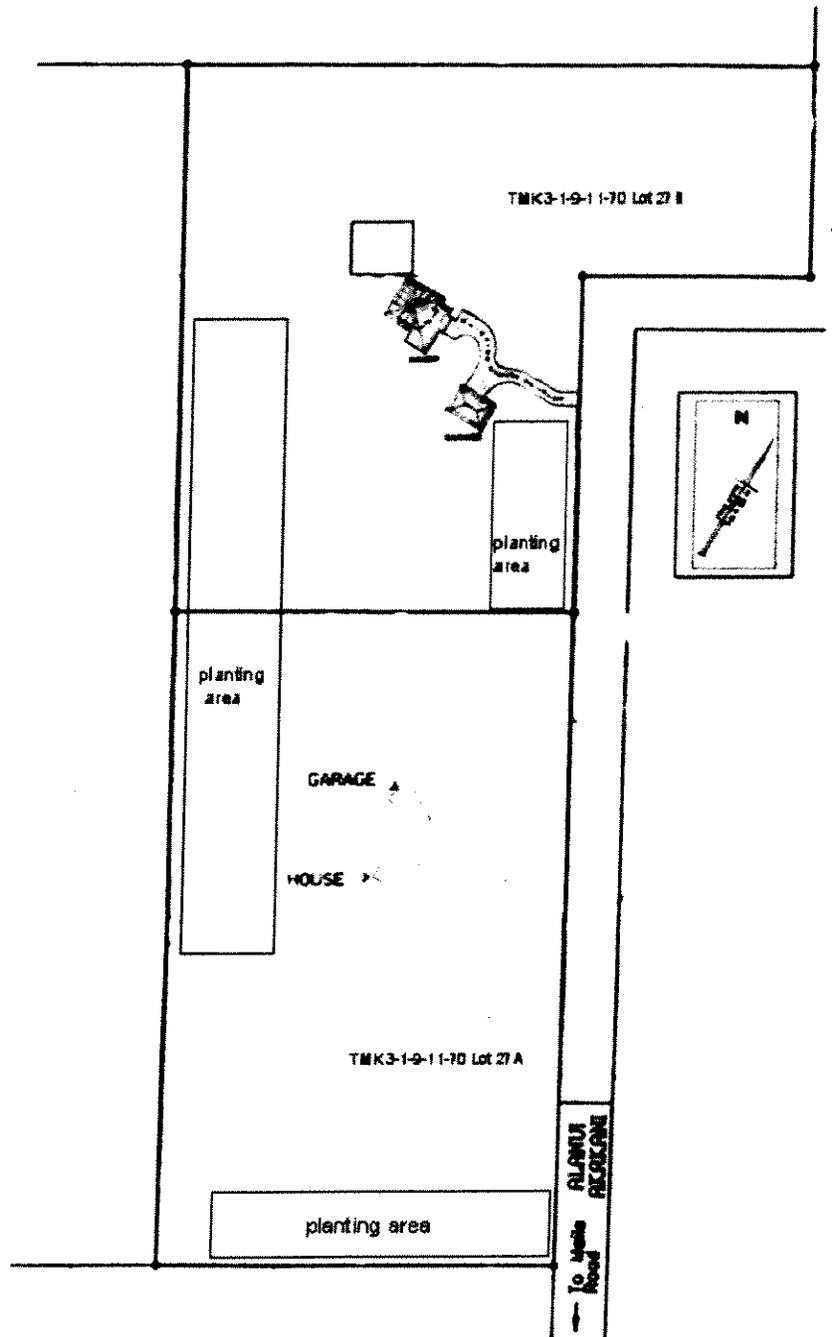


Figure 4. Future planting areas.

Figure 5. Landscape perspective from SW corner of property (see appendix 1)

Figure 6. Pig damage (see appendix 1)

Conant Implementation Schedule

Implementation Schedule Year 5

Practice Component	Units	Cost/Unit	Total Cost	Applicant	
				Share	FSP Share
Site Preparation		\$ -	\$ -	\$ -	\$ -
Weed Control*	7 acres	\$3,192.00	\$3,192.00	\$3,192.00	\$0.00
Seedling Acquisition		\$ -	\$ -	\$ -	\$ -
Planting**		\$ -	\$ -	\$ -	\$ -
Fencing Construction		\$ -	\$ -	\$ -	\$ -
Fence Maintenance		\$ -	\$ -	\$ -	\$ -
<b>Total</b>		<b>\$3,192.00</b>	<b>\$3,192.00</b>	<b>\$3,192.00</b>	<b>\$0.00</b>

\*cost covered by landowner; includes 1 acre carpet grass removal

\*\*cost covered by landowner

Implementation Schedule Year 6

Practice Component	Units	Cost/Unit	Total Cost	Applicant	
				Share	FSP Share
Site Preparation		\$ -	\$ -	\$ -	\$ -
Weed Control*	7 acres	\$3,192.00	\$3,192.00	\$3,192.00	\$0.00
Seedling Acquisition	55 plants	\$15.00	\$825.00	\$550.00	\$275.00
Planting		\$336.00	\$336.00	\$336.00	\$0.00
Fencing Construction		\$ -	\$ -	\$ -	\$ -
Fence Maintenance**		\$264.00	\$264.00	\$132.00	\$132.00
<b>Total</b>		<b>\$3,807.00</b>	<b>\$4,617.00</b>	<b>\$4,210.00</b>	<b>\$407.00</b>

\*Cost covered by landowner; includes 1 acre carpet grass removal

\*\*Fence post painting (4 gal paint @ \$33/gal)

Implementation Schedule Year 7

Practice Component	Units	Cost/Unit	Total Cost	Applicant	
				Share	FSP Share
Site Preparation		\$ -	\$ -	\$ -	\$ -
Weed Control*	7 acres	\$3,192.00	\$3,192.00	\$3,192.00	\$0.00
Seedling Acquisition**		\$ -	\$ -	\$ -	\$ -
Planting		\$126.00	\$126.00	\$126.00	\$0.00
Fencing Construction		\$ -	\$ -	\$ -	\$ -
Fence Maintenance		\$ -	\$ -	\$ -	\$ -
<b>Total</b>		<b>\$3,318.00</b>	<b>\$3,318.00</b>	<b>\$3,318.00</b>	<b>\$0.00</b>

\*Cost covered by landowner; includes 1 acre carpet grass removal

\*\*replacements for mortality

### Conant Budget Summary

<b>YEAR</b>	<b>Total Budget</b>	<b>Land Owner share</b>	<b>State Share</b>
1	\$15,876.00	\$9,450.00	\$6,426.00
2	\$3,192.00	\$3,192.00	\$0.00
3	\$3,024.00	\$3,024.00	\$0.00
4	\$3,192.00	\$3,192.00	\$0.00
5	\$3,660.00	\$3,560.00	\$0.00
6	\$3,624.00	\$3,458.00	\$407.00
7	\$3,543.00	\$3,543.00	\$0.00
8	\$3,192.00	\$3,192.00	\$0.00
9	\$3,192.00	\$3,192.00	\$0.00
10	\$3,324.00	\$3,258.00	\$0.00
<b>Total</b>	<b>\$45,819</b>	<b>\$39,061</b>	<b>\$6,833</b>

Figure 6. Recent pig damage .

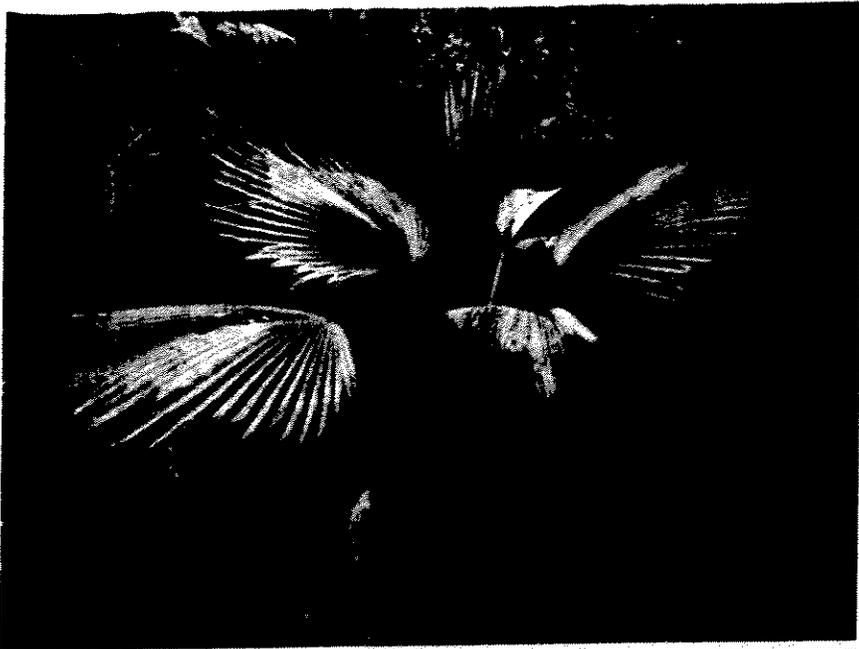




Above: Haiwale plants

Below: Loulu pig damage





# Forest Stewardship Program

Conant Project Site  
January 2008



# AINA MAIKA'I RANCH

P.O. Box 69, Volcano, Hawaii 96785  
Tel: 967-7357; FAX: 967-8525

*Organic food from the fertile soil of Kilauea.....*

## MEMORANDUM

**TO:** Sheila Conant  
**FROM:** J. P. Lockwood  
**SUBJECT:** South boundary fence of 'Aina Maika'i Ranch (TMK: 1-9-011-022)  
**DATE:** April 16, 2008

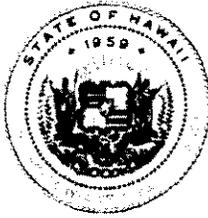
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## MESSAGE:

This is a reply in regard to your request to erect a 32 inch high hog wire fence against the 4 strand barb wire fence on the southern boundary of the Lockwood property. The 4 strand fence as it now stands is intentionally located about 2 feet inside of the property line. The portion of the barb wire fence that will be overlaid with hog wire is the portion between the lower west corner of the Lockwood property and the southeast end of the existing Conant 6 feet high hog wire fence. That point is about 154 feet northeast of the corner pin for the Conant property, Chiu Leong's property and the Lockwood property. Consider this letter as permission to overlay that portion of the Lockwood fence with the hog wire fence.

It is agreed that the corner pins that define the line between the Conant property and the Lockwood property remain the true property line and the erection of this hog wire fence does not change this in any way. Maintenance of this and any fence between the two properties will remain a joint venture between the two families as it has in the past.

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT  
RUSSELL Y. TSUJI  
FIRST DEPUTY  
KEN C. KAWAHARA  
DEPUTY DIRECTOR WATER  
RESOURCES  
HEATING AND OCEAN RECREATION  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCES MANAGEMENT  
CONSERVATION AND RESTORATION  
COMMISSION ON WATER RESOURCES MANAGEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KARUQUA AND RESERVE COMMISSION  
LAND  
STATE PARKS

June 27, 2008

MEMORANDUM

TO: Laura H. Thielen, Chairperson  
Department of Land and Natural Resources

FROM: PAUL J. CONRY, Administrator  
Division of Forestry and Wildlife

SUBJECT: Approval of Multi-term contract agreement with Patrick and Sheila Conant.

The Procurement and Pre-Audit Divisions of DAGS have requested that we seek your approval to process a multi-term contract with Patrick and Sheila Conant whom have been approved by the Board of Land and Natural Resources to receive cost-share assistance through the state Forest Stewardship Program. The Board of Land and Natural Resources approved the contract at its June 13, 2008 meeting. The Contractors signed the contract on April 19, 2008. The Division has determined that the contract agreement meets all requirements as described in the Public Procurement Code, Chapter 103D-315, relating to multi-term contracts. Hawaii Revised Statutes Chapter 195F, relating to the Forest Stewardship Program, allows the Division to provide financial and technical assistance to eligible landowners who voluntarily commit to a forest management plan for a period of at least ten years. All Forest Stewardship contract agreements state that funds to be paid by the state to the contractor are subject to annual appropriations.

The Division recommends your approval of this multi-term contract with Patrick and Sheila Conant, which meets established requirements, and will allow the Division to provide financial and technical assistance to Patrick and Sheila Conant in a manner, and for a term consistent with the goals of the Forest Stewardship Program.



APPROVED



DISAPPROVED

*for*   
LAURA H. THIELEN  
Chairperson, Department of Land and Natural Resources

06/27/08  
Date

# Forest Stewardship Program Review and Approval Form

## VENDOR

2008-0 Conant Forest Stewardship Project

Funding Rqst \$ 6,833  
Cash Match \$  
In Kind Match \$ > 39,061  
Purchase Order No:

Background Information Conant project is located in Volcano on Hawaii Island + consists of 2 property lots totaling 7 acres, 6.5 acres of which are enrolled in the program. 3900 ft. elev in Puna District, land zoned Agriculture + Urban.

Project Description Long-term goal is to restore native ohia/hapuun forest + mgn for conservation. Work has been on going by applicant, but due to issues w/ feral ungulate projects seeks aid with project perimeter fence. Project also includes rare species planting.

## GRANT REVIEW PROCESS

1. Date Received 3/7/2008 Stewardship Response Comments \_\_\_\_\_ Coordinator Signature \_\_\_\_\_

2. Applicant Response

3. Subcommittee Review n/a Subcommittee Review Comments\* \_\_\_\_\_ Signature \_\_\_\_\_

4. Applicant revisions received  Yes  No

5 Council Meeting Date 3/7/2007 Location Volcano, Hawaii Island

## FINAL COUNCIL DECISION

Project Approved  Amount Awarded \$ 6833

Project Deferred or Pending.

Recommendations of Council/Members Abstaining from Vote: \_\_\_\_\_

Signature of Forest Stewardship Advisory Chair [Signature] Date 3.7.08

\*The subcommittee convenes to pre-review grant applications (Stewardship, Forest Lands Enhancement and Forest Legacy) between quarterly meetings.

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

June 13, 2008

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

Land Board Members:

**SUBJECT:** Request Approval of Contract with Patrick and Sheila Conant to Participate in the State Forest Stewardship Program.

**Background:**

The Hawaii State Forest Stewardship (FS) Program provides technical and financial assistance to private landowners committed to the stewardship, conservation and enhancement of important forest resources that provide a variety of private and public benefits. This assistance encourages and enables private landowners to develop and implement long-term multi-resource management plans to restore and maintain primary forest values including timber productivity, watershed productivity, wildlife habitat availability, non-timber forest product diversity, recreational opportunities and native forest resources. The Program became effective through Act 327, SLH 1991. Annual funding is provided by the Conveyance Tax pursuant to Act 195, SLH 1993, Section 247-7, Hawaii Revised Statutes, whereby twenty-five percent of the amount collected from this tax is paid into the Natural Area Reserve fund from which funds are dispersed to the Forest Stewardship and Natural area Partnership Programs.

The Forest Stewardship Advisory Committee recommended assistance for the Conant Forest Stewardship Project at their meeting on March 7, 2008 in Volcano, Hawaii. The Conant Stewardship project proposes to restore, conserve, and manage 6.5 acres of native ohia/hapu'u forest on a 7 acre parcel. The Conant property is zoned Agriculture and Urban, corresponding to TMK 3-1-9-011:021 and 1-9-011:070. The Forest Stewardship Management Plan includes the control, eradication, or exclusion of alien pest, plants and animals; as well as conservation of native Hawaiian biodiversity by filling light gaps with native plants to restore the forest canopy. The Conant project will also include an education component for the surrounding community in conjunction with the Friends of Hawaii Volcanoes National Park.

The Forest Stewardship approval letter, project management plan, proposed contract, project maps, and supporting documents can be found in Exhibit A.

### **Project Objectives and Discussion:**

The Conant Forest Stewardship management objectives are to restore the native ohia/hapuu forest and manage it to conserve native Hawaiian biodiversity over the long term. The project seeks to accomplish their management objectives via establishing a perimeter fence line, ongoing alien weed control, and periodic planting of native species in the remaining light gaps.

Management and restoration work on the Conant project has been ongoing for over 10 years and has included non-native pest species removal and native seedling re-establishment. Through continual maintenance by the landowner, no invasive alien shrubs or trees exist on the property, which is very rare in the Volcano Village area. Due to vigilant surveillance, any emergent woody weeds, incipient grasses, or herbs are hand pulled or controlled with herbicide during weekly weed surveys. The landowner has also been continually planting native species on the forest floor to eventually fill gaps in the forest canopy.

Signs of feral pigs on the property have not been evident in the last 30 years, but in the last six months the presence of pigs has increased dramatically. As a result, the natural regeneration of the native forest and survival of planted seedlings have been significantly reduced. The Conant Forest Stewardship project seeks to reduce feral ungulate incursions by installing a "pig proof" fence and planting native species in the light gaps created by the initial disturbance.

Educational tours of the project area after fence installation will be held in conjunction with the Friends of Hawaii Volcanoes National Park, which the Conant property continues to be involved with. This education opportunity will provide an excellent example of a small but well managed forest, as well as before and after effects of feral ungulates.

Through this Forest Stewardship Agreement, Patrick and Sheila Conant are committed to the long-term maintenance of a healthy, biologically diverse native forest area for conservation, restoration, and educational purposes through the year 2039. The costs associated with the proposed practices are consistent with the intensity of management required for these management practices.

A total of \$6,883.00 is being requested, over a 10 year period, to share costs associated with a variety of management practices that are consistent with the Forest Stewardship Program. This cost-share funding will be provided in incremental reimbursement payments, matched equally or more by the landowner, as management practices are completed through the state fiscal year 2019. The landowner will continue to provide fence maintenance, weed control, native species planting, irrigation, fertilization and educational opportunities at their own cost through the fiscal year 2039.

### **RECOMMENDATIONS:**

1. That the Board approve this contract agreement with Patrick and Sheila Conant to participate the State Forest Stewardship Program subject to the following:

- A. Availability of State Forest Stewardship funds.
  - B. Review of the contract and approval as to form by the Department of the Attorney general.
2. Authorize the Chairperson to finalize and execute this contract.

Respectfully submitted,

  
Paul J. Conry, Administrator  
Division of Forestry and Wildlife

Attachment  
(Exhibit A)

APPROVED FOR SUBMITTAL:

  
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Laura H. Thielen, Chairperson