

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

October 28, 2011

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

Land Board Members:

**SUBJECT: REQUEST APPROVAL TO ENTER INTO A COOPERATIVE
MANAGEMENT AGREEMENT WITH THE AGRIBUSINESS
DEVELOPMENT CORPORATION (ADC), FOR AGRICULTURAL
AND RENEWABLE ENERGY PURPOSES AND FOR THE HUNTING
OF GAME BIRDS AND GAME MAMMALS IN THE KEKAHA AREA
OF THE WAIMEA DISTRICT, ISLAND OF KAUAI; AND TO
AUTHORIZE THE CHAIRPERSON TO FINALIZE TERMS AND
SIGN THE AGREEMENT**

AND

**REQUEST APPROVAL FOR DECLARATION OF EXEMPTION TO
CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE
REQUIREMENTS FOR THE COOPERATIVE MANAGEMENT
AGREEMENT**

BACKGROUND

The purpose of the agreement is to facilitate the pursuit of mutual interests; including agriculture, renewable energy, and public access for hunting on ADC lands in the lower Kekaha area. The ADC will provide land under its jurisdiction as a Cooperative Management Area (CMA). The Department will install management practices and provide personnel to obtain a population of game birds and mammals on such areas where game populations may be harvested and where the environment will sustain regeneration of the vegetation and minimize the threat to watershed resources. The Department and the ADC also agree to annually review a plan for the CMA on existing projects and proposed projects of mutual interest. The proposed length of the agreement is 10 years and the period can be extended by mutual written agreement of the parties.

The Department will manage delineated areas for hunting, including signage for open and closed areas and boundaries, notification of any changes, enforcement of administrative rules, prevention and control of wildfires, issuance of permits for animal damage control where

needed, and other actions mutually agreeable, subject to the availability of funds and Federal Aid reimbursement.

Currently, the Cooperative Management Agreement (CMA) is in draft form and has received review by both DLNR and ADC. A copy of the draft CMA is attached.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

In accordance with the requirements of Chapter 343, HRS, Hawaii Administrative Rule Section 11-200-8(6), the Exemption List for the Division of Forestry and Wildlife, Department of Land and Natural Resources as reviewed and concurred upon by the Environmental Council on June 12, 2008, and the Exemption List for the Department of Land and Natural Resources as reviewed and concurred upon by the Environmental Council on December 4, 1991 (Docket No. 91-EX-2), the subject project is exempt from the preparation of an environmental assessment pursuant to the following exemption classes and items:

From the DOFAW Exemption List:

Exemption Class 1, “Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.”

No. 17: “Animal damage control actions, when needed to maintain resource values, in Division of Forestry and Wildlife (DOFAW) program areas, including application of approved rodenticides, and ungulate removal.”

From the DLNR Department-Wide Exemption Class:

Exemption Class 1, “Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.”

No. 3: “Fire fighting.”

Exemption Class 6, “Construction or placement of minor structures accessory to existing facilities.”

No. 1: “Placement of signs, buoys, or markers.”

RECOMMENDATIONS:

That the Board:

1. Approve the Department entering into a Cooperative Management Agreement with the Agribusiness Development Corporation.
2. Delegate authority to the Chairperson:
 - (a) to finalize the terms of the CMA, and
 - (b) sign the final CMA and other related documents subject to approval as to form by the Deputy Attorney General, and
3. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Respectfully submitted,



PAUL J. CONRY
Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson
Board of Land & Natural Resources

For

- Attachment A: Cooperative Management Agreement Between the Agribusiness Development Corporation and the State of Hawaii Department of Land and Natural Resources
- Attachment B: Exhibit I: Description of the Cooperative Management Area (CMA)
- Attachment C: Exhibit II: Cooperative Management Areas (CMA) - Unit L Map
- Attachment D: Exhibit A: Waiver and Indemnification
- Attachment E: Declaration of Exemption

ATTACHMENT A:
COOPERATIVE MANAGEMENT AGREEMENT
BETWEEN
THE AGRIBUSINESS DEVELOPMENT CORPORATION
AND THE
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

THIS AGREEMENT entered into this _____ day of _____, 20___, to be Effective _____, 20___, between the AGRIBUSINESS DEVELOPMENT CORPORATION, a Hawaii corporation, hereinafter called the “Cooperator”, and STATE OF HAWAII, by its Board of the Department of Land and Natural Resources, hereinafter Called the “Board”;

WHEREAS, under the provisions of Section 183D-4, Hawaii Revised Statutes, the Board may enter into agreements for such purposes.

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, the parties agree to enter into this Cooperative Management Agreement for a period of _____ years commencing _____ and terminating on _____, to and upon all that certain tract of land, being a portion of the Island of Kauai, County of Kauai, State of Hawaii, and described as Cooperative Management Area (“CMA”) Unit L described in Exhibit I and shown on the map in Exhibit II attached hereto and made a part hereof, for agricultural and renewable energy purposes and for the hunting of game birds and game mammals, aforesaid purposes as may be mutually agreed to.

IT IS MUTUALLY AGREED:

(1) The Board will install management practices and provide personnel to obtain a population of game birds and mammals on such areas where game populations may be harvested and where the environment will sustain regeneration of the vegetation and minimize the threat to watershed resources.

(2) The Board will provide notice of any areas within the CMA to be closed to hunting, and other changes mutually agreed to by the Board and the Cooperator.

(3) Each year of this Agreement, the Board will submit to the Cooperator a plan for the management and hunting of wildlife in Unit L including any plans for or changes to the development and maintenance of the area including boundaries, hunter access, informational and boundary signs, and development and maintenance projects, plans for animal management and control within the Cooperative Management Area, proposed hunting periods, administrative rules and plans for the management of the hunt. Such plans shall be subject to the approval of the Cooperator prior to opening of subsequent hunting seasons.

(4) Representatives of the Board and the Cooperator shall meet at a mutually acceptable date and time for the purpose of: (a) review the previous year's management experience, (b) review and discussion of the current year's plan for management and hunting, and (c) discussion of management plans for the coming year. In the event the management plan is not approved by the Cooperator and the parties cannot agree on a mutually acceptable plan on a date which may be set or extended by mutual agreement of the parties, this Agreement may be terminated by either party upon sixty (60) days' prior written notice.

(5) The Board, or its duly authorized representatives will supervise and enforce all administrative rules adopted under applicable laws of the State on lands on Kauai and shall, upon request of the Cooperator, assist the Cooperator in the enforcement of the administrative rules, in

carrying out the management of the area for hunting, and in the prevention and control of forest fires in the Cooperative Management Area under this Agreement.

(6) The Board shall require each person entering the area covered by this Agreement for the purpose of hunting to sign a waiver and Indemnification Agreement if he is 18 years of age or older, or if he is below 18 years, he must have his parent or guardian sign the waiver. The waiver and indemnification form is attached hereto as Exhibit A and may be revised by agreement of the parties in writing.

(7) The Board and its duly authorized representatives shall have the right of entry upon all the said lands at all times for the purposes of carrying out management programs and the enforcement of the administrative rules.

(8) The Board shall erect such signs approved by the Cooperator, except in emergencies where signs may be installed provided that such signs are thereafter presented to Cooperator for review and approval as are necessary for the safe and orderly conduct of hunting seasons.

(9) The Board shall have the right to hunt or trap game in the CMA or to grant permits for purposes hereinafter set forth to responsible persons. Permits issued by the State pursuant to this paragraph shall be subject to the prior approval of the Cooperator. Upon request of the Cooperator, the Board shall assist the Cooperator to remove game from areas where such game animals are causing damage to watershed or other natural resources of concern.

(10) Only persons holding valid State of Hawaii hunting licenses shall be permitted to hunt on the CMA. Access to the CMA for the purposes pursuant to this Agreement shall be permitted and Cooperator reserves the right to designate access roads through Cooperator's land to the CMA from time to time. Such hunting shall be in accordance with conditions established between the Board and the Cooperator and Administrative rules consented to by the Cooperator

in accordance with Paragraph (3) and adopted by the Board.

(11) Notwithstanding anything herein to the contrary, this Agreement or trespass regulations governing hunting shall not be construed to prohibit entry of employees or other authorized persons of the Cooperator or its affiliated companies upon the CMA for purposes authorized by the Cooperator excluding hunting except damage control shooting under permits granted by the Board. The Cooperator reserves the right to use the CMA for any purpose not inconsistent with the rights granted the Board herein excluding hunting with the exception of damage control shooting under permits granted by the Board.

(12) The obligations of the Board, as set forth above, are subject to the availability of funds and Federal Aid reimbursement.

(13) The terms and conditions set forth herein are also subject to conformance with applicable State laws and administrative rules adopted by the Department of Land and Natural Resources.

(14) By mutual written agreement of the Board and the Cooperator, this Agreement may be extended, amended, renewed, and if warranted terminated (by writing) at any time prior to the expiration date.

(15) All prior agreements regarding hunting in the area now comprising Unit L are canceled and of no further force and effect.

(16) It is expressly understood and agreed by the Cooperator and the Board that they are subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972; and offer all persons the opportunity to participate in public programs regardless of race, color, national origin, age, sex or disability.

The Cooperator and the Board agree that no individual will be turned away from, otherwise denied access to, or benefit from any program it sponsors that is directly associated with a program of the Cooperator or Board on the basis of race, color, national origin, age, sex or disability. A violation of this assurance may become reason to nullify this Agreement.

If compliance with this paragraph requires improvements and/or structural changes or additions in or to the CMA, the Board shall be responsible for the cost and completion of such improvements and/or structural changes or additions, provided that the Board shall obtain the Cooperator's prior written consent before commencing any such improvements and/or structural changes or additions.

(17) The Board and Cooperator both agree that from time to time emergency conditions may arise requiring the use of a helicopter. It also agrees that water sources on the property may be required for fire control and thereby such uses are hereby granted. Helicopter landings on said property shall be consistent with safe practices which considers and mitigates hazards to life and property. The use of such helicopter services is also extended to all divisions of the Board, including but not limited to State Parks. Notification of such requirement shall be directed to the Cooperator and or the Manager of the Kekaha Agriculture Association at the earliest convenience.

IN WITNESS WHEREOF, AGRIBUSINESS DEVELOPMENT CORPORATION, the
Cooperator herein, has caused its corporate name to be signed by its proper officers thereto this
_____ day of _____, 20____, and the STATE OF HAWAII, by its Board of Land and
Natural Resources, has caused the seal of the Department of Land and Natural Resources, to be
hereunto affixed and these presents to be duly executed this _____ day of _____,
20____, both effective as of the day and year first above written.

STATE OF HAWAII

AGRIBUSINESS DEVELOPMENT
CORPORATION

By _____
Chairman and Member
Board of Land and Natural
Resources

By _____

KEKAHA AGRICULTURE
ASSOCIATION

By _____
Member
Board of Land and Natural
Resources

By _____
Its President

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

ATTACHMENT B

EXHIBIT I

DESCRIPTION OF THE COOPERATIVE MANAGEMENT AREA (CMA)

The area under agreement consist of the following CMA, also known as Unit L on the island of Kauai: that portion of lands under the Agribusiness Development Corporation which lie between Kokee Road (Hwy 552) and Waimea Canyon Road (Hwy 550), including areas known as Pokii Ridge, upper Waipao Valley, Paua Valley, Waiaka Ridge, Kapilimao Valley, Huluhulunui Ridge, Hukipo Ridge, and Kaleinamanu Ridge, north of Waimea and Kekaha Townships.

ATTACHMENT C

EXHIBIT II

COOPERATIVE MANAGEMENT AREA (CMA) – UNIT L MAP (NEXT PAGE)

ATTACHMENT D:

EXHIBIT A

WAIVER AND INDEMNIFICATION

By signing my name hereto, I hereby waive for myself, my heirs, executors, administrators, assigns and assignees any and all claims or demands against the United States, the State of Hawaii, the County of Kauai, their respective officers, agents, or employees, or the owner, lessee, or tenant of any area set aside for public hunting, for personal injury, property damage or death accruing or arising in any manner whatsoever while using the public hunting area.

Signature

Date

ATTACHMENT E:

DECLARATION OF EXEMPTION (NEXT PAGE)

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AHL, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 28, 2011

DECLARATION OF EXEMPTION

from the preparation of an environmental assessment under the authority of Chapter 343, HRS
and Chapter 11-200, HAR

Project Title: Cooperative Management Agreement with the Agribusiness Development Corporation (ADC) for Agriculture, Renewable Energy, and Public Hunting
Project Description: Public Use of ADC Lands for Mutual Interests Including Division of Forestry and Wildlife (DOFAW) Management and Personnel to Provide Requirements for Public Hunting of Game Birds and Game Mammals

The proposed project, in the Kekaha area of the Waimea District, Island of Kauai, is part of DOFAW's on-going efforts to open appropriate private lands to public hunting. The project expands public hunting opportunities at a time when they are being reduced in other areas on Kauai due to the need to protect critical habitat and watershed areas from adverse game mammal impacts. The project is also anticipated to benefit the natural resources within the hunting areas by appropriate management actions.

Exemption Class: DLNR, Division of Forestry and Wildlife, Class 1

Exempt Item Number: 17

Exempt Item Description:

"Animal damage control actions, when needed to maintain resource values, in Division of Forestry and Wildlife (DOFAW) program areas, including application of approved rodenticides, and ungulate removal."

Exemption Class: DLNR Department-Wide Exemption Class 1

Exempt Item Number: 3

Exempt Item Description:

"Fire fighting."

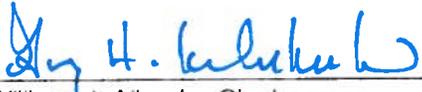
Exemption Class: DLNR Department-Wide Exemption Class 6

Exempt Item Number: 1

Exempt Item Description:
"Placement of signs, buoys, or markers."

Date of Agency Exemption List: October 28, 2011

I have considered the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200 HAR. I declare that this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under the Division of Forestry and Wildlife Exemption Class 1, Item Number 17 and Department of Land and Natural Resources Exemption Class 1, Item Number 3; and Class 6, Item Number 1.

WJC
Fd


William J. Aila, Jr., Chairperson
Department of Land and Natural Resources
10.17.11
Date