

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Oahu Branch
Honolulu, Hawaii 96822

September 25, 2015

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

Land Board Members:

SUBJECT: REQUEST APPROVAL TO SEEK THE GOVERNOR'S APPROVAL TO INDEMNIFY THE CITY AND COUNTY OF HONOLULU FOR THE USE OF FIVE PARCELS MANAGED BY THE DIVISION OF FORESTRY AND WILDLIFE AS PART OF THE POUHALA MARSH WILDLIFE SANCTUARY

SUMMARY:

The Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") manages the Pouhala Marsh Wildlife Sanctuary according to Executive Order 4146. Pouhala Marsh Wildlife Sanctuary parcel is surrounded by several parcels of land owned by the City and County of Honolulu ("City and County"). In order for DOFAW to manage the Pouhala Marsh Wildlife Sanctuary, DOFAW is requesting to enter into a revocable non-exclusive license agreement ("Pouhala Marsh License Agreement") with the City and County to manage City and County-owned parcels as part of Pouhala Marsh Wildlife Sanctuary. The City and County requires the State of Hawaii agree to indemnify the City and County. DOFAW requests that the Board of Land and Natural Resources ("BLNR") approve its request to seek the Governor's approval to indemnify the City and County in the Pouhala Marsh License Agreement.

BACKGROUND:

DOFAW manages the Pouhala Marsh Wildlife Sanctuary on two State of Hawaii-owned parcels, Tax Map Keys (TMKs) (1) 9-3-01:4 and 12. The City and County owns TMKs 9-3-01:2; 6; 21; 22; and 9-3-02:9, which surround the two parcels owned by the State of Hawaii (see attached map). DOFAW and the City and County agree that there is mutual benefit to managing the five City and County-owned parcels as part of the Pouhala Marsh Wildlife Sanctuary.

DOFAW currently manages three of the City and County-owned parcels under a revocable non-exclusive license agreement with the City and County from 2002. DOFAW is in the process of

requesting BLNR approval of a license agreement adding parcels 22 and a portion of parcel 9 under wildlife sanctuary management called the Pouhala Marsh License Agreement.

Pouhala Marsh Wildlife Sanctuary has historical, cultural, and educational value to the public. Additionally, Pouhala Marsh Wildlife Sanctuary is home to three species of endangered waterbirds, the Hawaiian Stilt (aeo or *Himantopus mexicanus knudseni*), the Hawaiian moorhen (alae ula or *Gallinula chloropus sandvicensis*), and the Hawaiian coot (alae keokeo or *Fulica alai*).

Under the Pouhala Marsh License Agreement, DOFAW would continue existing operations: clear vegetation, sculpt basins, remove obstructions, clean debris, construct and maintain an exclusion fence, restore ponds, construct temporary roads, hydraulically link the stream and restored ponds, and reintroduce damselfly nymphs.

In order to use the parcels, the City and County will require the State of Hawaii to agree to the following indemnification provision:

Licensee shall indemnify, defend, and hold harmless the Licensor, its officers, employees, and agents, from any and all claims of liability for any damage to real or personal property or injury to or death of any persons when such damage, injury or death arises out of the action or omission of the Licensee, its officers, employees, agents, consultants, contractors, or invitees in conjunction with the use of the Property for the restoration, development and establishment of Pouhala Marsh Wildlife Sanctuary on the Property and the right of ingress and egress from the said Property during the term of this License; provided that the Licensee shall not be required to indemnify, defend, or hold harmless, the Licensor, its officers, employees and agents, from any claims of liability for any damage to real or personal property or injury to or death of any persons, when such damage, injury or death arises out of the action or omission of the Licensor, and/or its officers, employees, agents, consultants, contractors, or invitees, regarding the maintenance and repair of the Property by the Licensor. This provision shall not be read or interpreted to create any liability of the Licensee or any person or entity to any person or entity, except for the duties to indemnify, defend, and hold harmless set forth herein. This provision is not intended to and shall not be interpreted to benefit any third person, or to benefit or create any third-party beneficiary.

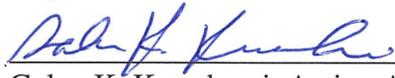
Under §46-71.5, Hawaii Revised Statutes ("HRS"), the State may agree to indemnify, defend, and hold harmless a county agency if certain preconditions are satisfied: 1) The Governor approves the State's proposed indemnification; and (2) The Comptroller, pursuant to Section 41D-8.5, HRS, has (a) obtained an insurance policy in an amount sufficient to cover reasonably anticipated liability of the State that may arise or (b) determined that the obtaining such a policy is not in the best interest of the State.

RECOMMENDATION:

That the Board:

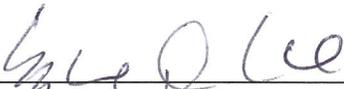
- 1) That the Board approves the request to seek the Governor's approval to indemnify the City and County of Honolulu for the use of five parcels managed by DOFAW as part of the Pouhala Marsh Wildlife Sanctuary.
- 2) That the Board authorizes the Chairperson to seek all necessary approvals and execute all documents related to the indemnification, subject to review and approval by the Department of the Attorney General.

Respectfully submitted,

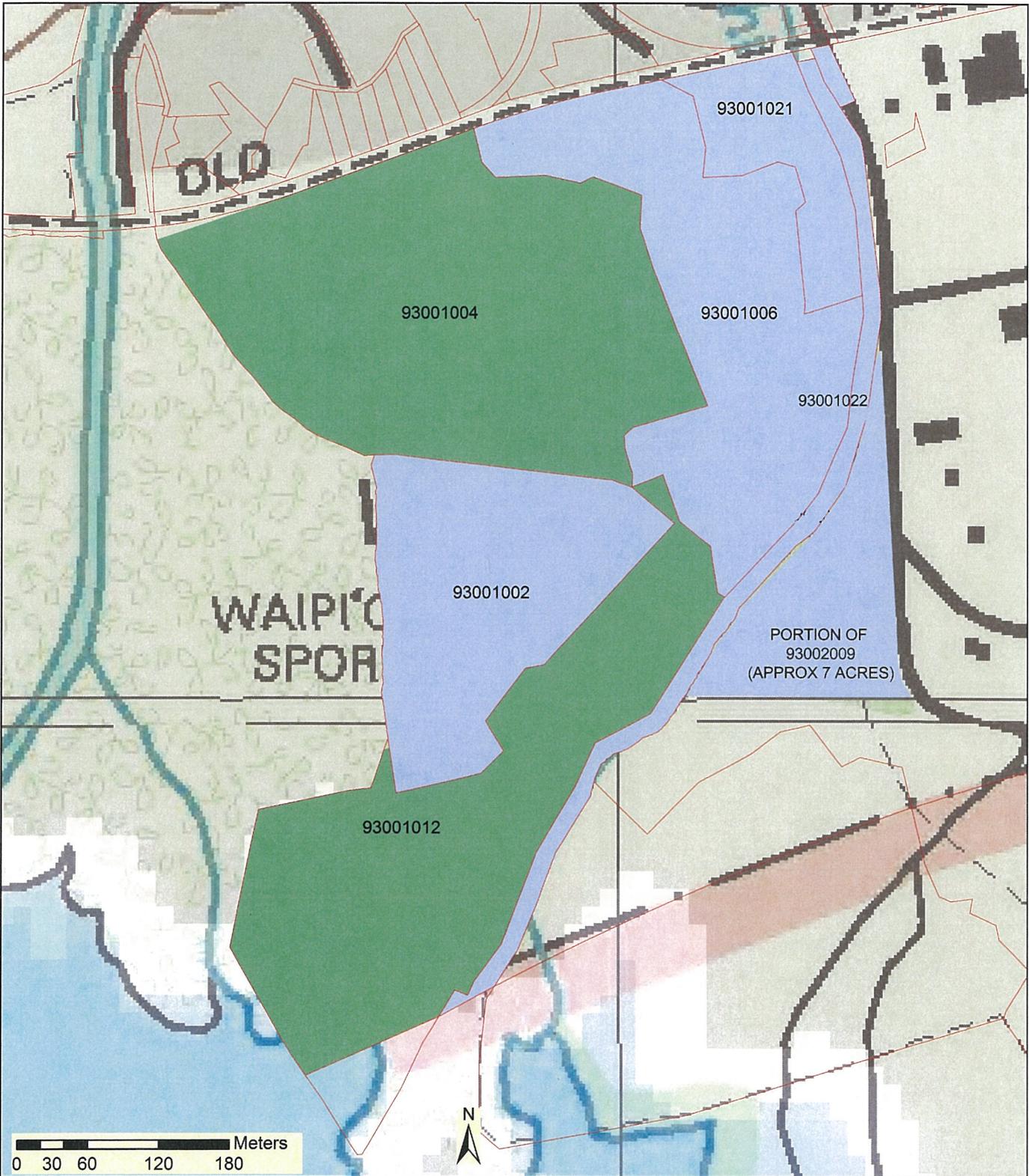


Galen K. Kawakami, Acting Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources



Pouhala Marsh State Wildlife Sanctuary

Legend

- NEWTMK8-11
- Pouhala Land Owner**
- City & County HNL
- DOFAW

