

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

March 27, 2015

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT: SUBMITTAL TO BOARD OF LAND AND NATURAL RESOURCES REGARDING REQUEST FOR DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO NEGOTIATE, APPROVE, EXECUTE, AMEND, AND EXTEND MEMORANDA OF UNDERSTANDING (MOU) PERTAINING TO BOARD-APPROVED HABITAT CONSERVATION PLANS AND SAFE HARBOR AGREEMENTS.**

This submittal requests the Board authorize the Chairperson to negotiate, approve, execute, amend, and extend Memoranda of Understanding (MOU) between the Department of Land and Natural Resources (DLNR) and entities seeking to implement conservation actions pertaining to their BLNR-approved Habitat Conservation Plans (HCPs) and Safe Harbor Agreements (SHAs). These conservations may include, but are not limited to, wildlife monitoring, habitat restoration, and invasive species control.

**BACKGROUND:**

HCPs and SHAs are created by developers and private landowners, respectively, to define the terms and conditions by which they are issued an Incidental Take License (ITL) by the State of Hawai'i. An ITL is issued to permit take<sup>1</sup> of a threatened or endangered species that is incidental to an activity that is otherwise lawful (e.g., construction of a wind farms my result in the take of listed avian species that collide with the turbines). HCPs in particular require developers to avoid and minimize take to the greatest extent practicable, and whatever take cannot be avoided or minimized, must be offset through mitigation measures. The Division of Forestry and Wildlife (DOFAW) is often contracted by these developers to implement mitigation measures to ensure that they are conducted in a manner that provides a net recovery benefit to the species in question as well as complies with all state laws and species recovery goals. This arrangement is mutually beneficial, as the applicants are able to offset their take, as required by the HCP, and DOFAW is able to implement and monitor management activities that serve to conserve listed species in Hawai'i.

---

<sup>1</sup> Defined by Hawai'i Revised Statutes (HRS) §195D-2: *Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct.*

In order to execute this work, DOFAW enters into MOUs with developers and other entities that have been issued the ITL, to define the expectations, roles, and responsibilities of each party involved. Currently, DOFAW staff must bring each MOU before the BLNR, so the BLNR can delegate signatory authority to the Chair. As these MOUs pertain to HCPs and SHAs that have already been reviewed and approved by the BLNR, including the language describing the conservation actions DOFAW is planning to implement, DOFAW is seeking approval to go directly to the Chair for signatory approval on MOUs only when the MOU is pertaining to a BLNR-approved HCP or SHA, and only when the proposed action is exempt from an environmental assessment under HRS Chapter 343.

**DISCUSSION:**

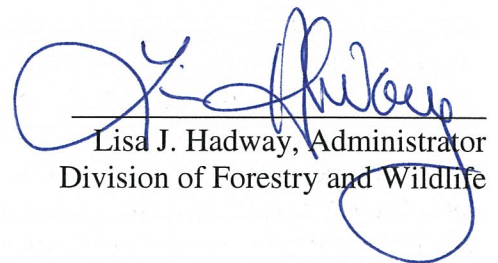
MOUs are mutually beneficial agreements that provide support for conservation measures for threatened and endangered species of Hawai'i and allow applicants to fulfill their HCP obligations. The current approval process is quite time-consuming, and brings projects before the BLNR that were already reviewed during the initial HCP approval process. Authorizing the Chairperson to approve these types of agreements would expedite the approval process and translate into faster implementation of on-the-ground conservation activities.

**RECOMMENDATIONS:**

That the Board:

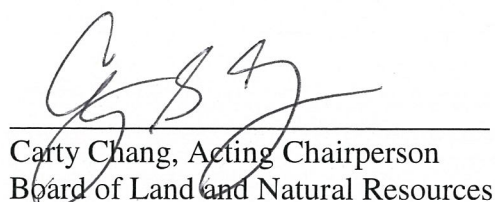
- Authorize the Chairperson to negotiate and sign MOUs between the DLNR-DOFAW, pertaining to BLNR-approved HCPs and SHAs, subject to review and approval by the Office of the Attorney General, for the purpose of conducting conservation measures to benefit threatened and endangered species in Hawai'i.

Respectfully submitted,



\_\_\_\_\_  
Lisa J. Hadway, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



\_\_\_\_\_  
Carty Chang, Acting Chairperson  
Board of Land and Natural Resources