

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

February 12, 2016

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

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO NEGOTIATE, APPROVE, EXECUTE AND AMEND A MEMORANDUM OF AGREEMENT WITH THE HAWAIIAN ELECTRIC COMPANY (HECO) REGARDING DONATION OF FUNDING FOR THE CONSTRUCTION OF A PREDATOR-PROOF FENCE TO PROTECT ENDANGERED HAWAIIAN TREE SNAILS IN THE PAHOLE NATURAL AREA RESERVE, O'AHU, TMK# 1-6-8-001-002

BACKGROUND

HECO is donating funds to DLNR-DOFAW for the construction of a predator-proof fence to protect a population of the endangered Hawaiian tree snail species *Achatinella mustelina*, located in the Pahole Natural Area Reserve. These funds will be donated in lieu of litigation and possible civil penalties for damage HECO caused to a population of endangered *A. mustelina*, in the Mt. Ka'ala Natural Area Reserve, in April of 2011.

Mt. Ka'ala is the highest mountain on O'ahu, the upper portions of which contain some of the best remaining native forest on the island. DLNR has designated the plateau summit and surrounding areas of Mt. Ka'ala as the Mt. Ka'ala Natural Area Reserve ("NAR"). The Federal Aviation Administration ("FAA"), Hawai'i Telcom, Hawai'i Public Radio ("HPR"), and Hawaiian Electric own and operate facilities within the Mt. Ka'ala NAR.

Hawaiian Electric's facilities on the mountain include poles, conductors, transformers, guy wires and anchors (collectively the "Distribution System"), as well as communications equipment. The Distribution System provides electric service to the FAA, Hawai'i Telcom, HPR, and Hawaiian Electric communication facilities. Hawaiian Electric routinely maintains, as well as provides emergency repairs to, the Distribution System.

Portions of the Mt. Ka'ala NAR represent some of the best and last remaining habitat for *Achatinella mustelina*, a state and federally listed endangered species.

The US Fish and Wildlife Service and DLNR-DOFAW allege that on or about April 4, 2011, Hawaiian Electric's vegetation clearing activities, in the vicinity of the Hawaiian Telcom site on Mt. Ka'ala, resulted in the unauthorized incidental take of approximately nine of these endangered tree snails.

In order to resolve allegations made by either or both the United States and the State of Hawai'i, Hawaiian Electric shall make a one-time donation of \$200,000 to DLNR-DOFAW. DLNR-DOFAW shall use the one-time payment solely to rebuild and improve an aging predator-proof fence in the Pahole Natural Area Reserve, which protects a genetically important population of *A. mustelina*. Activities pursuant to this rebuild include: deconstruction of existing fence, design, procurement, construction, operation and management of a new predator-proof fence.

The improved and expanded predator-proof fence that will result from this Memorandum of Agreement will protect this genetically important population of *A. mustelina* from all known invasive snail predators, and will increase suitable habitat area. These actions will significantly increase the survival and longevity of one of the most imperiled *A. mustelina* lineages, resulting in a net benefit to the entire species, offsetting damages caused to the species by HECO in 2011.

RECOMMENDATION: That the Board

1. Authorize the Chairperson to negotiate, approve, execute and amend a Memorandum of Agreement with the Hawaiian Electric Company (HECO) regarding donation of funding for the construction of a predator-proof fence to protect endangered Hawaiian tree snails in the Pahole Natural Area Reserve, subject to review and approval by the Office of the Attorney General.

Respectfully Submitted,



Sheri S. Mann, Acting Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Department of Land and Natural Resources