

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

May 27, 2011

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

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO THE CHAIRPERSON OF THE BOARD TO NOTIFY THE PUBLIC OF HABITAT CONSERVATION PLAN AND SAFE HARBOR AGREEMENT APPLICATIONS, DRAFT HABITAT CONSERVATION PLANS AND SAFE HARBOR AGREEMENTS, AND ASSOCIATED LICENSES IN THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL ENVIRONMENTAL NOTICE AND INITIATE THE PUBLIC AND ENDANGERED SPECIES RECOVERY COMMITTEE REVIEW PROCESS

BACKGROUND

Under HRS Chapter 195D-4, HRS Chapter 195D-21, and HRS 195D-22, a landowner may seek a license from the Department for take of a threatened or endangered species that is incidental to, and not the purpose of, an otherwise lawful activity provided that the applicant prepares an accompanying Habitat Conservation Plan (HCP) or Safe Harbor Agreement (SHA) that meets the requirements enumerated under HRS Chapter 195D including measures for avoidance, minimization, mitigation, monitoring, and net recovery benefit to the affected species.

The development and approval process for HCPs and SHAs includes public review as well as recommendations from the Endangered Species Recovery Committee (ESRC). The Department is required to notify the public of HCP and SHA applications, draft HCPs and SHAs, and the associated licenses in the Office of Environmental Quality Control (OEQC) bulletin (hereinafter referred to as the "OEQC Environmental Notice"), followed by a sixty-day comment period and a public hearing. The ESRC is an advisory committee to the Board on endangered and threatened species matters and pursuant to HRS Chapter 195D-25 the ESRC makes recommendations to the Board as to whether a HCP or SHA should be approved or disapproved.

In recent years, the Division's practice was to have the ESRC review and make a recommendation as to whether a draft HCP or SHA should be released for public review, followed by a request for the Board to approve the release of the draft HCP or SHA for public review. However, this practice presents a potential conflict between the State's open meetings law under HRS Chapter 92 and the confidentiality provision under HRS Chapter 195D-24 which

provides that all information contained in an HCP or SHA shall remain confidential until the HCP or SHA has been released for public review. The conflict arises because the ESRC must hold open public meetings to give consideration to an HCP or SHA that is protected under the confidentiality provisions.

In order to resolve the conflict, and on the advice of the Office of the Attorney General, the Division has changed its procedures so that the ESRC will not consider an HCP or SHA until after the HCP or SHA and associated license have been noticed in the OEQC Environmental Notice and available for public review. The ESRC will then review the draft HCP or SHA, recommend any revisions, and make a final recommendation as to whether to approve or disapprove the HCP or SHA. This Board submittal requests that the approval to release HCP and SHA applications, draft HCPs and SHAs, and associated licenses for public review be delegated to the Chairperson of the Board to comply with the confidentiality provision of HRS Chapter 195D-24.

AUTHORITY

HRS Chapter 195D-4, HRS Chapter 195D-21, and HRS Chapter 195D-22 direct the Board to notify HCP and SHA applications, draft HCPs and SHAs, and associated licenses in the OEQC Environmental Notice.

ANALYSIS

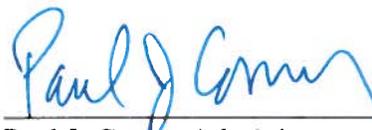
Delegation of authority to notice HCP and SHA applications, draft HCPs and SHAs, and the associated licenses in the OEQC Environmental Notice will expedite the processing of HCPs and SHAs in a manner consistent with HRS Chapter 195D-24 and allow for a full and extensive review before an HCP or SHA is ultimately brought before the Board with a request to approve or disapprove.

RECOMMENDATION

The Department recommends that the Board:

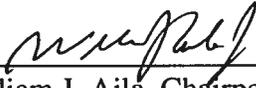
1. Approve the delegation of authority to the Chairperson of the Board to notice HCP and SHA applications, draft HCPs and SHAs, and the associated licenses in the OEQC Environmental Notice.

Respectfully submitted,



Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read 'William J. Aila', written over a horizontal line.

William J. Aila, Chairperson
Board of Land and Natural Resources