

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

March 9, 2012

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF INCIDENTAL TAKE LICENSE AND HABITAT CONSERVATION PLAN FOR KAUA'I LAGOONS RESORT, ON THE ISLAND OF KAUA'I, HAWAII

SUMMARY:

Submitted for your approval is the Incidental Take License (ITL) as part of the Habitat Conservation Plan (HCP) for Kaua'i Lagoons, on the island of Kaua'i, Hawai'i. The purpose of the HCP is to provide for avoidance, minimization, mitigation, and monitoring of potential incidental take of seven federally threatened and endangered species, the Hawaiian petrel (*Pterodroma sandwichensis*), Newell's shearwater (*Puffinus auricularis newelli*), nēnē or the Hawaiian goose (*Branta sandvicensis*), koloa maoli or the Hawaiian duck (*Anas wyvilliana*), ae'o or the Hawaiian stilt (*Himantopus mexicanus knudseni*), 'alae ke'oke'o or the Hawaiian coot (*Fulica alai*), 'alae'ula or the Hawaiian moorhen (*Gallinula chloropus sandvicensis*), and one state-listed endangered bird species, 'akē'akē or the band-rumped storm petrel (*Oceanodroma castro*). Hereafter, these eight species are collectively referred to as the "Covered Species." Kaua'i Lagoons is located in Lihue, Kaua'i, and the property encompasses approximately 600 acres. The development of this HCP is related to Kaua'i Lagoon's plan to construct additional development which will consist of several projects comprising of over 700 resort residential units and a variety of support facilities. The HCP also outlines measures to ensure net recovery benefit to the Covered Species.

BACKGROUND:

Construction and operation of the Kaua'i Lagoons has the potential to result in the incidental take of the eight threatened and endangered species identified above. To address potential take and to comply with Hawai'i endangered species law, Hawai'i Revised Statutes Chapter 195D, the Applicant developed an HCP that outlines measures to avoid, minimize, mitigate, and monitor take of the aforementioned Covered Species. In addition, the HCP outlines measures to ensure a net recovery benefit to the species that are the focus of the plan.

The requested incidental take levels are as follows:

Common Name	Scientific Name	Covered Activity	Type of Take	Requested Authorization	Location
Newell's Shearwater 'a'o	<i>Puffinus auricularis newelli</i>	Lighting	Mortality or Non-Lethal	27	TMK 3-5-001-027
Hawaiian Duck koloa maoli	<i>Anas wyvilliana</i>	New Construction and Resort Operations	Mortality or Non-Lethal	36	
Hawaiian Stilt ae'o	<i>Himantopus mexicanus knudseni</i>	New Construction and Resort Operations	Mortality or Non-Lethal	38	
Hawaiian Coot 'alae ke'oke'o	<i>Fulica alai</i>	New Construction and Resort Operations	Mortality	110	
			Non-Lethal	180	
Hawaiian Moorhen alae 'ula	<i>Gallinula chloropus sandvicensis</i>	New Construction and Resort Operations	Mortality	40	
			Non-Lethal	30	
Hawaiian Goose nēnē	<i>Branta sandvicensis</i>	New Construction and Resort Operations	Mortality or Non-Lethal	17	
Hawaiian Petrel 'ua'u	<i>Pterodroma sandwichensis</i>	Lighting	Mortality or Non-Lethal	1	
Band-Rumped Storm Petrel 'akē'akē	<i>Oceanodroma castro</i>	Lighting	Mortality or Non-Lethal	1	

To address the potential of incidental take of the covered species, the following mitigation measures are proposed:

Species or Group	Proposed Mitigation
Nēnē	Most if not all of the nēnē at Kaua‘i Lagoons will be removed and translocated to other islands as directed in the Governor’s Proclamation dated April 14, 2011. To accommodate any nēnē left on the property after translocation efforts have finished, the applicant will continue predator control on site and will provide funding to the DLNR Endangered Species Trust Fund.
Waterbirds	The applicant will deploy predator traps and rodent bait stations during the breeding season from September 15 to March 15 at areas frequented by listed waterbirds. Cattle egrets will be controlled using air rifles.
Seabirds	The applicant will contribute to the Kaua‘i Seabird mitigation pool with a specified percentage of these payments being distributed by certain benchmarks in the construction of the Marriott Vacation Club. Lighting in and around the property will be shielded or bird-friendly. There will be no nighttime construction from September 15 to December 15 every year.

The HCP also allows for adaptive management. Adaptive management is defined as a formal, structured approach to dealing with uncertainty in natural resources management, using the experience of management and the results of research as an on-going feedback loop for continuous improvement. Adaptive approaches to management recognize that the answers to all management questions are not known and that the information necessary to formulate answers is often unavailable. Adaptive management also includes, by definition, a commitment to change management practices when determined appropriate.

The HCP outlines detailed monitoring and reporting protocols to account for injury or mortality to the covered species, as well as to ensure avoidance, minimization, and mitigation measures are being accomplished and goals and objectives are being met.

The Division released the draft HCP for 30-day public comment period in the December 8, 2010, Office of Environmental Quality Control (OEQC) Environmental Notice. On February 1, 2011, the Division conducted a public hearing on Kaua‘i to receive public comments. During the comment period, the Division received comments from: the United States Department of Agriculture (USDA), Hawaiian Airlines, the Federal Aviation Administration (FAA), and two members of the public. The Division and applicant have addressed comments as necessary as reflected in the HCP.

At the January 31, 2012, Endangered Species Recovery Committee (ESRC) meeting, the ESRC recommended the Board approve the ITL and HCP.

HRS CHAPTER 343

The HCP includes predator control/trapping, wildlife surveys, and monitoring, and fencing. The Division’s analysis concludes that the project is eligible for an exemption from the need to prepare an environmental assessment.

In accordance with Hawai'i Administrative Rule Section 11-200-8, the Division has reviewed this action and determined it falls under the:

- Department of Land and Natural Resources Department Wide Exemption List (As reviewed and concurred upon by the Environmental Council July, 13 2011) Exemption Class No. 3 “Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same”
 - Item (1) “Fences around or to manage rare, threatened or endangered plants, covered and open areas for endangered species, game birds and mammals; auxiliary buildings for food storage, equipment storage, incubators and brooders; open-top breeding and release pens, field aviaries, hacking boxes, and for watershed and native forest management and restoration. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use”

- Division of Forestry and Wildlife of Exemption List (As reviewed and concurred upon by the Environmental Council June 12, 2008) Exemption Class No. 4 “Minor alteration in the conditions of land, water, or vegetation”
 - Item (3) “Minor alterations to existing wildlife or plant sanctuaries, including construction of pumps and controls, pipes and channels, and dikes and moats for the purposes of maintaining water levels, providing constant water supplies, and precluding predators. Also includes minor alterations to biological transects, camp sites, fertilizing and mowing, maintaining nēnē pastures, weed control, outplanting native plants, transplanting, clearing mist net lines and trap sites”

- Division of Forestry and Wildlife of Exemption List (As reviewed and concurred upon by the Environmental Council June 12, 2008) Exemption Class No. 5 “Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource”
 - Item (1) “Implanting transponders and affixing transmitters and/or markers (bands, collars, ear tags) to birds and mammals to record movement, longevity; taking disease and blood samples; placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders; removal of non-native avian competitors, predator control (including placement of approved toxic baits, kill traps, live traps, snares) and using approved herbicides”
 - Item (2) “Game and non-game wildlife surveys, inventory studies, new transect lines, photographing, recording, sampling, collection and captive propagation (involves walking, driving, and flying in the field (helicopters, light aircraft), use of nets and firearms, temporary traps including snares, mist nets, corral traps, drop door traps or leg hold traps”
 - Item (3) “Releases and recoveries of wildlife. On approved releases of game and non-game wildlife (after EA or EIS preparation and acceptance), actual release of animals and follow-up surveys, translocation within the range, or rearing in captivity and releasing to the wild”

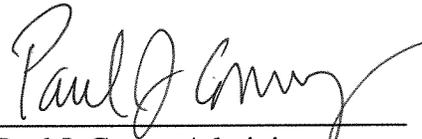
This action is determined to probably have minimal or no significant effect on the environment.

RECOMMENDATION:

The Department recommends that the Board:

1. 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.
2. Approve the Incidental Take License and the Habitat Conservation Plan for Kaua'i Lagoons, on the island of Kaua'i, Hawai'i by the required two-thirds vote of the authorized membership.
3. Authorize the Chairperson of the Board of Land and Natural Resources to issue the Incidental Take License.

Respectfully submitted,



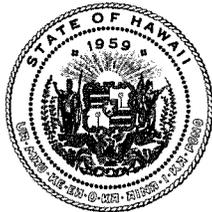
Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, Chairperson
Board of Land and Natural Resources

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
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DIVISION OF FORESTRY AND WILDLIFE
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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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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

Exemption Notification

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title	Habitat Conservation Plan for Kauai Lagoons
Project Description	Activities under the Habitat Conservation Plan for Kauai Lagoons, specifically: <ul style="list-style-type: none"> • Fencing • Predator control/trapping • Wildlife surveys and monitoring
Chapter 343 Triggers	Use of state land Use of state funds Use of conservation district
Exemption Class and Description	Department of Land and Natural Resources Department Wide Exemption List (As reviewed and concurred upon by the Environmental Council July, 13 2011): Exemption Class No. 3: Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same (1) Fences around or to manage rare, threatened or endangered plants, covered and open areas for endangered species, game birds and mammals; auxiliary buildings for food storage, equipment storage, incubators and brooders; open-top breeding and release pens, field aviaries, hacking boxes, and for watershed and native forest management and restoration. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.

Division of Forestry and Wildlife of Exemption List (As reviewed and concurred upon by the Environmental Council June 12, 2008):

Exemption Class No. 4: Minor alteration in the conditions of land, water, or vegetation

(3) Minor alterations to existing wildlife or plant sanctuaries, including construction of pumps and controls, pipes and channels, and dikes and moats for the purposes of maintaining water levels, providing constant water supplies, and precluding predators. Also includes minor alterations to biological transects, camp sites, fertilizing and mowing, maintaining nene pastures, weed control, outplanting native plants, transplanting, clearing mist net lines and trap sites.

Exemption Class No. 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource

(1) Implanting transponders and affixing transmitters and/or markers (bands, collars, ear tags) to birds and mammals to record movement, longevity; taking disease and blood samples; placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders; removal of non-native avian competitors, predator control (including placement of approved toxic baits, kill traps, live traps, snares) and using approved herbicides.

(2) Game and non-game wildlife surveys, inventory studies, new transect lines, photographing, recording, sampling, collection and captive propagation (involves walking, driving, and flying in the field (helicopters, light aircraft), use of nets and firearms, temporary traps including snares, mist nets, corral traps, drop door traps or leg hold traps.

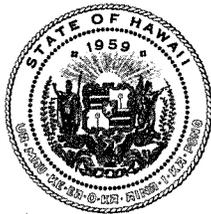
(3) Releases and recoveries of wildlife. On approved releases of game and non-game wildlife (after EA or EIS preparation and acceptance), actual release of animals and follow-up surveys, translocation within the range, or rearing in captivity and releasing to the wild.

Recommendation	It is anticipated the project will probably have minimal or no significant effects on the environment and is presumed to be exempt from the preparation of an environmental assessment.
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William J. Aila, Chairperson
Board of Land and Natural Resources

Date

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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March 9, 2012

TO: Honorable Chairperson and Members, Board of Land and Natural Resources

FROM: Endangered Species Recovery Committee

SUBJECT: Recommendation of approval of Incidental Take License and Habitat Conservation Plan for Kaua'i Lagoons Resort

On January 31, 2012, the Endangered Species Recovery Committee recommended approval the Incidental Take License and the Habitat Conservation Plan for Kaua'i Lagoons Resort.

Prepared and Submitted by:

A handwritten signature in black ink, appearing to read "Scott Fretz".

Scott Fretz, DLNR ESRC Designee