

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

July 24, 2013

Endangered Species Recovery Committee
State of Hawaii
Honolulu, Hawaii

Committee Members:

SUBJECT: REQUEST RECOMMENDATION OF APPROVAL FOR DRAFT ROUND-LEAVED CHAFF FLOWER (*ACHYRANTHES SPLENDENS* VAR. *ROTUNDATA*) HABITAT CONSERVATION PLAN, KENAI INDUSTRIAL PARK PROJECT AND ASSOCIATED INCIDENTAL TAKE LICENSE

BACKGROUND:

On March 5, 2010 AMEC Earth & Environmental, Inc. (AMEC) on behalf of their client, CIRI Land Development Company (CLDC), submitted to DOFAW a pre-application habitat conservation plan to begin their process to obtain an incidental take license for the CLDC Kenai Industrial Park Project (ʻEwa, Oʻahu), located at Tax Map Key No. (1) 9-1-074: 023. A subsequent draft habitat conservation plan for the project was submitted by AMEC in March 2012. Pursuant to Hawaii Revised Statutes Chapter 195D-21(a), the *Draft Round-Leaved Chaff Flower Habitat Conservation Plan, Kenai Industrial Park Project* (hereinafter referred to as “KIP HCP”) was publicly noticed in the May 8, 2012 edition of the *Environmental Notice*. On June 25, 2012 DLNR-DOFAW held a public hearing on Oʻahu to receive public testimony on the proposed KIP HCP and associated incidental take license. No public comments were received at the public hearing or during the 60-day public comment period.

On June 28, 2012 ESRC meeting members discussed the draft KIP HCP. Committee members expressed concerns with the possibility that the subject property may be under a previously BLNR approved 1990 Mitigation Plan for the general area. The ESRC requested staff to research this concern and report back at the next ESRC meeting.

On March 12, 2013 ESRC meeting members were provided with additional information of a 1994 U.S. Fish and Wildlife Service Draft Recovery Plan for *Achyranthes splendens* var. *rotundata*. Although this draft recovery plan named Cook Inlet Region, Inc. (CIRI) as a landowner of a property containing a naturally occurring population of *Achyranthes*, it was still unclear as to whether or not the 1990 Mitigation Plan referred to the subject property.

At the June 28, 2012 and March 12, 2013 ESRC meetings, the Committee had the following recommendations and amendments to the KIP HCP:

- Set a goal of 120 mature plants that are producing viable seed by year 5.
- Modify long-term success criteria to bring in different genetic lines of this species from subject property and other plant individuals from this region.
- Any mitigation proposed to occur on Pearl Harbor National Wildlife Refuge (Kalaeloa unit) will need to be above and beyond what is already occurring.
- Recommend to include the planting plan specifics for PH NWR within the draft KIP HCP for the Committee to consider.
- Clarify the watering plan for all sites including subject property and mitigation sites.
- Consult with the State Attorney General's office regarding any prior agreement that would obligate the site for mitigation. If applicable, can the prior mitigation targets be modified based on new scientific information or practical considerations.
- Request that the applicant make a determination whether there are any candidate species that may be affected by the on-site development, such as the Hawaiian anchialine shrimp species *Metabetaeus lohena* and adequately address any impacts to sinkholes on the subject property.

On April 15, 2013 CLDC representatives met with the State Deputy Attorney General, DOFAW staff and FWS staff to review CLDC findings concerning the status of a previous 1990 Mitigation Plan. These findings are provided in detail via a letter dated June 20, 2013 (Attachment 1) from Carlsmith Ball LLP representing CLDC in this matter.

On June 18, 2013 the new consultants for CLDC, SWCA Environmental Consultants (SWCA) submitted a revised draft KIP HCP with a cover letter addressing all recommendations from the ESRC (Attachment 2). The revised KIP HCP was reviewed by DOFAW staff and edits were sent to SWCA. SWCA incorporated edits and a final revised draft KIP HCP was submitted to DOFAW on July 5, 2013. The draft KIP HCP dated July 5, 2013 is submitted to the ESRC for action.

INCIDENTAL TAKE PROPOSED:

The project site is proposed to be developed as a self-storage facility or other industrial use, as permitted under zoning. The proposed construction and operation of an industrial use at the project site would result in direct incidental take of three (3) round-leaved chaff flower (federally and state listed endangered *Achyranthes splendens* var. *rotundata*) individuals, and their associated seed bank. The seed bank consists of un-germinated, viable seeds present on or in the soil or associated litter.

ANALYSIS

DOFAW supports the CLDC findings that the 1990 Mitigation Plan was prepared by ground lessee named Hawaii Project Management (HMP) and that the 1990 HPM Mitigation Plan does apply to the subject property. According to records reviewed and found by Carlsmith Ball LLP Attorney Ms. Jennifer Benck, HPM leased property from the Estate of James Campbell. The parcel at issue in the 1990 Mitigation Plan was TMK No. (1) 1-9-026: 028, and designated as Lot 4193 of Map 429 of Land Court Application No. 1069. Thus the 1990 Mitigation Plan and success targets therein, are not applicable to the KIP HCP.

The 1986 rezoning and Special Management Area (SMA) Use Permit to allow for development of the Kenai industrial subdivision, within which the subject property is located, required the applicant [Cook Inlet Region, Inc.] to preserve and protect *in situ* the colony of *Achyranthes rotundata* in the manner prescribed by DLNR. Prior to final approval of the subdivision, the applicant shall construct any protective devices and provide any access rights to DLNR as may be required (Condition F of the SMA Permit, City Council Resolution 87-237, issued on September 16, 1987). CIRI conveyed the entire industrial subdivision to CLDC in February 1991. The City and County of Honolulu Department of Planning and Permitting (DPP) issued subdivision approval in September 1991, noting that 32,943 sq. ft. lot was designated as a plant preservation lot. Lot 7,291 aka Tax Map Parcel No. 9-1-074: 023 (subject property) is still noted as a Plant Preservation in the DPP files.

DOFAW recognizes the inconsistencies with the 1987 Council Resolution, however the KIP HCP and associated incidental take license should be evaluated based on the applicable requirements under HRS Chapter 195D. Currently the *Achyranthes* population on the subject property is unmanaged and can be expected to decline due to surrounding development. The Kenai Industrial Park is adjacent to the James Campbell Industrial Park. Pages 6-8 of the draft KIP HCP provides detailed maps of the subject property.

Detailed measures of success have been refined to include all ESRC recommendations (KIP HCP page 28), the HCP/ITL term has been extended appropriately (KIP HCP page 10), and monitoring protocols have been improved (KIP HCP page 29-32) to ensure that out-planting success can be tracked with adaptive management measures in place if the plan is not achieving its goals.

Appendix D of the draft KIP HCP details the SWCA survey conducted on April 11, 2013 for Hawaiian red shrimp (*Halocaridina rubra*) and the candidate species anchialine pool shrimp (*Metabetaeus lohena*) and their anchialine pool habitat. According to the SWCA report, only one of the sinkholes contained water, which was too hypoxic to support native anchialine animals, including the Hawaiian red shrimp and candidate species anchialine pool shrimp. The proposed development of the property is not expected to impact anchialine pool habitat for these two species.

Appendix E of the draft KIP HCP contains a new letter of support from the U.S. Fish and Wildlife Service, Oahu National Wildlife Refuge Complex Project Leader, Mr. David M. Ellis, dated June 18, 2013, providing additional details on the proposed mitigation site at the Pearl Harbor National Wildlife Refuge, Kalaeloa Unit and how management of the mitigation site would be carried out.

HRS CHAPTER 343

CLDC prepared a Draft Environmental Assessment (DEA), titled *Draft Environmental Assessment for the Kenai Industrial Park Project Habitat Conservation Plan*, pursuant to Hawaii Revised Statutes Chapter 343. DLNR reviewed then submitted the DEA to the Office of Environmental Quality Control (OEQC) by letter dated January 23, 2013, and public notice of the DEA was issued in the February 8, 2013 edition of *The Environmental Notice*.

On April 15, 2013 CLDC, State Deputy Attorney General, and DOFAW staff discussed the DEA. It was determined that the proposed KIP HCP and associated Incidental Take License does not trigger any of the requirements for the preparation of an environmental assessment set forth in HRS § 343-5(a), and that CLDC no longer intends to pursue the HRS Chapter 343 process. On July 10, 2013 DLNR submitted to the OEQC a request to withdraw the DEA and public notice in the July 23, 2013 edition of *The Environmental Notice*.

RECOMMENDATION:

That the ESRC recommend approval or further amendments to reach a recommendation of approval for the *Draft Round-Leaved Chaff Flower Habitat Conservation Plan, Kenai Industrial Park Project* and associated Incidental Take License to the Board of Land and Natural Resources, pursuant to HRS 195D-25(b)(1).

Respectfully Submitted,



ROGER H. IMOTO, Administrator
Division of Forestry and Wildlife

Attachments: 2