NOT APPROVED

MINUTES
FOR MEETING PART I (SITE VISIT) OF THE
ENDANGERED SPECIES RECOVERY COMMITTEE

DATE: March 8, 2013
TIME: 8:30 am – 4:00 pm
PLACE: Subject Property: Honua‘ula (Wailea 670)
Eastern end of Kaukahi Street
Wailea-Makena, Hawaii 96753

Proposed Off-site Mitigation: Ulupalakua Ranch / Auwahi Forest Restoration Site

Chairperson Dr. J. Scott Fretz called the site visit meeting of the Endangered Species Recovery Committee (hereinafter referred to as the "ESRC" or "Committee") to order at 8:45 am.

The following were in attendance[1]:

MEMBERS: Dr. J. Scott Fretz (DLNR); Loyal Mehrhoff (USFWS); Dr. John Harrison (Appointee); and Dr. Patrick J. Hart (Appointee).

ABSENT: Dr. James Jacobi (USGS); and Dr. David Penn (UH Environmental Center).

STAFF: DOFAW: Betsy Gagne; Fern Duvall; and Lasha Salbosa. USFWS: Jess Newton; Kristi Young; Dawn Greenlee; Mike Richardson; and Cheryl Phillipson.

COUNSEL: None.

OTHERS: Charlie Jencks (Honua‘ula Partners LLC); Jaap Eijzenga and Tiffany Thair (SWCA); Elaine Malina (Maui Outdoor Circle); Ekolu Lindsey and Jonathan Lindsey (Maui Cultural Lands); Jacob R. Mau; Susan Offermann; Bob Offermann; Lajon Weaver; Mark Rooney; Lucienne de Naie; Lee Altenberg; Daniel Kanahele; Elijah Bratcher; Gene Weaver; Mark and Vicki Hyde; Lesley Bruce; Michael Kumukauoha Lee; Clare Apana; and Susan Nelson.

A. SITE VISIT OF SUBJECT PROPERTY AT HONUA‘ULA (WAILEA 670)

Meeting Chair re-stated the purpose of the site visit was to allow the ESRC an opportunity to observe the environmental and natural resource conditions of the subject property in relation to the Draft Habitat Conservation Plan (HCP) for Honua‘ula (Wailea 670). Draft HCP dated December 2012 and publicly noticed in the Office of Environmental Quality Control's January 8, 2013 issue of the Environmental Notice for a 60-day public comment period.

[1] The March 8, 2013 ESRC Meeting Part I was a site inspection or visit, and as such quorum was not required. No Committee deliberation or voting took place.

ESRC Members and agency staff were identified and a sign-in sheet was circulated. Mr. Jencks (HCP applicant) and SWCA environmental consultants served to host the visit. Four-wheel drive vehicles were necessary to traverse the subject property. Interested members of the public were instructed to meet within a gated area at 8:30 am. Adequate transportation was pre-arranged with a few members of the public able to utilize their own vehicles.

Jencks took the group through the subject property, making four stops: 1) the northern most boundary of the Native Plant Preservation Area; 2) approximate center of the 40 acre proposed on-site mitigation area; 3) the southeast boundary; and 4) a‘a lava flow and known sites for *Canavalia pubescens* or ‘Āwikiwiki. *Capparis sandwichiana* or Maiapilo was found abundant and healthy, as was many Wiliwili (*Erythrina sandwicensis*) trees of various age classes. Observations and photographs were taken.

B. PARTICIPANT TESTIMONY

Following the subject property visit, the group returned to the parking area at 11:00 am, at which time the public was invited to provide verbal comments but encouraged to submit written testimony on the ESRC site visit via email to Lasha.H.Salbosa@hawaii.gov.

Michael Kumukauoha Lee testified that there should be a plan in place to remove the invasive species on-site as a long-term management goal.

Lucienne de Naie testified against the proposed 40 acre on-site preserve. De Naie stated, “Back when this project first started, we were told the amount of native plants was insignificant, and that they could be transplanted to gulches. So, then we came up with the eight acre preserve. Then it was the 16 acre or 18 acre preserve. Then it was a 22 acre preserve. I want to point out that at every juncture; this absolutely was the best thing. That we had all the best science, and this was all supporting it. We are now at a 40 acre preserve. We are being told this is the best thing. We have the best science and everything is supporting it, and, I would just beg of you to look beyond that. That 40 acres probably is not what is needed here. Good science can coexist with good planning.”

Susan Offermann testified that a relatively small area would not be sufficient to protect and sustain a native dryforest preserve given rising temperatures and climate change. Offermann expressed, “With drier conditions, and more heat, you would need a bigger span to preserve a forest, rather than a smaller one.”

Daniel Kanahele testified against the proposed 40 acre on-site preserve as being inadequate and would not provide a benefit to the ecosystem. Kanahele stated, “I am a Hawaiian that lives in Wailea, and I think I should be part of the Habitat Conservation Plan. I am an endangered species. [Humorous] In any case, I know this site visit has a narrow scope, which is very antithetical to my Hawaiian nature. As a Hawaiian, a kanaka maoli, we always look at the big picture and how things are interconnected and related to one another. For the record, Hawaiian culture is a living culture; it is not dead. How many kanaka maoli are here? Raise your hands. This habitat, the plants and resources, are part of our living culture. That is why we are here. We do not take this lightly. There are very little of our cultural resources left. We feel like we have to stand up and speak for it. That is why I am here today. My main concerns are the unintended consequences of what is being

done here. The overall goal is for the Habitat Conservation Plan to provide a benefit to the ecosystem. One of the unintended consequences is that it will not be a benefit. There is only so much of this habitat left. I am afraid that 40 acres will decrease the size of the pie, of the habitat for a dry land forest."

Ekolu Lindsey testified on the significant nature and value of the resources described in the draft Habitat Conservation Plan and observed during the visit. Lindsey stated, "There are different definitions of significant, depending on where we're at, but for me, identifying the significant sites and significant plants are only as significant as the area that supports them. We need to look at the bigger picture. The definition of significance needs to be broadened. To make those things significant, we need everything around it preserved. The other question that came up today is, 'What is the value of that Maiopilo?' Now, what is the value? It is just one plant. It is not just a plant; it is a plant that survives in these types of conditions. It is who we are. It was here before us, and these things deserve preservation and a good place to live, so that students after us can come and study it and find out why they grow in such arid conditions, and maybe find medicines in this. As one of the few places I have seen it grow like this and survive, I think it deserves to be significant along with everything else. The value of it is that it is who we are; it is a part of us. They were here before us, and they deserve to be preserved."

Daniel Kanahele testified again, this time pointing to the reason why the area sustains so many Wiliwili trees. Kanahele stated, "There are pu'u waina, or underground lava tubes that the Wiliwili trees are tapping into for a water source. This is why they can survive. There are a lot of clouds up there. There is a lot of water running underneath us to the sea. In the management plan, you must look at the pu'u waina from the top of the mountain to the bottom."

Clare Apana testified against the proposed 40 acre on-site preserve as being inadequate and would not preserve cultural practices of la'au lapa'au. Apana stated, "I would just like to know if an actual practitioner of la'au lapa'au, for Hawaiian plants, since we are looking at Hawaiian dry land forest, has ever been consulted? I think that as you bring your experts, we should bring our experts too. I do not believe that this area proposed is going to be big enough to preserve the cultural practice, even in the limited capacity as has been done."

Bob Offermann testified against the current plan of the development as outlined in the draft Habitat Conservation Plan for Honua'ula and urged members to be mindful of unintended consequences. Offermann stated, "We have what we have, and once it is gone, it is gone and is not going to come back. It is really important to look for the unintended consequences, and error, as much as possible, on the side of preservation, rather than development. It is an irreplaceable resource. We need to keep what we can."

Jacob Mau testified on the diminished native species across the State. Mau stated, "I have worked with the State Department of Land and Natural Resources for a total of 38 years. Part of that has been with Forestry and State Conservation Resources Enforcement. Looking back, there are only a few places where our native birds are still up in the forest with the native trees. It is sad that all of that is practically gone. If you look at the West Maui Mountains, Hana'ula, there used to be a lot of Hawaiian tree snails when I first started working. I do not know if there are any left. You used to hear the chirp at night and early in the morning or late in the evening, before the sun goes down. I

have photographs of the Hawaiian tree snails. It is so sad that all of these things are disappearing. If there is some way we can preserve it, we should try."

Lesley Bruce testified on the general area and recounted her work with the Bishop Museum in 1971, and the eight native plants that were found in one area. Bruce stated, "In terms of ahupuaʻa, it is relevant to think of the moku of Honua'ula as very broad and large. Palauea is from the ocean to the mountains. We are losing pieces of it every day."

Susan Nelson testified against the proposed 40 acre on-site preserve as being too small to achieve the preservation objective. Nelson stated, "You need a functioning ecosystem to preserve the plants and animals that are here. If you make it too small, then all the pests and influence from the stuff around it will come in. I think, if we still have 130 acres for the native plant reserve, we should try to keep as much as we can. If we take it down to 40 acres, that is a lot of boundary and edge. You are going to lose a lot more. You are not going to have 40 acres if you only try to preserve 40 acres."

Michael Kumukauoha Lee testified again, this time noting an encroachment concern with the proposed 40 acres. Lee stated, "People encroach on the boundaries. It always happens. They set down a fixed boundary, a house ends up in the boundary zone, and the house stays, but the boundary goes. Encroachment takes place. That is a fact. It always happens. You have better security with a higher aacreage than a lower acreage."

Lee Altenberg testified against the proposed 40 acre on-site preserve as being inadequate. Lee stated, "From a conservation biology perspective, the number one principle is the species-area relationship and maximizing the amount of contiguous habitat. This is the most important way to preserve biodiversity. There is no principle of only preserving the 25 percent highest density used in conservation biology. There is the principle of minimum viable population size for any species to avoid deleterious mutations. That requires habitat. The principle to conserve anything is to maximize the area."

Lucienne de Naie testified again, this time noting that more information should be gathered. De Naie stated, "It was thought that there were no cultural sites here. Then, a handful was discovered. Now we know there are far more than the 40 that have been recorded. It is the nature of the place. In terms of the biology, we do not know, this might be fabulous Manduca habitat. It is hard to have someone hangout here at night and see what happens. To shortchange ourselves and say, 'Man, it's great up the hill because Blackburn's sphinx moths have the trees. They can munch full-time.' It seems to me that you would want to have low-land habitat, upper elevation low-land habitat. You would want to have as many fingers out there where you have an experiment with the survival of these species, as possible. Even on that front, this place should not be written-off. There is just so much more to know."

Verbal public testimony adjourned at 11:30 am and the meeting recessed for lunch and travel to proposed off-site mitigation area on Ulupalakua Ranch, Auwahi forest restoration site.

C. SITE VISIT OF PROPOSED OFF-SITE MITIGATION AREA: ULUPALAKUA RANCH / AUWAHI (190 ACRES) AND NEARBY KANAIO (164 ACRES)

Chair reconvened the meeting at 1:40 pm near the Ulupalakua Ranch Store and Grill. Members of the public interested in attending were instructed to meet at 1:30 pm, Ulupalakua Ranch Headquarters, Highway 37, 5 miles from Keokeo [Map was provided in the publicly noticed ESRC Meeting Agenda.]

Jacob Mau was the only member of the public to attend this portion. Proposed off-site mitigation area site visit was led by Dr. Art Medeiros and other staff members from the Leeward Haleakalā Watershed Restoration Partnership (LHWRP). Group traveled to the entrance gate to the Kanaio Natural Area Reserve and continued mauka to the Auwahi restoration site.

SWCA provided an overview of the off-site mitigation actions in the upland dry-mesic area. LHWRP walked participants through outplantings of ‘A‘ali`i or *Dodonaea viscosa*, ‘Aiea or *Nothocestrum latifolium,* and ‘Akoko or *Chamaesyce skottsbergii*; and naturally occurring individuals of Holei or *Ochrosia compta*, as well as other native dry-mesic plant species.

Medeiros expressed the historical potential of the area to support a large population of Blackburn’s Sphinx Moth, especially once mitigation actions (e.g., outplantings of moth host plants) are completed in the proposed 164 acre Kanaio off-site mitigation area. Questions were raised as to funding the fencing of the Kanaio offsite mitigation area (adjacent to the Kanaio NAR) and how if any, fence maintenance and fire management responsibilities would be shared with NARS staff and HCP applicant. Some funds may have been allocated in 2004 from USFWS to fence some portion of this area.

Having no other questions or comments the ESRC meeting site visit was adjourned at 3:40 pm to allow sufficient travel back to Ulupalakua Ranch Store. It was announced that the ESRC Meeting would be re-convened on O‘ahu on March 12, 2013 at 1151 Punchbowl Street Room 322B-C at 8:30 AM.

NOT APPROVED

MINUTES
FOR MEETING PART II (RECONVENED) OF THE
ENDANGERED SPECIES RECOVERY COMMITTEE

DATE: March 12, 2013
TIME: 8:30 am – 4:00 pm
PLACE: State of Hawai‘i, Department of Land and Natural Resources
1151 Punchbowl Street
Room 322B-C
Honolulu, HI 96813

Chairperson Dr. J. Scott Fretz called the meeting of the Endangered Species Recovery Committee (hereinafter referred to as the "ESRC" or "Committee") to order at 8:48 am.

The following were in attendance:

MEMBERS: Dr. J. Scott Fretz (DLNR); Esther Kia‘aina (DLNR); Loyal Mehrhoff (USFWS); Dr. John Harrison (Appointee); Dr. James Jacobi (USGS); and Dr. David Penn (UH Environmental Center).

ABSENT: Dr. Patrick J. Hart (Appointee).

STAFF: DOFAW: Randy Kennedy; Fern Duvall; Cynthia King; Lasha Salbosa and Afsheen Siddiqi.

COUNSEL: None.

OTHERS: Charlie Jencks (Honua‘ula Partners LLC); Jaap Eijzenga and Tiffany Thair (SWCA); Dawn Greenlee (USFWS); Lucienne de Naie; and Lee Altenberg.

A. REVIEW AND APPROVAL OF AGENDA

Chair requested to move Agenda Item C-2 (Draft HCP for Honua‘ula), after Agenda Item C-3 (HCP for Kaheawa Pastures Wind Energy Generation Facility), in order to allow DLNR First Deputy Kia‘aina to be present for the discussion.

Chair requested to modify Agenda Item C-1 (Draft HCP for Kenai Industrial Park) to strike "Vote to recommend approval, amendments, or rejections" and replace with "Discussion on issues of historical mitigation plan or site."

Chair requested to modify Agenda Item D-1 to defer the anticipated executive session until Counsel can be present. Written public testimony was accepted.

B. APPROVAL OF MINUTES

June 28, 2012

MOTION: (Jacobi/ Mehrhoff)
To approve the minutes.
UNANIMOUSLY APPROVED.

C. HABITAT CONSERVATION PLANS

A. Draft HCP for Kenai Industrial Park
Discussion of potential prior mitigation site on 0.75 acre subject property, Lot No. 25 Malakole Street in Kapolei, O'ahu.

Salbosa provided a summary of the issue for discussion. Cook Inlet Region Inc. (CIRI) is the HCP applicant and there are unresolved questions from the June 28, 2012 ESRC Meeting as to whether or not the subject property is a historical mitigation site. USFWS provided new information (Draft Recovery Plan of *Achyranthes splendens var. rotundata*) wherein CIRI is named as the landowner for what appears to be the current subject property that is described within a mitigation plan (dated March 1990) to offset impacts resulting from construction of storage or warehouse facilities.

Mehrhoff confirms that as USFWS understands the situation, CIRI is the landowner and they historically set aside a portion of their land to serve as mitigation, to protect a naturally occurring population of *Achyranthes*, but we don't know much else except that it went from approximately 100 plants down to now two plants on the subject property.

Jacobi asked if there was any other management under the previous mitigation plan (MP), other than not developing the area?

Mehrhoff responded that to his knowledge under the previous MP, CIRI constructed a fence to keep out people. Mehrhoff added that his question would be – Is CIRI mitigating for the current two plants or are they mitigating for their original mitigation? That population of *Achyranthes splendens var. rotundata* was at the time the second largest population out there.

Fretz asked what type of agreement was this in 1990? According to staff records it was approved by the Department of Land and Natural Resources and signed by the Chairperson. Fretz added that the State didn't have a legal authority to issue a take license in 1990, but it may have approved a mitigation plan.

Jacobi asked if the previous mitigation plan approved by the DLNR in 1990 would have been grandfathered in. He continued by asking, what are the implications for the project that is on the table right now and how do we get to a point where we can address this issue.

Fretz responded, that at the heart of the matter is the issue – are they mitigating for the present development or is there some old mitigation they need to throw on top, to their proposed site out at the Refuge as well. Mehrhoff and Jacobi concurred.

Fretz asked if the applicant is aware of this 1990 mitigation plan and what if at all are they proposing to do to address this situation?

Salbosa responded that to her knowledge the applicant is unsure if there was any involvement of a mitigation site, and they would like to hear from the Committee as to what they should do in going forward now.

Fretz would like to ask the State AG if we can make the previous plan part of the current mitigation. Fretz then asked if there was a Federal agreement or if there was only an agreement with the State.

Mehrhoff responded that the Federal part is unclear and that it would have been related to the deep draft harbor up at Campbell. And we were not able to find all exact sites that were mitigation for the harbor.

Fretz wondered if the Board approved the 1990 mitigation plan or was it perhaps something signed by a previous administrator or designee.

Fretz recommended staff consult with the AG's Office, in light of whatever previous agreement there was for the use of this site, whether the committee can legally require that the prior mitigation become a part of the mitigation in this HCP.

Jacobi asked to clarify, does the question include two parts: 1) is it permitted for a project like this to proceed on this land if mitigation is done elsewhere, and then 2) what is the project mitigating for; are you mitigating for the two plants that remain right now or the original number.

Penn noted that the original goal of the mitigation on the subject property, as stated in the recovery plan was to get the population sustainable and up to 1,000 individual *Achyranthes* plants.

Mehrhoff stated that in the context of today, such a mitigation target seems unrealistic.

Jacobi added that 1,000 individual *Achyranthes* plants is just a vague target because it does not include a timeline. For example, is that 1,000 individuals within 10 years or at one-time.

Mehrhoff added that there are other mitigation sites scattered throughout the Ewa region, which eventually could be in a similar situation.

Jacobi added that obviously there was no monitoring that was done for these older mitigation sites, no accountability in terms of the mitigation requirement being met; at least there doesn't appear to be any.

Jacobi asked if there was any information on the status of *Achyranthes* populations 1, 3, and 4? (Numbered as such in the USFWS Recovery Plan map).

Mehrhoff responded we have information of two of the *Achyranthes* sites. Mehrhoff is aware that the Coast Guard Station site is quite low (population 3). Mehrhoff believed Population 1 is the Refuge site. USFWS can get that information to the Committee.

Jacobi wanted to clarify that the only population that the landowner has any control over is population 2?

Mehrhoff and staff responded with a "yes", to our knowledge this is true.

Fretz asked for a summary of previous recommendations from the Committee. Staff provided the following recommendations that the Committee had regarding the Draft Kenai Industrial Park HCP at the June 28, 2012 ESRC Meeting:

- 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 HCP for the Committee to consider.
- Clarify the watering plan for all sites including subject property and mitigation sites.

Salbosa clarified that the HCP applicant did not want to make changes to satisfy these recommendations in the current draft HCP because the applicant was waiting to hear back from the Committee regarding any knowledge of a previous mitigation plan and had been focused on the Draft Environmental Assessment (DEA) for this HCP. Salbosa explained the DEA for this HCP was noticed in the February 8, 2013 issue of the Environmental Notice for a 60-day public comment period.

Harrison added that there is a typo within the Draft HCP, Section 4.1.2.2 Botanical Monitoring; second paragraph. The second mention of the term "quantitative" should be termed "qualitative" in this context.

Salbosa added that through verbal discussions with the applicant, CIRI may have future plans to sell the subject property, but would first like to properly record this HCP and mitigation plan with the Bureau of Conveyances, if such HCP is approved.

Chair asked if there were any members of the public wishing to provide testimony. Seeing none the Committee moved on to recommendations.

RECOMMENDATION:

That the Committee:

i. Consult with the AG on three questions.
   - In light of any prior agreement that would obligate the site for mitigation, can and should the development proceed on that site and be in compliance with 195D?
   - Can and should the BLNR require that that prior mitigation be accounted for in the present HCP, and if so, should that mitigation include achieving the original target mitigation of 1,000 *Achyranthes splendens var. rotundata* plants?
   - Can those original targets be modified based on new scientific information or practical considerations?

ii. Request that the HCP 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.

iii. Request staff to review the DEA and determine if the DEA has adequately addressed impacts to sinkholes, including biological and cultural.

Meeting recessed for approximately 10 minutes and reconvened at 10:03 am.
(First Wind LLC staff Dave Cowan, Greg Spencer, and Mitch Craig arrived at 10:00 am.)

B. HCP for Kaheawa Pastures Wind Energy Generation Facility (KWP I)
Review of Year 6 Annual Report (July 1, 2011 – June 30, 2012)

Salbosa began with a verbal account of staff recommendations, taken from data presented in Year 6 Annual Report.

1) The downed bat monitoring frequency should be increased on the turbine pads, as a result of data from CARE trials indicating that carcass retention is less than seven days in winter, and likely even shorter in the summer (page 4, Appendix 9). One CARE trial should be conducted in winter/spring and the other in summer/fall during each fiscal year. Also, SEEF trials for bats show 0 percent of small carcasses were found in shrub and grass areas of the turbine pads, and 20 percent of small carcasses were found on bare ground areas of the turbine pads.
2) Staff has concerns on the increased number of downed wildlife observed and reported as incidental and found outside of routine searches (page 8, Table 5). Incidental reporting of downed wildlife carcasses /injuries interfere with calculations of take, based on searches. To increase the power of downed searches, downed wildlife should be left in place, perhaps photographed, and not reported until it is detected by official searchers.
3) The permittee should consider pursuing mitigation alternatives for Hawaiian petrel (HAPE), as the take appears to be likely exceeding the authorized 20-year level take of

38 (Tier 1/Baseline take of 25 is also likely to be exceeded). Five HAPE carcasses have been detected (four HAPE carcasses if counting only those at the end of Year 6), total downed at the wind farm site over the past 6.5 years.

4) The Annual Report provides a 95% confidence interval for direct take of between two and eight birds in year six. If variability relating to SEEF and CARE were constant over the previous five years, this 95% confidence interval would translate to a total direct take of between approximately 15 and 62 birds in the 20-year permit term (and when indirect take is accounted for, between approximately 23 and 93 total HAPE are likely to be taken). Recommend wind farms calculate take using an 80% confidence interval given current SEEF and CARE data.
5) Finally, Staff is concerned on the carcass size for surrogates of Nene. Large carcasses were not included in either trial for this report.

Spencer provided a verbal update of progress on developing alternative seabird mitigation actions for KWP I and II, based on the First Wind document provided to the agencies dated March 5, 2013. (Hard copies of this document were provided to the Committee.)

Spencer added that in 2013, First Wind objectives will be to work in West Maui Kahakaloa and Puu Kukui, working closely with NARS staff, and develop a fairly comprehensive feasibility assessment for West Maui Newell's Shearwater management. First Wind also has plans to work with The Nature Conservancy in 'Aina Hou for Hawaiian petrels, and has plans to get into the area earlier to survey for the potential of Newell's Shearwater.

Jacobi asked if besides surveying and planning, is First Wind doing any actual mitigation right now?

Spencer responded "yes", First Wind is building a fence at Makamaka'ole, a planned social attraction site. The status there is that we received our permits for the site around Christmas of last year, after the whole process with Land Division. We so far have installed 400 linear feet of fence at the site. When we got into the end of January we found that we were facing some tough conditions with wind and rainfall, and that has set us back considerably. Within the last two and half weeks we have completely backed-off; we're waiting for things to dry up a bit. The agency coordination team met and at their request we have put together a progress update on alternative sites to Makamaka'ole should delays affect the five year target of project success.

Fretz added that when the enclosure fence was originally proposed it was drawn to include lands that were leased to a rancher, some State lands. There was a forest reserve and a NARS fence that came down to this rancher's leased land and went up and this was an agreement that was made with the rancher by a hand-shake many years ago. It wasn't until we really looked at this did we realize that we were dealing with a portion of State land that was leased to a rancher and weren't really DOFAW lands at all; and that triggered a lot of complications with land division and the disposition of those lands. And that is what caused a lot of delay with the permitting of this Makamaka'ole site. But that did finally get resolved.

Fretz also added that to my understanding First Wind was advised by the fence contractor to halt construction at Makamaka‘ole due to weather, is that correct?

Spencer responded “yes”, that’s correct. The contractor advised that waiting until after winter wet season would be best.

Fretz noted that due to the heavy equipment involved and safety concerns, halting construction would be best, but we still would have to deal with how the delay may affect your five year target.

Salbosa confirmed that the contractor did advise First Wind to halt fence construction at Makamaka‘ole.

Harrison asked once the weather clears and construction resumes, what is your completion schedule?

Spencer responded that First Wind has a target to finish the Makamaka‘ole fence by August 2013.

Mehrhoff asked is year one of the five years, this year (2013)?

Spencer responded that year one would be 2014, because First Wind cannot get social attraction up and running until spring of the following breeding season.

Jacobi expressed that the Committee has been talking about this mitigation for years and as far as he was concerned, this should’ve happened already. Jacobi asked what was meant when Spencer mentioned that there were some differences of opinion. If the fence configuration has changed are the agencies still confident that the existing fence will meet mitigation targets?

Mehrhoff responded that the differences of opinion was the interpretation of when the five year mitigation target clock starts, if it is at the point of permit issuance or at the completion of the fence for the mitigation site. USFWS believes that this has been resolved, as long as the Makamaka‘ole fence is completed in 2014, as there is no reason to suggest that the target clock to reach mitigation production would start prior to fence completion. USFWS does not see a way around it the way the HCP is written. There is a concern if Tier II take is reached, that alternative mitigation sites need to be pursued.

Mehrhoff stated that with this Tiered take approach in some of these HCPs, mitigation sites are not locked in until and if, some take level is reached, at which time such sites may be utilized by other project mitigation needs that come up and may get there first.

Spencer asked to be made aware of other project mitigation areas in order to work effectively and so that First Wind can carve out what they need.

Greenlee (USFWS) commented that with the Hawaiian petrel take calculations from KWP it may be beneficial for First Wind to start and commit to some level of Hawaiian petrel mitigation now instead of waiting until Year 6 or 7. Greenlee added a good place to start would be the Haleakala Crater Rim area, discussed in the March 5, 2013 First Wind document.

Spencer responded that we can have that conversation but First Wind is not prepared to make that decision now.

Spencer asked to clarify where the fifth Hawaiian petrel take occurred, because according to First Wind's records there have only been four observed take of Hawaiian petrels to date.

Salbosa responded that the fifth Hawaiian petrel occurred after the Year 6 report was submitted. Greenlee commented that she believes it was one of the carcasses found incidentally. Spencer replied that First Wind will re-examine their records to clarify.

Jacobi would like a regular update of all take of the facility. Fretz replied that staff will be sure to provide regular take reports to the Committee.

(Chair introduced DLNR First Deputy Kiaʻaina to the Committee)

Mehrhoff continued that if Makamakaʻole is not successful at year 5 the start-up year, then First Wind should begin planning the implementation of the alternative options. There will be a lag time between Makamakaʻole and any alternative sites and First Wind will need to plan accordingly.

Harrison added that milestones need to be in place in terms of success once the social attraction program starts, and what kind of schedule of feedback data that will give you the decision point as to whether or not to continue on that path or to start going towards the alternative mitigation.

Spencer responded that he believes it will be excruciating for the Committee to be invested in the long-term endeavor of Makamakaʻole, to sit still and let the biology unfold.

Jacobi expressed that we should move forward from here and be sure we are running on all cylinders, and capacity is adequate to really meet the goals as best as possible. The Committee has been involved in this site from day one.

Fretz asked to go again through the staff recommendations.

Jacobi asked if the SEEF results in the Year 6 report was correct, because if he read it right, the searcher efficiencies were 20 percent for bare ground; which brings the next question, how many carcasses might you be missing.

Spencer confirmed that the 20 percent searcher efficiencies were correct. First Wind has been making it a high priority to increase SEEFs on bare ground.

Jacobi asked First Wind what is the SEEF target percent.

Spencer responded that First Wind is targeting a searcher efficiency of 50 percent or better.

Jacobi replied that is a toss of a coin. Is it a searcher efficiency problem or is it a carcass removal problem?

Greenlee commented that the applicant has two choices, increase the frequency or increase the searcher efficiency. So if you did daily bat searches just on the bare turbine pads with a 20 percent efficiency, you'll likely to find the bat carcass before it's scavenged; versus increasing the search efficiency so that you'll only have to search three times a week, all of the turbine pads.

(Dave Cowan, First Wind Vice President for Environmental Affairs joined arrived and joined Spencer at the meeting table.)

Cowan suggested that First Wind can narrow the spacing between transects that are searched to improve efficiency. He also noted that he was not aware of the staff recommendations coming into the meeting.

Mehrhoff stated that there is a lot of monitoring issues in addition to bat take monitoring.

Jacobi asked if the State monitoring ever happened.

Fretz asked to get through the staff recommendations first, and then discuss the State compliance monitoring.

Spencer stated in regards to the number of incidental take observations documented (staff recommendation #2), what proportion would have been found during official searches. Cowan continued by adding that is what SEEF measures, but some of the data isn't where we would like it; and we are working to improve this.

Mehrhoff explained that his primary concern is what the impact will be on the statistics that will result in the overall take calculation.

Fretz asked to move on to staff recommendation #3, regarding the increase take in Hawaiian petrels.

Salbosa re-iterated that staff is recommending the applicant to use an 80% confidence interval rather than the current 95%, when calculating total adjusted take, in order to account for confidence in the estimator.

Cowan stated that this is news to First Wind and suggested that applying this 80% or 95% can be done at any time, because at any point along the process one could apply those uncertainties.

Cowan asked to see these agency recommendations in writing first.

Greenlee commented that USFWS and DOFAW are compiling a joint document to contain these recommendations.

Jacobi and Harrison requested that a joint summary with details of staff recommendations be provided to the Committee in advance of the meeting to allow Committee members to review. However, Jacobi asked that no agency resolutions be made with the applicant until the Committee can participate on these larger decisions.

Fretz concluded that staff will work to provide these recommendations in writing, refine the process, but note there will be a time lag for resolutions due to ESRC meeting scheduling.

RECOMMENDATION:

That the Committee:

i. Request the permittee to increase the search monitoring frequency to twice a week for downed bats in an effort to detect any carcasses present and get search efficiency above 50 percent.
ii. Requests that observed downed carcasses be left in place and documented (e.g., photographed) and treated as a carcass left in place for official searchers to find; actual details are to be worked out by staff and applicant to ensure carcasses are not double-counted.

Chair asked if there were any members of the public wanting to provide comments, seeing none the meeting moved on.

Third Party Compliance Monitoring

Salbosa provided a verbal summary beginning with the ESRC meeting in 2010 (refer to draft ESRC Meeting Minutes December 6, 2010), noted that since that time there has been 6-8 revisions of a Scope of Work, and DOFAW and applicant have not been able to come to an agreement.

Cowan commented that to his knowledge there is an agreed Scope of Work on the table, but that the budget is the item that is not agreed upon. Cowan stated that consultants provided a quote for labor hours that was about 900 versus the 5800 hours to do the same Scope of Work. Cowan believes that there is a middle ground that can be reached.

Kia‘aina asked that staff and applicants clearly explain the issues and introduce themselves not only for the Committee but for the public as well.

Jacobi commented that if the Scope of Work specifies tasks to complete then everyone should come up with fairly similar labor hours, as opposed to an objective which is; give me an adequate SEEF and CARE monitoring program. Jacobi continued that if the Scope of Work is down to the task level, then there should not be a problem.

Cowan commented that another option would be to have an independent third party conduct this work, he felt it doesn’t necessarily have to be the State.

Spencer asked if the third party compliance monitoring is a study, a trial, a validation of methodology, or is it a full-blown program.

Jacobi responded that it is a validation, a QAQC, and it’s an accuracy assessment. And from what he sees in the SEEF results, this is really needed and is a critical thing to do. The Committee asked for this to occur three years ago.

Jacobi continued that this validation needs to be a true QAQC, something we can then use to make a comparison.

Fretz commented that he didn’t think that going to a third party for this work would be beneficial, because if we go to a third party and they give you something that you don’t want I don’t think you will agree with that either. If we go with a third party and we (State) select the third party, and what if that third party’s bid is something like $147K, you might not like that either.

Cowan responded that he doesn’t know how that will pan out but he must go through this process; it’s part of smart shopping at work.

Penn asked if there was a budget estimate in an HCP for this work.

Cowan responded that Kahuku First Wind HCP is $30,000. Craig added that that amount is only for proctoring of SEEF trials, it doesn’t include CARE trials or anything else.

Fretz asked Duvall what would be the on-the-ground consequences if the budget was reduced to around $110K.

Duvall responded that the discrepancy was that First Wind felt that this could be done with one tech and one biologist to provide oversight. Duvall stated that the State disagreed and felt that it would take two people, so basically the cost differences is due to staffing levels. And he noted that this is a year-long attempt to clarify SEEF and CARE trials and methodology, and to look at it as a scientific study that can provide generalized recommendations for this sort of work. Duvall felt that every line item can be defended.

Fretz requested that the parties meet in the middle, somewhere between the $110K and $147K, and if there's consequences to things that are missing like a vehicle, the State can find that from somewhere else.

Fern stated that there are other issues like GPS monitoring, and we actually need tracks, in order to recommend whether or not the methodology works. So there were other substantive issues besides costs, between the applicant and the State.

Harrison asked how specific was the Scope of Work in terms of statistical evaluation of the results. He heard two different things; one an independent consultant doing a scope of work process and a team doing a scientific research project. And after 40 years as a scientist his basic input assumption is when you're dong science it will always cost more than if you're doing a project. Harrison felt that what we have here is a disagreement in what exactly the scope of work means.

Cowan commented that this is not scientific research, it's a validation of the efficiency of First Wind searchers and a validation of how long a carcass lasts in the field. He felt that this is supposed to be a compliance exercise and an independent measure, not a scientific research project.

Kia'aina asked for clarification of what was meant by the Committee when they originally said that this would be a collaborative effort and second, why is there not at our disposal all of these staff recommendations in front of us. In order for us to be making these critical decisions we should have all of the analysis in front of us, similar to a BLNR meeting; so that we can determine on our own, effectively. Kia'aina felt that the Committee was fishing and basing decisions on oral arguments.

Kia'aina added that right off the bat, $150K sounds like a lot, especially given the current sequester and the State's budgetary woes, Kia'aina felt that everything we attempt to cost out, whether we do it with applicants or ourselves, should be done with prudence.

Penn commented that he was confused because he heard DLNR say that part of the objective here was to have broader methodological and programmatic application, beyond this specific project. Penn went on to say that that is fine, but if that is the case and it really is going to be a collaborative venture then maybe some other folks that we're not talking to at this time should be putting money towards this project.

The Chair asked to move on as he doesn't see a resolution to this and requested we defer this and have the staff work on this and bring it back to the Committee with more detailed recommendations.

Kia'aina asked that all actionable items have a description of what the staff is recommending so that the Committee can analyze it, and have the document provided prior to meeting.

Fretz stated that staff will work to resolve this as soon as possible and if it's not resolved and we need to bring it back to the Committee, this will be brought to the next meeting.

Jacobi requested that if this third party compliance monitoring is resolved in the interim that the Committee is provided with a package of what that resolution is.

Jacobi commented that what he believed the Committee wanted in the beginning was a way to independently assess the accuracy of the SEEF and CARE trials. That was something the Committee wanted and something he felt the applicant wanted as well, from a validation standpoint. This should not just be an effort, but an outcome as well. Jacobi added that he would like to see the scope of work and have folks at USGS evaluate it to see if it meets what we want.

Meeting recessed for approximately 40 minutes and reconvened at 12:40 pm.

C. Draft HCP for Honua'ula (Wailea 670); Draft HCP Published for a 60-day public comment period in the January 8, 2013 issue of the Environmental Notice, OEQC.

Chair reconvened the meeting and introduced the item.

Salbosa summarized the status of the Draft HCP for Honua'ula. The 60-day public comment period was January 8, 2013 through March 8, 2013. During this time 10 members of the public submitted public testimony. On March 4, 2013 at the Kīhei Community Center, DLNR held a public hearing on the draft HCP and during this time approximately 20 members of the public attended and of this number, 12 individuals provided oral testimony. An ESRC site visit was held at the Honua'ula proposed site and off-site mitigation area on March 8, 2013; at this meeting approximately 11 members of the public provided oral testimony. A packet of all testimony will be provided to the Committee as soon as possible.

Jencks represented the owners of the subject property and began a powerpoint presentation to the Committee. A hardcopy of the slides were also provided to Committee members at the meeting. The presentation provided a background overview of the project's planning history and proposed actions as described in the draft HCP.

Jencks turned the presentation over to SWCA environmental consultant Jaap. Jaap presented on the botanical surveys undertaken during the project's planning, as described in the draft HCP and appendices.

Jacobi asked if Jaap thought the area was 100% surveyed.

Thair responded that SWCA did 20 meter transects in the southern a'a flow and then 50 meters elsewhere, as the vegetation is somewhat open.

Jaap provided an overview of the two covered species of which take is requested, and also outlined related surveys conducted as described in the draft HCP.

Jaap commented that a total of three larvae in total have been observed on the subject property. Unfortunately the occurrence of the moth itself and some of the host plants have a great deal of temporal variation making it difficult to pinpoint a specific number of moths that would be impacted to calculate take. Thus, Blackburn's Sphinx Moth take is calculated based on habitat take or acreage.

Jaap commented that Nene are not currently observed in the area but are included as a covered species based on previous ESRC recommendations and the fact that there have been take of Nene due to golf course operations on the island in the past.

Jaap provided an overview of the proposed avoidance and minimization measures that when implemented are expected to result in no take of the following species: Newell's shearwater; Short-eared owl; Hawaiian hoary bat; Hawaiian duck; and Hawaiian stilt, as described in the draft HCP.

Jaap asked for clarification at some point on the agency position on Nene mitigation; whether financial contribution to Hawaii Wildlife Center or translocation efforts would be acceptable. Both are options in the draft HCP.

Jaap provided an overview of the funding matrix in the draft HCP.

The Chair asked for members of the public in attendance that would like to provide testimony.

Public Testimony

i. Dr. Lee Altenberg provided testimony against the proposed 40 acre on-site mitigation area as not providing enough conservation value as needed. Dr. Lee's testimony included powerpoint slides. (A copy of these slides were subsequently provided to ESRC members.) Altenberg shared locations of ʻĀwikiwiki plants documented on the subject property 10 years ago and overlaid these locations with the proposed 40 acre Native Plant Preservation Area. Altenberg pointed out that the entire lava flow contains all constituent elements the Canavalia (ʻĀwikiwiki) need to survive, and the lava flow likely contains a large seed bank of Canavalia; underlining the need to conserve this area.

   Altenberg shared several photographs of the area, including photographs of threatened and endangered plants he documented on the subject property. Altenberg believes that the draft HCP denigrated the true beauty and value of the Honuaʻula area.

Altenberg wondered whether the destruction of three-quarters of ʻĀwikiwiki habitat can possibly be mitigated by putting management into an area where the ʻĀwikiwiki does not occur naturally.

Penn asked what the total number of Canavalia individuals found previously on-site.

Altenberg responded that the previous Starr botanical survey in February 2, 2003 found and documented 11 different Canavalia sites; individuals were not counted but many sites had more than two plant individuals present.

Thair asked how the points were collected in 2003.

Altenberg responded that all locations were documented using a Global Positioning System.

Jacobi asked if the applicant could comment in regards to the discrepancy in botantical survey results, specifically locations of native plants.

Thair responded that SWCA performed their surveys in 2008 and as mentioned by Dr. Art Medeiros, Canavalia functions as an annual so it is possible that the Canavalia plants were there in 2003 but were not present in 2008.

Jacobi commented that in order for the Committee to make a proper assessment it would be ideal to understand the botanical conditions in 2013.

Jaap commented that Canavalia is currently a proposed species, recently proposed last year; and thus is not endangered right now.

Jaap asked what constitutes take; is it just live plants or would that include seeds as well.

Mehrhoff responded that under the Federal ESA there is no plant ‘take’; USFWS looks at it in the viewpoint of jeopardy.

Fretz commented that for the State it seems that there would be take of some amount of a seed bank here but that we cannot quantify it.

ii. Robert Harris, Director of the Sierra Club Hawaiʻi Chapter testified against the draft HCP stating that the Committee does not have all the data needed to make a determination. Harris commented that the HCP describes that there would be take of five Canavalia plants, whereas Altenberg shares 11 locations of Canavalia plants, and some of his locations were from 2011, much more recent than 2003. Harris commented that under the statute the Committee has the responsibility to look at the best available science but also other reliable data, and cultural sites or

resources could be considered. He suggested the Committee ask for additional studies oo observations particularly as it concerns ʻĀwikiwiki.

iii. Lucienne de Naie testified on behalf of Maui Cultural Lands, against the draft HCP with concerns that the proposed actions will result in great loss of cultural and biological resources. De Naie urged that the draft HCP be based on realistic data and based on cultural considerations. Maui Cultural Lands would like to work together to kokua this area for the community and for smart development.

De Naie mentioned the Maui County Council Ordinance condition number 27, designed for this area and she asked that USFWS and DLNR treat the County Council ordinance with the same seriousness as the Committee must do with the draft HCP. De Naie commented that as a condition of re-zoning the area, the County Council put forward 130 acres to be preserved, unless any of the 130 acres did not merit protection as determined by USFWS and DLNR.

De Naie brought a copy of the January 2013 State Historic Preservation Division letter, stating that all archaeological inventories done by the applicant or contractor are unacceptable and essentially should be re-done.

De Naie commented that one of the very first Manduca moths found on the subject property is a site that's actually outside the proposed 40 acre preserve. De Naie believes we need more citizen scientists here and community members to be allowed to manage and kokua this area.

Kiaʻaina asked if there were pictures of the wiliwili trees.

De Naie responded that she will provide electronic copies of wiliwili photos she has gathered.

The Chair asked if there were any other public comments. Seeing none, the meeting progressed to Committee discussion.

Meeting recessed for approximately 10 minutes.

Committee Deliberation

Jacobi asked for clarification on how the agencies are planning to deal with candidate species such as Canavalia within this draft HCP.

Fretz responded that within 195D there is nothing that requires a candidate species to receive a net recovery benefit. Fretz continued that within 195D-21 (b)(1)(a) regarding habitat conservation plans, it states that the plan will protect and restore ecosystems upon which the endangered, threatened, proposed, or candidate species depend within the area covered by the plan.

Fretz stated that the plan (HCP) needs to protect the habitat types upon which the candidate species depend. Therefore, off-site mitigation areas such as Kanaio and Auwahi will need to include habitat upon which the ʻĀwikiwiki depend; which is a biological question.

Mehrhoff stated that from a USFWS perspective, should the plan be approved and go forward, the Service would do an incidental take authorization for the two animals, none would be done for plants; however, a conference opinion will need to be done internally on the Service's action to issue a permit and ensure no jeopardy to the candidate species will result. Mehrhoff continued that in addition, the applicant will need to do an environmental assessment and in order for the Service to be able to use the EA a finding of no significant impact (FONSI) will need to be determined; this means that no significant impact will need to be determined for both biological and cultural resources. Mehrhoff continued that if a FONSI cannot be reached the project will need to do an EIS.

Mehrhoff commented that for the Service, the Service has the actual HCP, incidental take permit for any animals, an internal section 7 consultation that includes both plants and animals, and an EA that would need to reach a FONSI or kick into an EIS.

Jacobi asked if the State would include a take authorization for a candidate species.

Fretz responded that according to his read of 195D, the State does not need to account for the individual level of take and conduct mitigation for candidate species; however it is incumbent on the program manager and staff to consult with the AG's office to ensure that that is correct.

Jacobi asked that if an HCP is finalized while a species is listed as candidate and that species subsequently is listed as endangered, that HCP will then need to be amended to cover that species; is that correct?

Fretz responded that that would be his interpretation.

Jacobi asked the Committee to clarify what level of currency data or surveys should be in the Honuaʻula case, in regards to the baseline conditions.

Fretz responded that he felt such a question would be important if the Canavalia, for example, was listed. Fretz continued by stating that even if more recent Canavalia surveys are conducted it may not impact the HCP any way.

Jacobi commented that he would like to reconcile the differences between the two Canavalia survey results, presented by the applicant and shared by the public.

Fretz responded that we could request more surveys to be done or we could recognize some biological points mentioned today that these Canavalia plants utilize a seed bank so the number of plants on the landscape may vary from one time to the next.

Harrison asked to clarify that the Canavalia plant is a low elevation dry forest plant and is not found at the proposed off-site Kanaio and Auwahi mitigation areas.

Mehrhoff commented that he thought that Canavalia is found in the Kanaio NAR area but not specifically sited within the off-site Kanaio area adjacent to the NAR.

Duvall responded that Canavalia is found within lower Kanaio; however it was unclear as to whether or not Canavalia is currently found within the NAR and near the off-site Kanaio mitigation area.

Fretz commented that he did not see specific targets for Canavalia within the off-site Kanaio area.

Jaap responded that much of the conservation measures would be on-site habitat restoration; as for the off-site areas however, because of the variable nature of this plant Dr. Art Medeiros suggested to use an annual average. According to the draft HCP, the Canavalia target is an annual average of 10 mature plants present at any given time.

Greenlee commented that she thought the Canavalia target was 50 rather than ten.

Fretz asked that based on all surveys done, there would be anywhere between 10 and 20 plants present at any given time; thus could the off-site area support that number of plants.

Harrison commented that Canavalia is an opportunistic plant and often fluctuates due to seasonal changes.

Fretz asked what the timing to list Canavalia would be.

Mehrhoff responded that the decision to list Canavalia or not is made by the USFWS Director not locally and would be determined by early summer, perhaps July; but this is not certain. Once it is determined to be listed, listing would take effect within 30 days.

Fretz commented that if this draft HCP is not provided to the Board and progress and if the Canavalia is listed, that would affect this HCP.

Mehrhoff suggested that Canavalia be treated as if it is listed for the purposes of this HCP, but there is no guarantee that Canavalia will be listed, as that decision is made in Washington. Mehrhoff stated that including Candidate species as a covered species with take requested, will allow an HCP to clearly address the species when and if it is listed; and any applicant actions that may affect the species will already be known and mitigation planned. In that manner, an incidental take permit would be issued after and if such species becomes listed.

Fretz asked if the 10 or 50 Canavalia target would meet Federal requirements.

Mehrhoff responded that the 10 Canavalia would be a weak target, but that the State he thinks would need more of a consistent ratio, for example a 3 to 1for existing plants, than the Service; as the Service does not permit incidental take for plants and rather considers the status of the entire population, and if the population is viable.

Salbosa commented that if Canavalia is treated as a listed species within the HCP then there may need to be a re-survey done or some other assessment to determine what the take would be.

Fretz clarified that from the take amount determined, mitigation would typically require three self-sustaining sites per each site taken.

Jacobi commented that within the Abutilon HCP it was determined that the target would be five populations and out of those five, three self-sustaining populations would result.

Jacobi asked to shift the discussion to Manduca; and addressing the requirement, if any, for a set number of host plants and the importance if any of other plants such as Maiapilo.

Jaap commented that from his work and talking with other individuals, the availability of adult host plants doesn't appear to be a limiting factor for Manduca species recovery.

Fretz commented that there may be a discrepancy in terms of the restoration targets; it is not clear what the diversity will be at the off-site mitigation area. It is unclear if the 190 acres will be entirely restored or managed.

Jaap commented that the description in the draft HCP focused on the Manduca needs and will be edited to describe and address overall restoration goals.

Fretz asked staff member Cynthia King what she thought would be the criteria of an ecosystem or natural community that would be essential in order to support Manduca; would a monoculture of Aiea be sufficient for Manduca, as described in the draft HCP.

King responded that a monoculture of Nicotiana has been more than adequate but not ideal or suggested for ecosystem restoration purposes.

Salbosa commented that perhaps there could be some type of assessment within the Kanaio off-site mitigation area accounting for the actual offsetting of Manduca; ideally and eventually leading to an increase in Manduca within the off-site area.

Jaap commented that because take for Manduca is in terms of habitat loss and thus mitigation would replace that habitat; surveying for Manduca abundance comes with it a lot of species related technical challenges.

Mehrhoff commented that there should be more of lowland habitat species composition as part of the restoration goals; perhaps expanding the on-site area or seeking mitigation above the subject property on Ulupalakua Ranch.

Jaap commented that he sees a lot of potential in the Auwahi area and that Medeiros has less experience in the lowland Kanaio area but is confident on the targets. Jaap also commented that he understands the hesitation with the Auwahi area in that it is higher in elevation; however with climate change this may prove to be a prudent decision.

Fretz commented that he was concerned with the budget for restoration work within the draft HCP that the budget was not adequate given that Medeiros stated that restoration work in that area is in the range of $20K per acre per year. Compare this with the $200K per year for restoration work in the HCP, supposedly to restore or manage 190 acres, this doesn't add up.

Fretz added that the HCP should be clear in terms of who will be doing the restoration, what the targets will be and ensure that the budget is adequate to conduct that level of work.

Jencks commented that he went to Medeiros with this proposal and although Jencks would like to provide $500K a year that cannot be done. In terms of funding, the applicant will provide a $10 million dollar endowment, cash for the term of the permit in order to conduct the conservation actions; he asked that the Committee keep that in mind and the fact that these two off-site areas would be conserved into perpetuity through a conservation easement all paid by the applicant.

Mehrhoff asked for clarification on the value added portion for the Kanaio off-site area if fencing will be done by the State. What will the duties be for the State in managing the area versus the applicant?

Fretz commented that the Kanaio NAR area on Ulupalakua Ranch land, sharing a border of the Kanaio off-site area has been entirely fenced using USFWS conservation partner's money, and this should be updated in the HCP.

Harrison commented that we would need to be clear on what improvements, conservation measures will be done on the NAR portion on Ulupalakua land and who would be performing those actions.

Mehrhoff commented that USFWS is concerned with the 25-50% non-native species cover as a target, and suggested that this percentage of non-native species be reduced.

Greenlee added that a 50% non-native species cover for the on-site area is rather high and likewise a 25% non-native species cover off-site is also high. Greenlee stated that the Service was recommending a 5% non-native species cover as a target.

Jaap responded that it will likely be difficult for any restoration group to achieve a 5% non-native species target at Kanaio and on-site. Jaap did not believe that such a 5% non-native species target was realistic.

Greenlee commented that whether or not such a target is realistic is tied more to cost than to actual biology. If more money is allocated, such a target may be realistic.

Jacobi commented that the focus should be on what the goal is in terms of response. Here the goal is a positive response from a native community; as an interim measure you set targets; but don't lose sight of the response from the native community.

Mehrhoff stated that a target of 50% non-native species cover for the on-site mitigation area will be difficult near impossible for the Service to support as a successful measure.

Jacobi re-iterated that one of his concerns is that the Auwahi mitigation area is different from the project site and he does not want to lose sight of the a'a lava flow community. Jacobi continued that he is not certain that he sees a clear link with the use of the off-site restoration areas.

Fretz commented that the State had asked the applicant to preserve the 130 acres following the County Council measure, but if that's not possible, the applicant should look to preserve similar lowland habitat. To Fretz' knowledge, the applicant stated that such an area could not be found.

Jencks responded that regarding comparable sites, he stated that he was not able to find an entity to work with; however he did ask what else he could do besides finding comparable land.

Jacobi stated that Honua'ula Partners as a landowner could look at expanding the on-site area.

Jencks responded that that is not possible as the landowner has economic needs.

Kia'aina asked what further discussions need to be had.

Harrison commented that current Manduca threats are loss of habitat and fragmentation and looking at the Honua'ula project actions, fragmentation and loss of habitat will most certainly occur. Harrison continued that his preference is to look for ways to better allocate land use and reorganize the development plan to place a higher priority on the resources. He felt that there is a level of entitlement that has been conveyed that makes the recommendations of conservation biologists here difficult.

Mehrhoff added he is open to loss of some areas if management in other areas can be obtained. Mehrhoff continued that he sees the importance of having these off-site mitigation areas conserved into perpetuity. Mehrhoff suggested we take the data we have

been provided here today and see if the on-site preserve area is in the best possible area to achieve the objective.

Fretz stated that the Committee does not have clear recommendations but rather topics to clarify.

Jencks stated that he will take a look at the information provided by Altenberg and other comments made by the Committee members, but more generally asked what the next steps are.

Penn commented that whatever shape this takes all of the issues laid out today should be clearly described, analyzed, and tradeoffs presented, especially when it comes time for the Committee to provide a recommendation to the Board.

Fretz added that after the meeting the Committee will be provided with all public testimony. The Committee's job would then be to review those public comments and the discussion that we've had and at a future meeting the Committee will be asked to approve or disapprove or amend the draft HCP.

Mehrhoff asked to clarify that the Committee is not asking for the applicant to revise the draft HCP at this time.

Jacobi and Fretz concurred; the Committee will need to first review all public comments received and then provide a recommendation to approve, deny, or amend the HCP.

The Committee requested to have this and future staff recommendations beforehand so that members could see the internal staff discussions and use those to guide the meeting.

Jacobi asked for the agencies to work with the applicant to determine if the surveys are representative of the current plants in the area, especially in regards to Canavalia.

Harrison asked if it is feasible to go back and look at realigning holes 10, 11, 12, and 13 of the proposed golf course; because that alone would serve to lessen the adverse impact to the lowland forest on the a'a flow.

Jencks responded that the project has conditional zoning and if making significant changes to the map, that may require Jencks to go back to the County Council; an added step that is not desirable. The ordinance has specific standards in terms of density and altering the density on the project may cause him to be at odds with the ordinance.

Fretz commented that the only quantitative mitigation measure is 500 Aiea; he suggested the applicant be more specific in terms of mitigation targets, especially in regards to restoration targets.

Penn clarified that if the applicant wants to include Canavalia as a covered species with take requested as a preventative measure, the applicant can do that.

Fretz re-iterated that the Committee has asked the applicant to (1) revise the discrepancy between the 10 and 50 Canavalia targets; (2) have staff assess the need to re-survey the 130 acres and provide a recommendation to the Committee (are surveys adequate to represent current condition); (3) revise restoration measures of success to be clear beyond just Canavalia and Aiea numbers; and (4) explain the value added portion with and without the HCP for the Kanaio area.

Kia‘aina stated she understands that the State Historic Preservation Division concerns are a separate issue but she asked when the applicant would complete the modified AIS (Archaeological Inventory Survey).

Jencks responded that he has received SHPD’s letter and is asking the SHPD to sit down with him because frankly the letter was a surprise. Jencks believes he submitted and re-submitted AIS to SHPD several times.

Kia‘aina added that she would hate to see the decision here be made by the Committee in a vacuum and only talk about the biological resources, which is the kuleana of this Committee, without considering the cultural resources; because if the SHPD comes down and does not concur then all of this is for naught. Kia‘aina continued that she would be willing to sit down with the SHPD and applicant to move discussions forward but added that these discussions need to be done simultaneously.

Mehrhoff added that he will need cultural concerns addressed if the Service is to go forward on an EA.

Fretz concurred and added that a large part of the public testimony points to both cultural and biological concerns.

Fretz asked if there were any other comments or questions on this topic; seeing none this agenda item was concluded.

D. OTHER DEPARTMENT BUSINESS

1. Approving a federal agreement plan, or license in place of a state habitat conservation plan, safe harbor agreement, or incidental take license; provision in HRS 195D-4(i).

Item was deferred. No members of the public were in attendance to provide oral testimony. Written testimony received will be provided to the Committee.

2. Setting remaining ESRC meeting dates in calendar year 2013.

May 14th; August 7th; and November 13th

NOT APPROVED

E. ANNOUNCEMENTS

1. Hard copies of the "Open Meetings: Guide to 'The Sunshine Law' for State and County Boards," dated July 2012, were provided to Committee Members.

Meeting adjourned at approximately 4:10 PM.