

State of Hawaii  
Department of Land and Natural Resources  
Division of Forestry and Wildlife  
1151 Punchbowl Street, Room 325  
Honolulu, Hawai'i 96813

Incidental Take License Number: ITL-26  
Date of Issue: June 12, 2020  
Valid Until: 30 years from date of issue

### INCIDENTAL TAKE LICENSE

To accompany:

#### "Kaua'i Seabird Habitat Conservation Plan"

The Board of Land and Natural Resources hereby grants permission under the authority of Hawaii Revised Statutes §§ 195D-4(g) and 195D-26 and all other applicable laws to:

**Kaua'i Blue, Inc.**  
**dba Sheraton Kaua'i**

For take resulting from light attraction, if such taking is incidental to and not the purpose of the carrying out of an otherwise lawful activity, of the following species:

Common Name	Scientific Name	5-Year Rolling Annual Average	Requested Authorization fledglings (lethal/non-lethal)
'A'o Newell's Shearwater	<i>Puffinus auricularis newelli</i>	2.69/2.11	145 (81/64)
'Ua'u Hawaiian Petrel	<i>Pterodroma sandwichensis</i>		2 (1/1)
'Akē'akē Band-rumped Storm Petrel	<i>Oceanodroma castro</i>		6 (3/3)

At the following location: The Sheraton Kaua'i encompasses three tax map keys: (4)2-8-016: 003, (4)2-8-016: 004, (4)2-8-015: 43 at a physical street address of 2440 Hoonani Road, Koloa, Hi 96756 ("Covered Property").

**I. GENERAL CONDITIONS**

- A. This license only authorizes incidental take of the covered species by the Licensee at the locations listed above that are owned or otherwise controlled by the Licensee, on the island of Kaua'i pursuant to the "Kauai Seabird Habitat Conservation Plan" (hereafter "HCP").
- B. Licensee shall abide by the terms and conditions of the HCP and ITL for the duration of the permit, and DLNR may suspend or revoke this ITL as set forth in Section 6.15 of the HCP if Licensee is not in compliance with the terms of its license.
- C. This license is valid for species protected by federal law only if accompanied by a valid federal Incidental Take Permit or Biological Opinion.
- D. The allowable incidental take authorized by this license for the covered species includes observed, unobserved, direct, indirect, lethal, and non-lethal take.
- E. This license shall become valid upon completion of the following:
  - 1. A legal representative of the Licensee has acknowledged understanding and agreement to abide by its conditions by signing two copies of this license.
  - 2. Both copies of the signed license must be returned to the Division of Forestry and Wildlife. Upon approval by the Chairperson, a copy of the license will be returned to the applicant.
- F. Pursuant to Hawaii Revised Statutes 195D-23(d), DLNR may collect payment from the Licensee for costs incurred when providing technical assistance in the development, review, or monitoring of the HCP. This payment shall be limited to Licensee's pro-rata portion of the \$10,000 state HCP compliance amount set forth in section 7.6, as established by Licensee's take allocation as a fraction of the total take licensed under the HCP, which will cover review of Licensee's compliance with the HCP. Any additional technical assistance requested by Licensee may be subject to additional charges.
- G. The Board may suspend or revoke this license for due cause, including not but limited to the suspension or revocation of the HCP. The Board may also suspend or revoke this license in accordance with applicable laws and regulations in force during the term of the license.

**II. SPECIAL CONDITIONS**

- A. The authorization granted by this permit is subject to the Licensee's compliance with, and implementation of, the Kauai Seabird Habitat Conservation Plan (May 2020). This license, the Licensee's approved

Participant Inclusion Plan, and the applicable provisions of the HCP are binding upon the Licensee, and any authorized officer, employee, contractor, or agent conducting Covered Activities, whether or not enumerated further in this license.

- B. The take authorization contained in this license is not effective until the following is complete:
1. The Department receives from the National Fish and Wildlife Foundation confirmation that the Licensee has deposited its required Year 1 financial commitments, per HCP provision 6.1.2 and chapter 7.
  2. The Licensee provides a copy of the signed contract for the Prime Contractor, performance schedule, and responsibilities of each party for the Kahuama‘a Seabird Preserve mitigation project.
  3. If these conditions are not met, the license will be suspended immediately.
- C. The Licensee shall allow the US Fish and Wildlife Service and Department of Land and Natural Resources (collectively “the Agencies”) to conduct site visits for the duration of the license following a 48-hour notice.
- D. The Licensee shall provide to the Agencies the following from all ongoing monitoring efforts: all raw data from Covered Property searches, predator monitoring and removal efforts, and any biological information related to take monitoring. The Licensee shall calculate their annual lethal and non-lethal take using the methodology described in the HCP and with the discovery rate within their approved Participant Inclusion Plan. Take calculations shall be verified by the Agencies.
- E. The Licensee shall follow all procedures described in the most recent version of the “Protocol for Holders of a State of Hawai‘i Incidental Take License and U.S. Fish and Wildlife Service Incidental Take Permit Responding to Dead or Injured Birds Under the Kauai Seabird Habitat Conservation Plan” (“Standard Protocol”), when locating any dead, injured, or sick individuals. All Covered Seabird Species found at a Licensee’s Covered Property(ies), whether found alive or dead, shall be transferred to the Save Our Shearwaters Program for further documentation and data collection. A copy of the current version of the Standard Protocol is attached to this permit.
1. The Licensee shall notify State of Hawaii, DLNR-DOFAW HCP staff, and Island Biologist as described in the Standard Protocol within one working day of finding a downed Covered Species or receiving notification from SOS that a downed Covered Seabird Species was found on their property.
  2. A Downed Wildlife form as described in the Standard Protocol shall

- be filed with the Agencies within three days of the incident.
3. The Agencies may send dead specimens of Covered Species to the U.S. Geological Survey for necropsy or other analysis; the Licensee shall reimburse the Agencies for all costs (not to exceed \$1,000 per carcass) associated with the transport and analysis of such specimens.
  4. The Licensee shall accept and implement updated versions of the Standard Protocol if directed to do so by DLNR.
- F. The Licensee shall notify DLNR-DOFAW HCP staff, and Island Biologist within one working day of finding sea turtle activity or receiving notification of sea turtle activity on the Covered Property or on the beach adjacent to the Covered Property.
- G. In accordance with the HCP, including sections 5.3.2, 6.2.2, 6.6.1.2, 6.8.2 and 6.8.3, the Licensee, in coordination with the Agencies shall within one year of the effective date of this permit, provide for DOFAW's review and approval of the following:
1. Implementation plan for predator monitoring and removal for Covered Property(ies), including effort and efficacy monitoring.
  2. If this condition is not met, the Department may immediately suspend the permit.
- H. In accordance with HCP section 6.2.2.1.b.3 the Licensee, in coordination with the Agencies shall, prior to the end of the second seabird season following of the effective date of this permit, coordinate the development and implementation of a program for validation of discovery rate. Discovery rate validation shall identify the searchable area, probability of detection, and carcass removal rate.
- I. Reporting Requirements. The Licensee shall provide the Prime Contractor with reports on all monitoring and project activities as described in the HCP by January 15 during each year of the Permit Term. The Licensee will ensure that the final Summary Report is submitted by the Prime Contractor to the Agencies no later than February 28 following each seabird fallout season of the Permit Term. The Licensee's reports and the Summary Report shall contain descriptions of circumstances that triggered adaptive management and how the adaptive management was implemented; description of all occurrences of changed circumstances and how they were addressed; description of any unforeseen circumstances; progress made in achieving biological goals and objectives; any problems that occurred and how they were handled; description of cost expenditures and other information related to funding assurances; an annual work plan including an implementation schedule and entities responsible for implementation; and any other pertinent information such as actions taken by any State or Federal Agencies related to

implementation of the HCP. In addition, the following items are required in the Licensee's annual report and Summary Report:

1. Facility name, ownership and contact details;
  2. Summary of any proposed changes to the facilities with potential to affect the Covered Species;
  3. Changes to facility management or other key personnel involved in the HCP;
  4. Request from a Participant to change minimization measures conducted at the facility and the reasons for the requested change (as needed);
  5. Summary of the results of self-monitoring of take of the Covered Seabirds and monitoring for honu nests, including:
    - a. Map or description of search route used for conducting searches;
    - b. Frequency and timing of searches conducted;
    - c. Personnel involved in search efforts;
    - d. A summary table of the search effort results to include: number of birds or honu nests found, the date, time, and exact location where each was found, disposition of the birds or nests (if known), including description of any honu nest protection efforts implemented;
    - e. A discussion of the efficacy of the current self-monitoring protocols and adaptive management;
    - f. Nighttime photos of participant's Covered Properties or operations during non- seabird season and during seabird season;
  6. Summary discussion of the results and efficacy of on-site animal control efforts and adaptive management;
  7. Summary of worker training and outreach efforts;
  8. Other relevant information that the Agencies may require to verify compliance with license issued.
- J. The Licensee shall refer to license number **ITL-26** in all correspondence and reports concerning permit activities. Any questions about this permit shall be

directed to the Wildlife Program Manager and to the HCP coordinator, Division of Forestry and Wildlife, Department of Land and Natural Resources.

- K. A copy of this license shall be on the premises of the Licensee, or in the possession of the Licensee, their designated agents, or agency-approved biologists while conducting activities that may result in incidental take.

Counterpart Signatures. This license may be executed in multiple counterparts, and each executed counterpart of this license shall be deemed an original for all purposes, despite the fact that not all of the parties are signatories to the same counterpart. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

Approved by the Board of Land and Natural Resources at its meeting held on June 12, 2020.

*DES*
*Suzanne D. Case*
Date Aug 31, 2020  
 By: \_\_\_\_\_  
 Suzanne D. Case, Chairperson and Member  
 Board of Land and Natural Resources

The undersigned has read, understands, and hereby agrees to abide by the General Conditions and the Special Conditions stipulated in this license.

**Kauai Blue dba Sheraton Kaua'i**

By: \_\_\_\_\_ Date \_\_\_\_\_

Its: \_\_\_\_\_

Kauai Blue dba Sheraton Kauai's notarized signature is made a part of this document.

NOTARY ON NEXT PAGE

cc: DOFAW  
 DOCARE  
 USFWS Pacific Islands Office, Honolulu

directed to the Wildlife Program Manager and to the HCP coordinator, Division of Forestry and Wildlife, Department of Land and Natural Resources.

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Approved by the Board of Land and Natural Resources at its meeting held on June 12, 2020.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Suzanne D. Case, Chairperson and Member  
Board of Land and Natural Resources

The undersigned has read, understands, and hereby agrees to abide by the General Conditions and the Special Conditions stipulated in this license.

**Kauai Blue dba Sheraton Kaua'i**

By:  \_\_\_\_\_ Date Aug 28, 2020  
DENIS EBRILL  
Its: Vice President

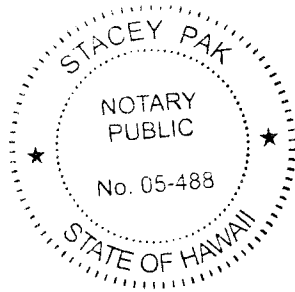
Kauai Blue dba Sheraton Kauai's notarized signature is made a part of this document.

NOTARY ON NEXT PAGE

- cc: DOFAW
- DOCARE
- USFWS Pacific Islands Office, Honolulu

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

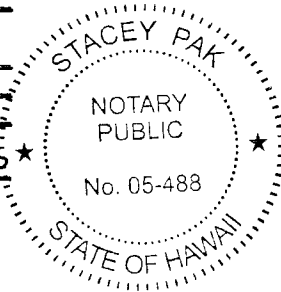
On this 28<sup>th</sup> day of August, 2020, before me appeared DENIS EBRILL, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing INCIDENTAL TAKE LICENSE dated Aug. 28, 2020, which document consists of 7 page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Stacey Pak  
Name of Notary: STACEY PAK  
Notary Public, First Judicial Circuit,  
State of Hawaii.

My commission expires: July 19, 2023

Doc. Date: 08/28/2020 # Pages: 7  
Stacey Pak First Circuit  
Doc. Description Incidental  
Take License  
Stacey Pak 08/28/2020  
Notary Signature Date



NOTARY CERTIFICATION