



LAW OFFICE OF
JENNIFER A. LIM LLLC

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November 1, 2023 23 NOV -1 A8 :44

Via Hand Delivery

FORESTRY & WILDLIFE
STATE OF HAWAII

David G. Smith, Administrator
Division of Forestry and Wildlife
Department of Land and Natural Resources
1151 Punchbowl Street, Room 325
Honolulu, HI 96813

Re: Incidental Take License ITL-18 ("ITL") and Related Habitat Conservation Plan ("HCP") Authorizing Take of Two Round-Leaf Chaff Flower Plants (*Achyranthes splendens* var. *rotundata*) From the Kenai Industrial Park, Kapolei, O'ahu

Dear Mr. Smith:

We received your letter of October 2nd responding to our letter of May 18th and found it baffling.

The Division of Forestry and Wildlife has a grave misunderstanding about the status of this ITL and HCP. It is shocking that the Division would threaten my client AKC Leasing Corporation ("AKC") with unspecified penalties, costs, and fees as leverage to get AKC to capitulate to a new set of demands now for a permit that was issued almost 10 years ago. A permit that allowed AKC to "take" two lone plants located in the Kenai Industrial Park. AKC has met and exceeded the requirements under the ITL and HCP. And, in any event, the ITL expires in February. We trust this response will clarify the Division's misconceptions on this matter.

Pursuant to the ITL, in 2014, AKC "took" two isolated plants from a privately owned lot within a fully built out industrial park.¹ In return for that authorization over the past nine-plus years AKC has:

- Spent well over \$370,000 on mitigation, compliance, maintenance, and reporting (this amount does not include legal fees), far exceeding the \$253,600 in costs agreed to in the HCP
- Deposited over 20,000 seeds into the State's seed bank at Lyon Arboretum

¹ The ITL and HCP anticipated the incidental take of three individual plants. However, only two plants were removed from the industrial park because only two plants existed. In between the time that the HCP had been prepared in 2013 and the 2014 "take" one of the three plants at the industrial property had died. The conditions at the Kenai Industrial Park are clearly not hospitable to the success of this plant species.

- Propagated over 300 new Round-Leaf Chaff Flower plants
- For the past nine years, maintained a bond in the amount of \$197,500 in favor of the State
- Fully satisfied the HCP's Contingency Obligation
- By the Division's own account, satisfied all seven of the HCP success criteria by year 5 of the ITL, except for criterion #1, which in 2021 the Division confirmed was no longer applicable

1. CONTINGENCY OBLIGATION BOND

The Division's demand that AKC renew the bond lacks any justification. AKC procured and maintained the bond solely as insurance for the satisfaction of the "Contingency Obligation" should the State come into the position of having to complete the Contingency Obligation (a screenshot of the relevant provision of the bond is shown below). No such event occurred. AKC completed the Contingency Obligation and there is no further purpose or need for the bond.

Principal AKC Leasing Corporation

and the Zurich Surety, as Surety in a certain Bond No. LPM9170468, with an effective date of the 25TH day of SEPTEMBER, 2014 in the penalty of: One Hundred Ninety Seven Thousand Five Hundred and Zero Cents

Dollars (\$ 197,500)

In Favor of State of Hawaii, Department of Land and Natural Resources

do hereby continue said bond in force for the further term(s) of 1 year(s) beginning on the 25TH day of SEPTEMBER, 2022 and ending on the 25TH day of SEPTEMBER, 2023.

Contingency Obligation

PROVIDED, however, that said bond, as continued hereby, shall be subject to all its terms and conditions, except as herein modified, and that the liability of the said Zurich Surety under said bond and any and all continuations thereof shall in no event exceed in the aggregate the above named penalty, and that this certificate shall not be valid unless signed by said Principal.

Signed, sealed and dated this 28TH day of JUNE, 2022

The only purpose for the bond was to ensure the State could complete the Contingency Obligation in the event AKC failed to do so.² Presented with irrefutable evidence that AKC completed the Contingency Obligation in February, as detailed in our May letter, and AKC's request that the State authorize the release of the bond prior to its September expiration date, the

² Under HRS § 195D-21, all habitat conservation plans must “Provide for an adaptive management strategy that specifies the actions to be taken periodically if the plan is not achieving its goals.” For this HCP, that strategy was the Contingency Obligation under Section 6.7, which AKC completed earlier this year.

State did nothing.³ Through its inaction, the State forced AKC to retain the bond in favor of the State for no identifiable or legitimate purpose. It is extraordinary that the State now demands that AKC renew the bond and threatens to impose unspecified penalties upon AKC for failure to do so.

AKC has already spent more than \$370,000 on mitigation, compliance, maintenance, and reporting. This amount is far greater than \$253,600, which is what was agreed to under the HCP's funding matrix. In addition, AKC has fully implemented the Contingency Obligation under the HCP, which was the sole purpose for the bond. The Division's demand that AKC replace the bond is irrational and lacks any legal justification.

2. THE STATE'S ILLEGAL ATTEMPT TO FORCE NEW CONDITIONS ON AKC

In an even more egregious abuse of power, the State ignores AKC's satisfaction of the Contingency Obligation, ignores its own prior determinations that AKC had satisfied the terms of the HCP and ITL, and now attempts to strong-arm AKC into complying with an entirely new set of conditions that are outside the terms of the ITL and the HCP. These new conditions were developed behind closed doors, between Division staff and one member of the ESRC. If applicable, they would require significant additional time and costs from the permittee.

The HCP is clear that the permittee would not be required to commit additional land, water, money, or financial compensation beyond what was already agreed to under the HCP. Yet the Division had the audacity to prepare an entirely new set of permit conditions, which were formulated without any input from, or even prior notice to, AKC. Moreover, the Division attempted to foist those new conditions on AKC by the Division's letter of November 25, 2022. But at that point in time AKC was already months into completing the HCP's Contingency Obligation, with the cooperation and consent of the Division!

3. AKC HAS SATISFIED THE HCP AND ITL REQUIREMENTS

The ITL was issued with a 10-year term. Under any circumstances it expires in three months, on February 9, 2024. However, the HCP allows AKC to terminate it early if the conditions thereunder were satisfied ("The Applicant anticipates a 10-year permit term, throughout which this HCP would be in effect, but the term may be terminated early if all success criteria have been met."). Those criteria have been met and the permit obligations have been completed.

All applicable success criteria have been satisfied, as the Division itself confirmed in its annual reports to the State Legislature. In addition, AKC took the additional step of completing the Contingency Obligation. Although the Division now threatens to "revoke both the HCP and ITL" and to "impose penalties . . . costs and fees" on AKC, the simple fact is that under any

³ AKC's year-long efforts to complete the Contingency Obligation, which included coordination with the State, are detailed in our letter of May 18, 2023. The Kalaeloa Heritage Park has turned out to be a beneficial location for this plant species. Heritage Park staff have reported that a great number of the plants have survived through the dry season and flowered and are in fruit.

David G. Smith, Administrator
Division of Forestry and Wildlife
November 1, 2023
Page 4

plausible and good faith analysis, AKC's obligations under the HCP and ITL are satisfied. The Division has confirmed as much in its reports to the State Legislature. There is no ongoing authorization for the State to revoke.

As of April 2018 and 2019 all HCP success criteria but for criterion #1 were satisfied, as confirmed by the Division's reports to the Legislature. See enclosed. Those reports also informed the Legislature that the Division had come to understand that this plant species has a "relatively short lifespan." For that reason, the Division alerted the Legislature in 2021 that the Division and ESRC had eliminated criterion #1 from the HCP. See enclosed.

It is incredible that the Division would present a set of facts to the Legislature and the public, and then ignore those facts in its mistaken attempt to prevent AKC, under threat of governmental penalties and fees, from being freed from the Division's grasp.⁴

* * *

All applicable success criteria under the HCP have been satisfied, all requirements under the ITL have been satisfied. In addition, AKC, with the Division's knowledge and consent, went beyond the requirements of the HCP's success criteria and also completed the HCP Contingency Obligation.

Almost ten years ago AKC took two plants from an industrial lot. In return, AKC has propagated hundreds of new plants, spent hundreds of thousands of dollars to benefit this plant species, took action to prevent this plant species from extinction through its deposit of seeds at the Lyon Arboretum, and ensured that the genetic diversity present within the two founder plants will persist in the future. Respectfully, AKC is done. We trust this letter, together with our letter of May 18th, clarifies the Division's misunderstandings regarding this matter.

Very truly yours,

LAW OFFICE OF JENNIFER A. LIM, LLC

By: 

Jennifer A. Lim

⁴ Unlike the other ITLs and HCPs under the Division's purview, all of which cover the ongoing take of endangered animal species (e.g., Hawaiian Hoary Bat, Nene, Pueo, etc.), ITL-18 and its HCP did not authorize any ongoing take and AKC has not engaged in any further take. Two plants were taken a decade ago from a 0.75-acre industrial lot within a larger built out industrial park. Not further take occurred.

David G. Smith, Administrator
Division of Forestry and Wildlife
November 1, 2023
Page 5

Encl.

Excerpts from DLNR Report to State of Hawaii Legislature, FY 18, 19, and 21.

cc: Myrna N. Giraldo-Perez, DOFAW (via email)
AKC Leasing Corporation (via email)
SWCA Environmental Consultants (via email)

DAVID Y. IGE
GOVERNOR OF
HAWAII



DEPT. COMM. NO. 36

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT H. MASUDA
DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 5, 2018

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Status Of The Issuance Of Incidental Take Licenses For Endangered, Threatened, Proposed, And Candidate Species And The Condition Of The Endangered Species Trust Fund For The Period July 1, 2017 – June 30, 2018 report, as required by Section 195D-26, Hawaii Revised Statutes (HRS). In accordance with Section 93-16, HRS, a copy of this report has been transmitted to the Legislative Reference Bureau and the report may be viewed electronically at <http://dlnr.hawaii.gov/reports/>.

Sincerely,

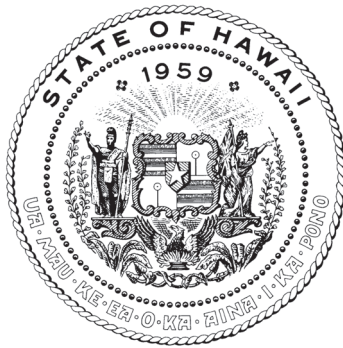
A handwritten signature in blue ink, appearing to read "Suzanne D. Case".

SUZANNE D. CASE
Chairperson

Enclosure

**REPORT TO THE THIRTIETH LEGISLATURE
STATE OF HAWAII
2019 REGULAR SESSION**

**STATUS OF THE ISSUANCE OF INCIDENTAL TAKE
LICENSES FOR ENDANGERED, THREATENED, PROPOSED,
AND CANDIDATE SPECIES
AND
THE CONDITION OF THE ENDANGERED SPECIES TRUST FUND
FOR THE PERIOD JULY 1, 2017 – JUNE 30, 2018**



Prepared by

**THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE**

In response to Section 195D-26, Hawaii Revised Statutes

Honolulu, Hawaii
December 2018

**STATUS OF THE ISSUANCE OF
INCIDENTAL TAKE LICENSES FOR ENDANGERED, THREATENED,
PROPOSED, AND CANDIDATE SPECIES
AND
THE CONDITION OF THE ENDANGERED SPECIES TRUST FUND
FOR THE PERIOD JULY 1, 2017 – JUNE 30, 2018**

PURPOSE

Act 380, Session Laws of Hawai‘i (SLH) 1997, amended the State Endangered Species Law, Chapter 195D, Hawai‘i Revised Statutes (HRS), to provide for the preparation and implementation of habitat conservation plans (HCPs) and safe harbor agreements (SHAs) and to provide additional incentives for private landowners to recover and protect threatened and endangered species on their lands. Specifically, Section 195D-26, HRS, requires that an annual report be prepared by the Department of Land and Natural Resources (DLNR) on:

- The effectiveness of HCPs and SHAs issued under Chapter 195D, HRS, and the status of all species for which incidental take licenses have been issued;
- Description of the condition of the Endangered Species Trust Fund (ESTF) established under Section 195D-31, HRS; and
- Recommendations to further the purposes of Chapter 195D, HRS.

Incidental Take Licenses (ITLs) are issued in conjunction with an approved HCP or SHA for the legal take¹ of threatened or endangered species, if such take is incidental to an otherwise lawful activity. Habitat Conservation Plans and SHAs are important management tools in the State of Hawai‘i by accomplishing the following:

- Resolves conflicts between endangered species protection and legitimate use of natural resources;
- Contributes to endangered species recovery efforts through partnerships and proactive planning; and
- Provides essential ecological information for Hawai‘i’s resource managers by requiring a strong monitoring component in all HCPs.

This annual report is submitted to fulfill the reporting requirement for Fiscal Year (FY) 2018 and provides detailed information for 10 HCPs and five SHAs for which ITLs have been issued. One new ITL was issued in FY 2018 (June 22, 2018) for the Kamehameha Schools SHA. Given its date of issue this SHA is not included in this report. The report is organized by HCP project type, provides an overview of SHAs, describes the condition of the ESTF, and concludes with recommendations to further the purposes of Chapter 195D, HRS.

¹ “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct (§195D-2, HRS).

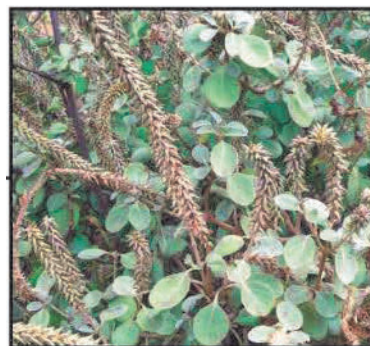
Relocation of Round-leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) Habitat Conservation Plan, Kenai Industrial Park, Kapolei, O'ahu, Hawai'i. Approved 2014

ITL Licensee: CIRI Land Development Company (In September 2014 CIRI Land Development Company sold the property under the ITL to AKC Leasing Corporation)

Project: Industrial development on a 0.75-acre parcel

ITL Duration: February 10, 2014 – February 9, 2024

Take Authorization Over 10-year Term:



Achyranthes splendens var. *rotundata*.

Table 28. Take Authorization for Kenai Industrial Park.

Common Name	Scientific Name	Total Authorized Over ITL Duration
Round-leaved Chaff Flower	<i>Achyranthes splendens</i> var. <i>rotundata</i>	3 individuals and their seed bank

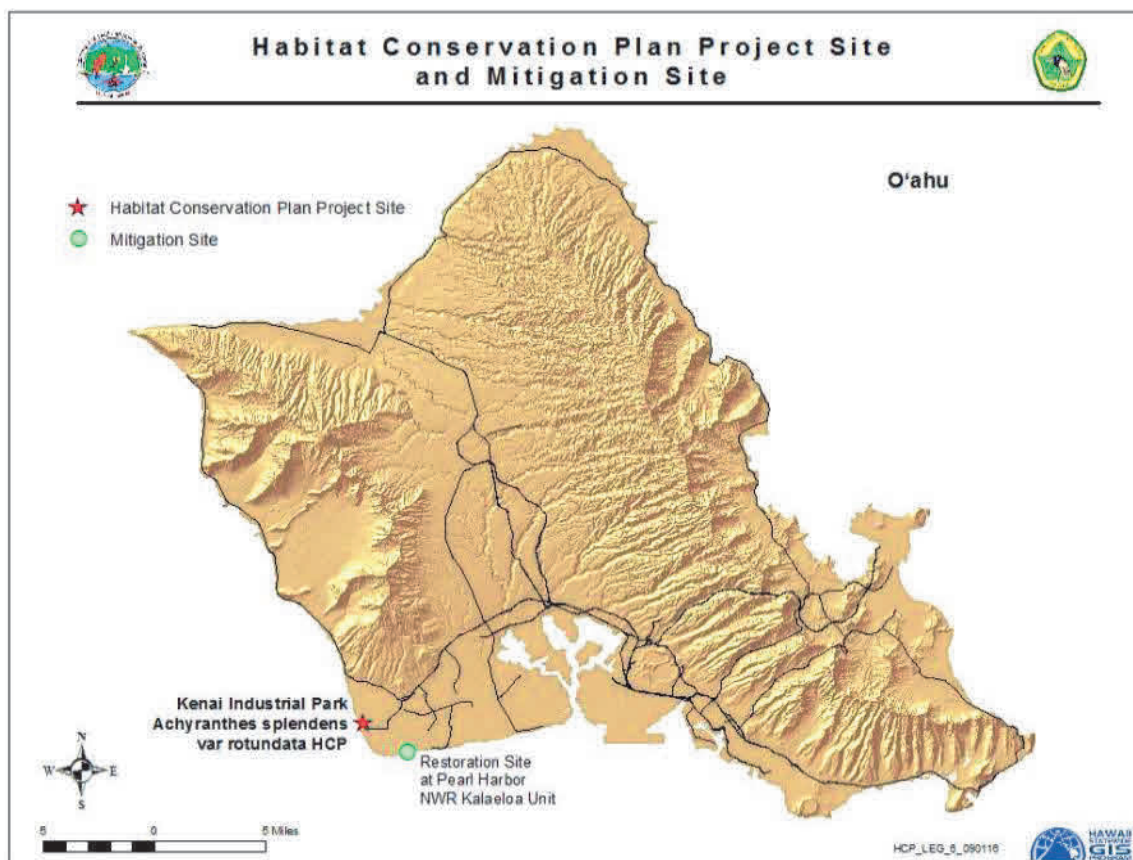


Figure 12. Location of Kenai Industrial Park HCP

Status of ITL: All plants at the site have been removed under supervision of the State botanist. Approximately 23,000 seeds were collected in 2014. Approximately 400 of the seeds collected were used to germinate plants at Hui Ku Maoli Ola native plant nursery, the remainder are in

storage at the Lyon seed facilities. The seeds at Hui Ku Maoli Ola were propagated and were used for out-planting at the mitigation site.

Mitigation Status:

Round-leaved Chaff Flower. In accordance with the HCP, seeds were collected from the project site and were either stored or propagated for future out-planting at the mitigation site located at the Kalaeloa Unit of the Pearl Harbor National Wildlife Refuge.

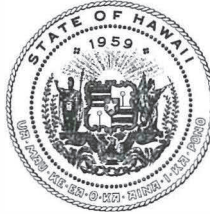


Plot 1 out-plants on 4/25/17

A total of 159 plants were installed in four plots within the Kalaeloa Unit in November and December 2014. Each planting plot is approximately 12 × 12 meters (m) (39.5 × 39.5 feet). In addition, four individual plants of round-leaved chaff flower were planted outside of the Plots 1–4 in November 2014 and this area was designated Plot 5. As of April 12, 2018 there were 74 out-plants (47% of 159 planted) surviving, therefore the 75% survival by Year 4 criteria in the HCP has not been met. In all, 27 seedlings reached at least six inches in height in FY 2018, bringing the total number of progeny for the project to 47. Other success criteria specified in the HCP to be achieved by Year 5 are met as of this report including less than 25% cover of herbaceous non-native plants and more than 25% cover of native plants.

Funding Status: In September of 2014, CIRI Land Development Company (original owner of the property under the ITL) sold the property to AKC Leasing Corporation. AKC Leasing Corporation has acknowledged and understands that ownership of the property is subject to conditions under the approved Incidental Take License Number ITL-18 and the associated HCP for Kenai Industrial Park. AKC Leasing Corporation is required to provide all funding necessary to fulfill obligations outlined in the approved HCP including funding assurances. In FY 2018, AKC Leasing Corporation used their own procurement processes to fulfill HCP obligations.

DAVID Y. IGE
GOVERNOR OF
HAWAII



DEPT. COMM. NO. 112

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 13, 2019

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
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Thirtieth State Legislature
State Capitol, Room 431
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Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Status Of The Issuance Of Incidental Take Licenses For Endangered, Threatened, Proposed, And Candidate Species And The Condition Of The Endangered Species Trust Fund For The Period July 1, 2018 – June 30, 2019 report, as required by Section 195D-26, Hawaii Revised Statutes (HRS). In accordance with Section 93-16, HRS, a copy of this report has been transmitted to the Legislative Reference Bureau and the report may be viewed electronically at <http://files.hawaii.gov/dlnr/reports-to-the-legislature/2020/FW20-Endangered-Species-Rpt-FY19.pdf>.

Sincerely,

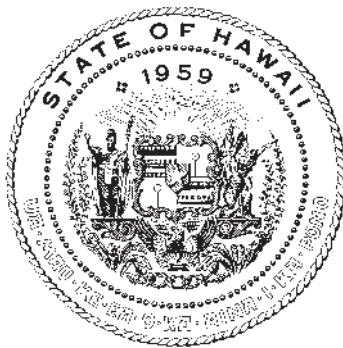
A handwritten signature in blue ink that reads "Suzanne D. Case".

SUZANNE D. CASE
Chairperson

Enclosure

**REPORT TO THE THIRTIETH LEGISLATURE
STATE OF HAWAII
2020 REGULAR SESSION**

**STATUS OF THE ISSUANCE OF INCIDENTAL TAKE
LICENSES FOR ENDANGERED, THREATENED, PROPOSED,
AND CANDIDATE SPECIES
AND
THE CONDITION OF THE ENDANGERED SPECIES TRUST FUND
FOR THE PERIOD JULY 1, 2018 – JUNE 30, 2019**



Prepared by

**THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE**

In response to Section 195D-26, Hawaii Revised Statutes

Honolulu, Hawaii
December 2019

**STATUS OF THE ISSUANCE OF
INCIDENTAL TAKE LICENSES FOR ENDANGERED, THREATENED,
PROPOSED, AND CANDIDATE SPECIES
AND
THE CONDITION OF THE ENDANGERED SPECIES TRUST FUND
FOR THE PERIOD JULY 1, 2018 – JUNE 30, 2019**

PURPOSE

Act 380, Session Laws of Hawai‘i (SLH) 1997, amended the State Endangered Species Law, Chapter 195D, Hawai‘i Revised Statutes (HRS), to provide for the preparation and implementation of habitat conservation plans (HCPs) and safe harbor agreements (SHAs) and to provide additional incentives for private landowners to recover and protect threatened and endangered species on their lands. Specifically, Section 195D-26, HRS, requires that an annual report be prepared by the Department of Land and Natural Resources (DLNR) on:

- The effectiveness of HCPs and SHAs issued under Chapter 195D, HRS, and the status of all species for which incidental take licenses have been issued;
- Description of the condition of the Endangered Species Trust Fund (ESTF) established under Section 195D-31, HRS; and
- Recommendations to further the purposes of Chapter 195D, HRS.

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- Resolve conflicts between endangered species protection and legitimate use of natural resources;
- Contribute to endangered species recovery efforts through partnerships and proactive planning; and
- Provide essential ecological information for Hawai‘i’s resource managers by requiring a strong monitoring component in all HCPs.

This annual report is submitted to fulfill the reporting requirement for Fiscal Year (FY) 2019 and provides detailed information for 11 HCPs and six SHAs for which ITLs have been issued. One new ITL was issued in FY 2019 (April 30, 2019) for the Na Pua Makani Wind Energy Project HCP and one ITL concluded in FY 2019 (March 27, 2019) for the Daniel K. Inouye Solar Telescope Construction HCP. The report is organized by HCP project type, provides an overview of SHAs, describes the condition of the ESTF, and concludes with recommendations to further the purposes of Chapter 195D, HRS.

¹ “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct (§195D-2, HRS).

Relocation of Round-leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) Habitat Conservation Plan, Kenai Industrial Park, Kapolei, O‘ahu, Hawai‘i. Approved 2014

ITL Licensee: CIRI Land Development Company (In September 2014 CIRI Land Development Company sold the property under the ITL to AKC Leasing Corporation)

Project: Industrial development on a 0.75-acre parcel

ITL Duration: February 10, 2014 – February 9, 2024 (as of end of FY 2019, 5.37 years (54 %) through the permit term)



Achyranthes splendens var. *rotundata*.

Take Authorization Over 10-year Term:

Table 25. Take Authorization for Kenai Industrial Park.

Common Name	Scientific Name	Total Authorized Over ITL Duration
Round-leaved Chaff Flower	<i>Achyranthes splendens</i> var. <i>rotundata</i>	3 individuals and their seed bank

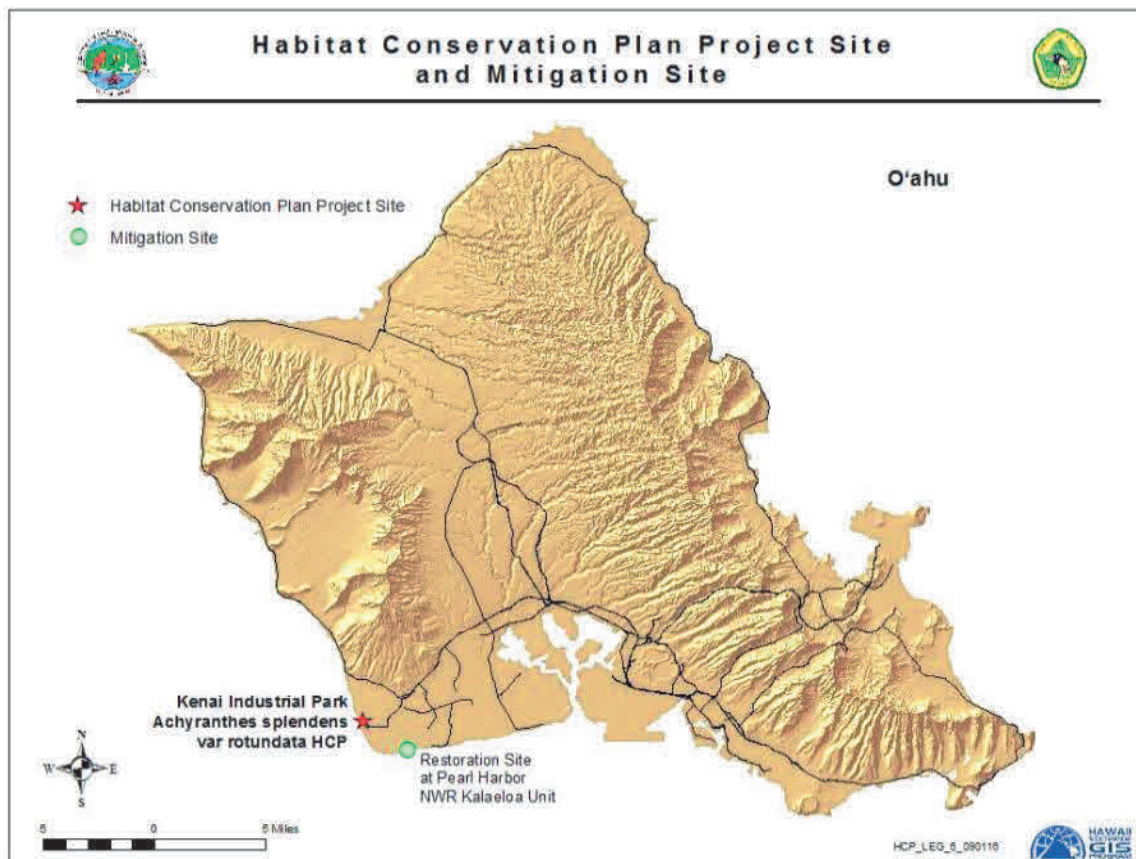


Figure 13. Location of Kenai Industrial Park HCP

Status of ITL: All plants at the site have been removed under supervision of the State Botanist. Approximately 23,000 seeds were collected in 2014. Approximately 400 of the seeds collected were used to germinate plants at Hui Ku Maoli Ola native plant nursery, the remainder are in storage at the Lyon seed facilities. The seeds at Hui Ku Maoli Ola were propagated and were used for out-planting at the mitigation site.

Mitigation Status:

Round-leaved Chaff Flower. In accordance with the HCP, seeds were collected from the project site and were either stored or propagated for future out-planting at the mitigation site located at the Kalaeloa Unit of the Pearl Harbor National Wildlife Refuge.



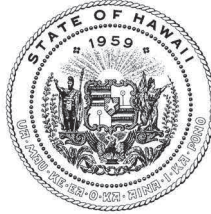
Plot 1 out-plants on 4/25/17

A total of 159 plants were installed in four plots within the Kalaeloa Unit in November and December 2014. Each planting plot is approximately 12 × 12 meters (39.5 × 39.5 feet). In addition, four individual plants of Round-leaved Chaff Flower were planted outside of the Plots 1–4 in November 2014 and this area was designated Plot 5. As of April 10, 2019 there were 50 out-plants (31% of 159 planted) surviving, therefore the 75% survival by Year 5 criteria in the HCP has not been met. In all, 33 seedlings reached at least six inches in height in FY 2019, bringing the total number of progeny for the project to 79. All other success criteria specified in the HCP to be achieved by Year 5 are met as of this report including less than 25% cover of herbaceous non-native plants and more than 25% cover of native plants.

Reports on the life expectancy of Round-leaved Chaff Flower vary and range from two to 10 years; however, restoration managers generally agree that this species has a relatively short lifespan, relying on its high reproductive output to perpetuate its populations in the harsh, dry environments in which it is found. For this reason, in FY 2019 the ITL licensee and DOFAW discussed adjusting the survivorship criterion in the HCP to reflect that the species' lifespan often falls below this time period.

Funding Status: In September of 2014, CIRC Land Development Company (original owner of the property under the ITL) sold the property to AKC Leasing Corporation. AKC Leasing Corporation has acknowledged and understands that ownership of the property is subject to conditions under the approved Incidental Take License Number ITL-18 and the associated HCP for Kenai Industrial Park. AKC Leasing Corporation is required to provide all funding necessary to fulfill obligations outlined in the approved HCP including funding assurances. In FY 2019, AKC Leasing Corporation used their own procurement processes to fulfill HCP obligations.

DAVID Y. IGE
GOVERNOR OF
HAWAII



DEPT. COMM. NO. 43

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 1, 2021

The Honorable Ronald D. Kouchi,
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and Members of the Senate
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State Capitol, Room 409
Honolulu, Hawaii 96813

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and Members of the House of
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Sincerely,

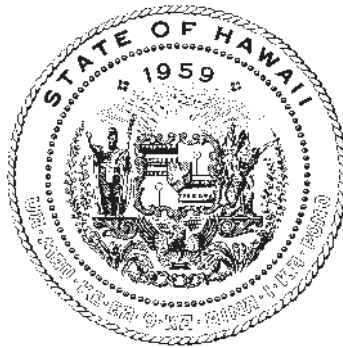
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SUZANNE D. CASE
Chairperson

Enclosure

**REPORT TO THE THIRTY-FIRST LEGISLATURE
STATE OF HAWAII
2022 REGULAR SESSION**

**STATUS OF THE ISSUANCE OF INCIDENTAL TAKE
LICENSES FOR ENDANGERED, THREATENED, PROPOSED,
AND CANDIDATE SPECIES
AND
THE CONDITION OF THE ENDANGERED SPECIES TRUST FUND
FOR THE PERIOD JULY 1, 2020 – JUNE 30, 2021
AND
SAFE HARBOR AGREEMENTS SUMMARY**



Prepared by:

**THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE**

In response to Section 195D-26, Hawaii Revised Statutes
and
Act 37, Session Laws Hawaii 2016

Honolulu, Hawaii
November 2021

**STATUS OF THE ISSUANCE OF
INCIDENTAL TAKE LICENSES FOR ENDANGERED, THREATENED,
PROPOSED, AND CANDIDATE SPECIES
AND
THE CONDITION OF THE ENDANGERED SPECIES TRUST FUND
FOR THE PERIOD JULY 1, 2020 – JUNE 30, 2021**

PURPOSE

Act 380, Session Laws of Hawai‘i (SLH) 1997, amended the State Endangered Species Law, Chapter 195D, Hawai‘i Revised Statutes (HRS), to provide for the preparation and implementation of Habitat Conservation Plans (HCPs) and Safe Harbor Agreements (SHAs) and to provide additional incentives for private landowners to recover and protect threatened and endangered species on their lands. Specifically, Section 195D-26, HRS, requires that an annual report be prepared by the Department of Land and Natural Resources (DLNR) on:

- The effectiveness of HCPs and SHAs issued under Chapter 195D, HRS, and the status of all species for which incidental take licenses have been issued;
- A description of the condition of the Endangered Species Trust Fund (ESTF) established under Section 195D-31, HRS; and
- Recommendations to further the purposes of Chapter 195D, HRS.

Incidental Take Licenses (ITLs) are issued in conjunction with an approved HCP or SHA for the legal take¹ of threatened or endangered species, if such take is incidental to an otherwise lawful activity. Habitat Conservation Plans and Safe Harbor Agreements are important management tools in the State of Hawai‘i and accomplish the following:

- Resolve conflicts between endangered species protection and legitimate use of natural resources;
- Contribute to endangered species recovery efforts through partnerships and proactive planning; and
- Provide essential ecological information for Hawai‘i’s resource managers by requiring a strong monitoring component in all HCPs.

This annual report is submitted to fulfill the reporting requirement for Fiscal Year (FY) 2021 and provides detailed information for 11 HCPs and six SHAs for which ITLs have been issued. One amendment to an ITL was issued in FY 2021 for the Kawailoa Wind Power HCP (March 30, 2021). The report is organized by HCP project type, provides an overview of SHAs, describes the condition of the ESTF, and concludes with recommendations to further the purposes of Chapter 195D, HRS.

¹ “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct (§195D-2, HRS).

Relocation of Round-leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) Habitat Conservation Plan, Kenai Industrial Park, Kapolei, O'ahu, Hawai'i. Approved 2014

ITL Licensee: CIRI Land Development Company (In September 2014 CIRI Land Development Company sold the property under the ITL to AKC Leasing Corporation)

Project: Industrial development on a 0.75-acre parcel

ITL Duration: February 10, 2014 – February 9, 2024 (as of end of FY 2021, 7.3 years (73%) through the permit term)



Achyranthes splendens var. *rotundata*.

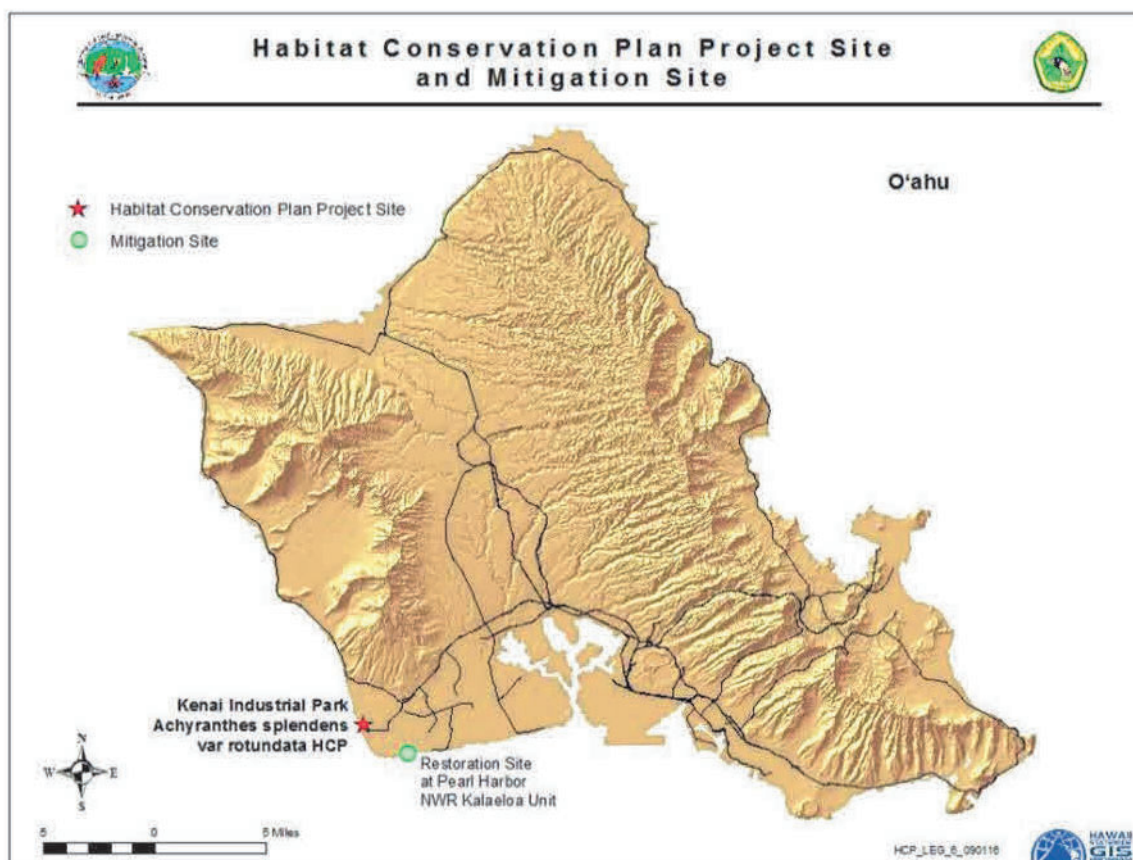


Figure 12. Location of Kenai Industrial Park HCP

Take Authorization Over 10-year Term:

Table 21. Take Authorization for Kenai Industrial Park.

Common Name	Scientific Name	Total Authorized Over ITL Duration
Round-leaved Chaff Flower	<i>Achyranthes splendens</i> var. <i>rotundata</i>	3 individuals and their seed bank

Status of ITL: All plants at the site have been removed under supervision of the State Botanist. Approximately 23,000 seeds were collected in 2014. Approximately 400 of the seeds collected were used to germinate plants at Hui Kū Maoli Ola native plant nursery, the remainder are in storage at the Lyon Arboretum seed facilities. The seeds at Hui Kū Maoli Ola were propagated and were used for out-planting at the mitigation site.

Mitigation Status:

Round-leaved Chaff Flower. In accordance with the HCP, seeds were collected from the project site and were either stored or propagated for future out-planting at the mitigation site located at the Kalaeloa Unit of the Pearl Harbor National Wildlife Refuge.



Plot 1 outplants on 4/25/17

A total of 159 plants were installed in four plots within the Kalaeloa Unit in November and December 2014. Each planting plot is approximately 12 × 12 meters (39.5 × 39.5 feet). In addition, four individual plants of Round-leaved Chaff Flower were planted outside of the Plots 1–4 in November 2014 and this area was designated Plot 5. As of June 29, 2021, there were 0 outplants (0% of 159 planted) surviving; therefore, the 75% survival by Year 5 outlined in success criteria 1 would not have been met if it were still valid. In all, 2 seedlings reached at least six inches in height in FY 2021. In June 2021, 57 live newly outplanted individuals were included in the count bringing the total number of individual progeny at the project site to 121. Success criteria that apply to Year 5 of the monitoring include no fewer than 120 mature plants surviving, no mature kiawe present within the plots, less than 25% cover of herbaceous non-native plants, and more than 25% cover of native plants. At the end of FY 2021, there were 121 plants at the site (57 recently planted and not yet considered established), native plant cover ranged from 17-50% in the plots, and non-native plant cover ranged from 8-67% in the plots, and no mature kiawe were present in the plots. Weeding will take place to ensure all plots meet other success criteria.

Reports on the life expectancy of Round-leaved Chaff Flower vary and range from two to ten years; however, restoration managers generally agree that this species has a relatively short lifespan, relying on its high reproductive output to perpetuate its populations in the harsh, dry environments in which it is found. For this reason, in FY 2019 the ITL licensee and DOFAW discussed adjusting the survivorship criterion in the HCP to reflect that the species' lifespan often falls below this time period. In FY 2021, DOFAW finalized the ESRC's approval to omit success criteria 1 as requested by the permittee.

Funding Status: In September of 2014, CIRI Land Development Company (original owner of the property under the ITL) sold the property to AKC Leasing Corporation. AKC Leasing Corporation has acknowledged and understands that ownership of the property is subject to conditions under the approved Incidental Take License Number ITL-18 and the associated HCP for Kenai Industrial Park. AKC Leasing Corporation is required to provide all funding necessary to fulfill obligations outlined in the approved HCP including funding assurances. In FY 2021, AKC Leasing Corporation used their own procurement processes to fulfill HCP obligations.