



LAW OFFICE OF
JENNIFER A. LIM LLC

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2023 MAY 18 PM 1:55

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

May 18, 2023

Via Hand Delivery

Dawn Naomi S. Chang, Esq., Chairperson
Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Re: Request for Termination of Bond Related to Completed Incidental Take License
ITL-18 for Two Round-Leaved Chaff Flower Plants (*Achyranthes splendens* var.
rotundata) Removed From the Kenai Industrial Park, O'ahu

Dear Chairperson Chang:

This firm represents AKC Leasing Corporation (“AKC”), the successor permittee under incidental take license ITL-18, issued by the Chair of the Board of Land and Natural Resources (“BLNR”) on February 10, 2014, allowing the incidental take of three individual plants (the Round-Leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*), aka “Ewa hinahina”) and their seed bank from an industrial property at the Kenai Industrial Park on O’ahu. The ITL expires in less than nine months (on February 9, 2024). However, as of April 2018, *i.e.*, in Year 5 of the ITL, AKC had satisfied all ITL Special Conditions. In addition, AKC, with the consent of Department of Land and Natural Resources (“DLNR”), in February of this year voluntarily satisfied the contingency measures under section 6.7 of the associated habitat conservation plan (“HCP”). The legal requirements under the ITL/HCP have been satisfied—in fact, exceeded—and we therefore respectfully request your immediate release of the bond that AKC posted pursuant to Hawai‘i Revised Statutes (“HRS”) § 195D-4(g) (Bond No. LPM9170468) in the amount of \$197,500 in favor of the DLNR.

AKC has maintained the bond in favor of DLNR since September 25, 2014. As noted in the bond document (copy enclosed), its purpose is to ensure that DLNR would have funds to complete the “contingency obligation” under the HCP in the event AKC did not perform. AKC, with the consent of DLNR, satisfied the HCP “contingency obligation” earlier this year, thereby eliminating any need for the bond. Because the bond does not expire until September 25, 2023, we ask that you execute a release of the bond now, so that AKC can access the money it has kept sequestered for so many years. By signing where indicated on page 8 of this letter, and returning the signed copy to me via email, we can instruct the bonding company to release the bond.

My client is proud of its accomplishments in providing a net benefit to the species. In return for removing two isolated plants¹ from a harsh and isolated industrial site, AKC has deposited seeds for long-term storage within the State's seed bank at Lyon Arboretum. AKC has also undertaken several rounds of outplantings. First within the Pearl Harbor National Wildlife Refuge mitigation site, which is managed by the U.S. Fish and Wildlife Service, where AKC planted well over 200 plants. More recently, AKC transferred to the Kalaeloa Heritage Park 103 new plants that AKC had cultivated, and that were sourced from the two plants "taken" from the Kenai Industrial Park.

AKC's actions ensure that the genetic diversity present within the two founder plants will persist in the future. Additionally, the plants at the Heritage Park, which is operated by the non-profit Kalaeloa Heritage and Legacy Foundation, will serve as an educational resource for the public, raising awareness about the species, and highlighting the importance of ongoing conservation efforts for those who visit and volunteer at the Heritage Park.

These benefits to the species have come at a far greater cost than was presented in the HCP. At over \$370,000.00, AKC's total costs for the implementation, monitoring, reporting, bond maintenance, and other compliance requirements greatly exceeded the HCP's \$253,600.00 cost projections. Now, all of AKC's work under the ITL and HCP is done. Thus, we request that you take quick action to release this too-long held bond.

I. ITL Special Conditions.

ITL-18 (copy enclosed) provides for up to a 10-year permit term.² The associated HCP acknowledges that the ITL may be terminated early if the success criteria are satisfied. AKC has satisfied the four Special Conditions set forth in the ITL, as discussed below. Moreover, DLNR-DOFAW's reports to the legislature (as required in consultation with the endangered species recovery committee ("ESRC") under HRS § 195D-26) on Years 4, 5, 6, and 7 of the ITL noted that *all* success criteria specified under the HCP to be achieved by Year 5 had been satisfied, with the exception of one HCP criteria that was never imposed under the ITL, and which the Division of Forestry and Wildlife ("DOFAW"), in consultation with the ESRC, eliminated from

¹ Although the ITL authorized the take of three plants, in fact, only two were taken, as there were only two plants in existence at the time of the take.

² The ITL permit term broken out into applicable permit Years is as follows:

Year 1: 2/10/2014 – 2/9/2015	Year 6: 2/10/2019 – 2/9/2020
Year 2: 2/10/2015 – 2/9/2016	Year 7: 2/10/2020 – 2/9/2021
Year 3: 2/10/2016 – 2/9/2017	Year 8: 2/10/2021 – 2/9/2022
Year 4: 2/10/2017 – 2/9/2018	Year 9: 2/10/2022 – 2/9/2023
Year 5: 2/10/2018 – 2/9/2019	Year 10: 2/10/2023 – 2/9/2024

the HCP in State fiscal year 2021. *See* DLNR/DOFAW report to the legislature on State fiscal year 2021.

ITL Special Condition 1. All *Achyranthes splendens* var. *rotundata* seeds visually found on the plants at the project site prior to grading must be preserved and stored for outplanting purposes, in accordance with the approved HCP.

Approximately 23,000 seeds were collected in 2014, prior to site grading at the industrial park. Of those seeds, 400 were used to germinate plants at Hui Kū Maoli Ola native plant nursery for the purposes of outplanting. The remainder of the seeds were put into storage at Lyon Arboretum. The seeds at Hui Kū Maoli Ola were propagated and used for outplanting at the mitigation site at the Pearl Harbor National Wildlife Refuge.

ITL Special Condition 2. An authorized horticulturist/botanist experienced in propagation and growing of Hawaiian plants will supervise the permanent removal of the naturally occurring population of *Achyranthes splendens* var. *rotundata*, in accordance with the approved HCP.

Although the ITL and HCP anticipated the incidental take of 3 plants, in fact only 2 round-leaf chaff flower plants were removed from the Kenai Industrial Park site because the site contained only 2 plants. These 2 plants were removed by Hui Kū Maoli Ola in 2014 and under the supervision of the State botanist.

ITL Special Condition 3. There must be (a) recruitment of seedlings that survive through the dry season at the offsite mitigation area, in absence of any supplemental watering, and (b) 25% natural seedling germination from seedlings of the outplanted lineages by Year 5.

This requirement was satisfied in Year 5 of the ITL, yet AKC nevertheless continued this monitoring into Years 6 and 7 of the ITL.

The original outplants were watered during a 120-day establishment period, after which no irrigation took place. In April 2018 (Year 5 of the ITL), 47 seedlings had grown into the mature class, exceeding the 25% germination criterion. This successful seedling germination grew and continued. In April 2019 (Year 6 of the ITL), 79 progeny had grown into the mature class, and by May 2020 (Year 7 of the ITL), 97 seedlings had grown into the mature class without artificial irrigation.

ITL Special Condition 4. No fewer than 120 mature plants, which will include plants recruited from the planted lineages, will be established by Year 5.

Year 5 of the ITL ran from 2/10/2018 – 2/9/2019. As of April 2018, a total of 121 mature plants had been established, fully satisfying Special Condition 4. Despite satisfying the ITL requirements, AKC nevertheless continued with monitoring and cultivation. Thus, in April of

2019 (ITL Year 6), a total of 129 mature plants had been established (50 of the original outplanted individuals and 79 progeny).

AKC timely satisfied ITL Special Condition 4. Nevertheless, we note that by May 2020 (ITL Year 7), only 110 mature plants remained alive (13 of the original outplanted individuals and 97 progeny). This is not entirely surprising. DLNR/DOFAW alerted the legislature to the relatively short lifespan of this plant species in its reports to the legislature on State fiscal years 2019, 2020, and 2021.

While not required under the ITL, in 2022-2023, AKC voluntarily undertook additional actions to further benefit the species by completing the contingency measures provided in section 6.7 of the HCP.

II. Contingency Measures – HCP Section 6.7.

In April of 2022, AKC and representatives from DOFAW met to discuss the fate of 103 cuttings that AKC had taken from the mitigation site and held for safe keeping, consistent with the contingency and adaptive management measures under the HCP.³ AKC had intended to turn those cuttings over to DOFAW directly. However, DOFAW admitted it lacked capacity to care for them. Thus, AKC forged ahead with cultivating, permitting, and eventually transferring the cuttings to a new mitigation site at the Kalaeloa Heritage Park in Kapolei.

The Kalaeloa Heritage Park was identified as a potential back-up, contingent, mitigation site in the HCP, but no formal arrangements had been made at the time of the HCP. After discussions with DOFAW in April 2022, AKC proceeded to work with Kalaeloa Heritage Park to secure a site for the newly grown plants once they achieved maturity. AKC, together with its biological consultant SWCA Environmental Consultants, then proceeded to apply for and obtain DOFAW

³ We note that DLNR/DOFAW's report to the legislature on State fiscal year 2022, dated September 2022, quoted below, refers to 100 cuttings held by AKC. However, to be exact, there were 103 such cuttings.

In April of FY 2022 DOFAW met with the licensee to discuss the fate of 100 cuttings in the licensee's possession that were taken from the mitigation site. While the licensee prefers to hand these cuttings over to DOFAW, the agency feels that they do not have the capacity to tend to them and instead suggested the look for an alternative mitigation at which to plant them.

Although the Kalaeloa Heritage Park in Kapolei was discussed as a suitable site no firm decision was made and no further discussion or follow up occurred between the licensee and DOFAW by the end of the fiscal year.

Regarding follow up actions taken by AKC before the end of State fiscal year 2022, *i.e.*, before June 30, 2022, we note that DOFAW Permit I5122 was issued effective June 27, 2022.

threatened/endangered rare plant permit, #I5122 (“**DOFAW Permit I5122**”), that was effective as of June 27, 2022.

Pursuant to DOFAW Permit I5122, on September 12, 2022, 103 plants were transferred from the Native Ecosystem Services Nursery to the DOFAW nursery at Waimano,⁴ where they were cared for by DOFAW staff for around five months. Then, on February 3, 2023, Elisabeth “Betsy” Wilson of AKC Leasing Corporation, and Richard Pender of SWCA Environmental Consultants, retrieved those plants, which ranged in height from 8 to 28 inches, the majority (n = 98 [95%]) of which of which were in flower or fruit, and transported them to the Kalaeloa Heritage Park.

Once at the Heritage Park, four SWCA staff, together with four Park staff and volunteers (Dwight Victor, Kawika Lauriano, Shad Kane, and Malia Cox), all of whom are listed on DOFAW Permit I5122, worked together to plant and water these 103 individuals.⁵ The outplanting was a success. *See* enclosed blog post from Kalaeloa Heritage Park reporting on the great work done during the February 2023 ‘Ewa hinahina outplanting. Those plants and any progeny that naturally recruit will remain at the Heritage Park indefinitely.⁶

The Heritage Park is an ideal location for ‘Ewa hinahina (*Achyranthes splendens* var. *rotundata*), as it is situated within the species’ historic range and contains coralline sinkholes, which are a preferred habitat for the plant. Additionally, the Park is actively maintained as an ecological restoration site by a group of dedicated volunteers committed to preserving the area’s natural and cultural history. The site has also experienced unassisted natural recruitment of this species from existing seedbanks, further confirming its viability as a restoration site.

III. DOFAW’s Invalid “Modification” of the HCP Violates HRS § 195D-23.

HRS § 195D-23 (copy enclosed) provides incentives and assurances to permittees under an ITL or HCP. Once those approvals are issued, the State cannot impose any new requirements or conditions upon the landowner unless: (a) the landowner expressly consents to the new requirements, or (b) the BLNR makes a determination, in coordination with the landowner, that

⁴ DOFAW Permit I5122 originally stated that the plants would be transferred to DOFAW’s nursery near Dillingham Airfield. However, due to issues with irrigation at the nursery near Dillingham Airfield, the Waimano nursery was used as an alternative by DOFAW staff.

⁵ SWCA informs us that after the planting, SWCA staff emailed the DOFAW botanist a completed Hawaii Rare Plant Restoration Group (HRPRG) form on February 10, 2023.

⁶ Pursuant to DOFAW Permit I5122 (and not the ITL or HCP), SWCA will monitor the plants quarterly until February 2024. The number, height, health, and reproductive status of the plants, and the habitat characteristics and threats present at the site, will be recorded using the HRPRG monitoring form that will be submitted to the DOFAW botanist quarterly.

the modifications will not result in increased costs or other burdens for the landowner, or (c) the DLNR is prepared to pay the landowner for the costs resulting from the modifications, and/or (d) the primary obligation for executing the new measures rests with the State and not with the landowner.

Notwithstanding these strict limitations, late last year DOFAW, without the consent of my client, and without proper notice or due process, presumed to impose an entirely new collection of obligations upon my client. By letter dated November 25, 2022, Administrator Smith summarily informed AKC that a member of the ESRC had met, in private with DOFAW staff, and together they, with no input from AKC, had unilaterally attempted to redraft the terms of the HCP! At that point, not only had AKC satisfied its obligations under the ITL, AKC was also fully invested in completing the contingency measures under the HCP.

AKC has never agreed to DOFAW's new "terms" and AKC unequivocally rejects DOFAW's illegal backdoor attempt to impermissibly modify the HCP to put substantial and costly new obligations on AKC. Those purported modifications are a legal nullity and have been disregarded as such.⁷

* * *

AKC has diligently and at great cost complied with and satisfied the terms of the ITL and HCP. In return for the right to remove two plants from a fully developed industrial park (zoned in the I-3 industrial district), AKC has spent the last nine years cultivating and monitoring hundreds of new plants at the Pearl Harbor National Wildlife Refuge. AKC has also taken the additional step, with input and guidance from DLNR, of completing the contingency measure identified in the HCP, and cultivating and outplanting an additional 103 new plants. AKC brought these 103 new plants to the Kalaeloa Heritage Park, where they will be maintained by Park staff.

The ITL terminates on February 9, 2024. However, as described herein, AKC has satisfied all permitting conditions. Additionally, AKC has gone so far as to fully satisfy the HCP "contingency obligations." Thus, the ITL shall be terminated "early" and the ITL bond for the HCP "contingency obligations" (which AKC posted to provide DLNR financial assurance in the event DLNR completed the contingency obligations), should be released. To that end, we respectfully request the Chair's signature on the release of the bond at page 8 of this letter. In the

⁷ We are pleased to see that recently the ESRC appears to be better informed as to its important but circumscribed advisory role on ITLs and HCPs. And also that the ESRC's agendas now provide notice (to the permittee and the public) when the ESRC may vote to recommend that DOFAW consider proposing changes to an HCP. No such procedural safeguards were in place for AKC.

Dawn Naomi S. Chang, Esq., Chairperson
Board of Land and Natural Resources
May 18, 2023
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interest of clarity, this confirms that irrespective of the Chair's decision on the requested bond release, AKC does not intend to renew the bond upon its expiration in September 2023.

My client and I greatly appreciate your attention to this matter. Please do not hesitate to contact me if you have questions about this request.

Very truly yours,

LAW OFFICE OF JENNIFER A. LIM, LLLC

By: 

Jennifer A. Lim

Encl.
Bond LPM9170468
ITL-18
Printout of blog post from Kalaeloa Heritage Park re February 2023 'Ewa hinahina outplanting
HRS § 195D-23

cc: David Smith, Administrator, Division of Forestry and Wildlife (via email)
AKC Leasing Corporation (via email)
SWCA Environmental Consultants (via email)

Dawn Naomi S. Chang, Esq., Chairperson
Board of Land and Natural Resources
May 18, 2023
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RELEASE OF BOND

This confirms that the undersigned, on behalf of the State of Hawaii, Department of Land and Natural Resources, authorizes the release and cancellation of Bond No. LPM9170468 as of _____, 2023, because AKC Leasing Corporation has satisfied all requisite obligations.

By: _____
Dawn Naomi S. Chang, Director,
State of Hawaii Department of
Land and Natural Resources



Zurich Surety

Surety Service Center
1299 Zurich Way
Schaumburg, IL 60196

Bond No. LPM9170468

CONTINUATION CERTIFICATE

For Miscellaneous Terms Bonds

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

Witness:

Principal _____ (SEAL)

Principal _____ (SEAL)

Principal _____ (SEAL)



Fidelity and Deposit Company of Maryland

BY:

Candy L. Browning

Candy L. Browning, Attorney-in-fact

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint CANDY L. BROWNING, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND** this, 28TH day of JUNE, A.D. 2022.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

**State of Maryland
County of Baltimore**

On this 28TH day of JUNE, A.D. 2022, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys -in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

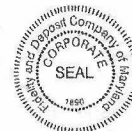
This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 28TH day of JUNE, 2022.



Mary Jean Pethick

By: Mary Jean Pethick
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
800-626-4577

If your jurisdiction allows for electronic reporting of surety claims, please submit to:
reportsfclaims@zurichna.com

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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

February 18, 2014

Dave Pfeifer
CIRI Land Development Company
2525 C Street, Suite 500
Anchorage, Alaska 99503

SUBJECT: Incidental Take License for the Habitat Conservation Plan for the Round-Leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) at the Kenai Industrial Park on the Island of O'ahu, Hawai'i

Dear Mr. Dave Pfeifer:

Please find enclosed your copy of the Incidental Take License associated with the Habitat Conservation Plan for the Round-Leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) at the Kenai Industrial Park on the Island of O'ahu, Hawai'i signed and approved by the Board of Land and Natural Resources Chairperson.

If you have any questions, please contact Ms. Afsheen Siddiqi, Habitat Conservation Planning Associate, at 808-587-0010.

Aloha,

A handwritten signature in blue ink that reads "Marie Morin".

Marie P. Morin
Wildlife Program Manager

Attachment I: Incidental Take License for the Round-Leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) at the Kenai Industrial Park on the Island of O'ahu, Hawai'i

State of Hawai'i
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-18
Date of Issue: FEB 10 2014
Valid Until: 10 years from date of issue

INCIDENTAL TAKE LICENSE

To accompany:

“Round-leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) Habitat Conservation Plan Kenai Industrial Park Project”

The Board of Land and Natural Resources hereby grants permission under the authority of Hawaii Revised Statutes §§ 195D-4(g) and 195D-21 and all other applicable laws to:

CIRI Land Development Company

For take, 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	Requested Authorization	Location
Round-leaved Chaff Flower	<i>Achyranthes splendens</i> var. <i>rotundata</i>	Three individuals and their seed bank within the 0.75-acre project area	TMK 9-1-074:023

I. GENERAL CONDITIONS

1. This license only authorizes incidental take of the covered species by the licensee on the lands owned or otherwise controlled by CIRI Land Development Company identified as TMK 9-1-074:023 on the island of O'ahu, Hawai'i at the time this license is issued pursuant to the “Round-leaved Chaff Flower (*Achyranthes splendens* var. *rotundata*) Habitat Conservation Plan Kenai Industrial Park Project” dated October 2013 (hereinafter “HCP”).

2. This license is valid only if CIRI Land Development Company abides by the terms and conditions of the HCP and ITL for the duration of the permit.
3. This license is valid for species protected by federal law only if accompanied by proper federal authorization.
4. This license shall become valid upon completion of the following:
 - i. A legal representative of CIRI Land Development Company has acknowledged understanding and agreement to abide by its conditions by signing two copies of this license.
 - ii. 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.
5. The Board may suspend or revoke this license if the HCP is suspended or revoked. 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

1. All *Achyranthes splendens* var. *rotundata* seeds visually found on the plants at the project site prior to grading must be preserved and stored for outplanting purposes, in accordance with the approved HCP.
2. An authorized horticulturist/botanist experienced in propagation and growing of Hawaiian plants will supervise the permanent removal of the naturally occurring population of *Achyranthes splendens* var. *rotundata*, in accordance with the approved HCP.
3. There must be (a) recruitment of seedlings that survive through the dry season at the off-site mitigation area, in absence of any supplemental watering, and (b) 25% natural seedling germination from seedlings of the outplanted lineages by Year 5.
4. No fewer than 120 mature plants, which will include plants recruited from the planted lineages, will be established by Year 5.

By:



Date

2/10/14

for William J. Aila, Jr., 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.

CIRI Land Development Company

By:



Date

January 27, 2014

Dave Pfeifer, President
CIRI Land Development Company

CIRI Land Development Company notarized signature is made a part of this document.

cc: DOFAW
DOCARE
USFWS Pacific Islands Office, Honolulu

STATE OF ~~HAWAII~~ Alaska)
 Third Judicial District) SS.
 _____ COUNTY OF _____)

On this 27th day of January, 2014 before me personally appeared
Dave Pfeifer, to me known to be the person described herein, and who, being duly
 sworn or affirmed, did say that he/she/they is/are the said President named in the foregoing
 instrument, and that he/she/they executed said instrument as his/her/their own free act and deed.

(Notary Stamp or Seal)



Carolyn B. Bickley
 (Signature)

Carolyn B. Bickley
 (Signature)

Notary Public, State of ~~Hawaii~~ ALASKA
 My commission expires: 6-25-14

Doc. Date: _____ # of Pages: _____

Notary Name: _____ Circuit _____

Doc. Description:

Notary Signature

Date

NOTARY CERTIFICATION

(Notary Stamp or Seal)

FEB 10

‘EWA HINAHINA OUTPLANTING



KHP volunteers helped to outplant 'Ewa hinahina with SWCA Environmental Consultants.

The true inoa Hawai'i for the 'Ewa hinahina (or 'āhinahina) has been lost to time. This plant, known scientifically as *Achyranthes splendens* var. *rotundata*, has now become extremely rare to find in the wild and has been designated as endangered. At the park, the 'Ewa hinahina naturally flourished once again when the invasive species (such as kiawe and haole koa) were cleared from the land.

Last year, we were connected with SWCA Environmental Consultants, who knew someone that wanted to repatriate 'Ewa hinahina back to its natural habitat. After lots of coordinating, planning, and obtaining the proper permitting, volunteers met SWCA Environmental Consultants and their gracious donor, Auntie Betsy Wilson, at the park on February 3, 2023 to outplant over 100 'Ewa hinahina in the park.



SWCA Environmental Consultants help plant 'Ewa hinahina at the Kalaelo Heritage Park.

Mahalo nui to Auntie Betsy, SWCA Environmental Consultants, and DLNR DOFAW Plant Extinction Program for helping us plant and coordinate!

[Learn more about the 'Ewa hinahina](#)

§195D-23 Incentives. (a) After approval of a habitat conservation plan or safe harbor agreement, or issuance of an incidental take license pursuant to this chapter, no agencies or departments of the State, in order to protect a threatened or endangered species, may impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor to the landowner, to mitigate or compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the plan, agreement, or license unless:

(1) The landowner, or the landowner's successor, expressly consents to the requirement, condition, or modification;

(2) The board has found, in accordance with those special procedures agreed to by the board and the landowner, or in the absence of any special procedures, in accordance with those procedures that govern the findings generally, that:

(A) The requirement, condition, or modification does not impose any additional restriction on any parcel of land or body of water available for use or development under the plan or agreement; and

(B) The requirement, condition, or modification will not increase the cost to the landowner or other parties to the plan or agreement of implementing the plan or agreement;

- (3) The department is prepared to exercise its authority to:
 - (A) Pay the landowner for the costs of any new requirement or condition or any modification of any existing requirement or condition, which costs may be determined through binding arbitration; and
 - (B) Take any other action to ensure that any party to the plan or agreement is not, without the party's consent, unduly burdened by the requirement, condition, or modification, in which case the department shall implement that necessary requirement, condition, or modification upon committing to pay the costs, mitigate the actions, or undertake the action;
- (4) The board has revoked the approval of the plan or rescinded the agreement in accordance with section 195D-21(d) or 195D-22(c); or
- (5) Extraordinary new circumstances or information indicate that failure to modify the plan or agreement is likely to appreciably reduce the likelihood of the survival or recovery of any threatened or endangered species in its natural habitat. If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a habitat conservation

plan, safe harbor agreement, or incidental take license as a result of extraordinary circumstances, the primary obligation for executing mitigation measures shall rest with the State, or the federal government with its consent, and not with the landowner.

(b) Entry by a landowner into a habitat conservation plan or safe harbor agreement shall be voluntary.

(c) The department may establish a landowner contact and recognition program that:

- (1) Contacts landowners who may have threatened or endangered species or their habitat on their land and that sends information on the species or habitat in question. If the landowner is willing, a nonbinding memorandum of understanding may be signed, which states a general intention to protect the species or habitat found on the land;
- (2) If available, provides participating landowners with a current supply of information on the conservation of species and habitat found on their land;
- (3) On an annual basis, recognizes one or more private landowners who have demonstrated, through past and current efforts, sound conservation practices and principles on their land; and
- (4) On an annual basis, awards a private landowner participating in a habitat conservation plan an "Outstanding Participant of the Year" award.

(d) The department may establish a habitat conservation technical assistance program to assist landowners in developing, reviewing, or monitoring habitat conservation plans by providing technical assistance. The department may collect fees and payment for costs incurred for use of the technical assistance program in the development, review, or monitoring of a specific habitat conservation plan. Fees shall be charged at an hourly rate of \$50. The fees and payment for costs collected pursuant to this subsection shall be deposited into the endangered species trust fund established under section 195D-31.

(e) Persons participating within voluntary programs under this chapter may receive consideration from the board to use adjacent public lands for commercial nature tourism activities that increase public education and support for endangered species; provided that an agreed percentage of the fees charged for nature tourism activities shall be donated to the trust fund to implement this chapter.

(f) The execution of habitat conservation plans and safe harbor agreements under sections 195D-21 and 195D-22, respectively, shall, for the purposes of providing incentives and assistance to landowners, be deemed to be a public purpose and in the public interest, and for the general welfare of the State. [L 1997, c 380, pt of §2; am L 2011, c 147, §3]

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