

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

April 26, 2024

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR ADMINISTRATIVE FINE OF \$15,000 AND OTHER PENALTIES AGAINST THE YUE-SAI KAN TRUST, YUE-SAI KAN AS TRUSTEE, AND YUE-SAI KAN, INDIVIDUALLY, FOR VIOLATION OF SECTION 13-124-3, HAWAII ADMINISTRATIVE RULES, FOR THE INTENTIONAL INJURY AND SUBSEQUENT DEATH OF HO'OKIPA, AN INDIGENOUS MOLI (AKA LAYSAN ALBATROSS), ON DECEMBER 2, 2023, AT UNIT 1 OF THE MARCONI POINT CONDOMINIUM PROPERTY REGIME, KAHUKU, OAHU, HAWAII, TMK (1) 5-6-003:053.

The Board may enter Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

AGAINST: YUE-SAI KAN TRUST (Yue-Sai Kan, Trustee)
YUE-SAI KAN, individually

LOCATION: Kahuku, Ko'olauloa, O'ahu, TMK (1) 5-6-003:053, UNIT 1

EXHIBITS: Exhibit 1: DOCARE Report
Exhibit 2: Letter from USFWS
Exhibit 3: Department of Planning and Permitting Website

I. SUMMARY:

The Division of Forestry and Wildlife (DOFAW) requests the Board of Land and Natural Resources (Board) impose an administrative fine of \$15,000 and other penalties against the Yue-Sai Kan Trust and Yue-Sai Kan for the intentional injury and death of Ho'okipa, an indigenous female mōlī (Laysan Albatross), in violation of section 13-124-3(a) of the Hawaii Administrative Rules (HAR), on December 2, 2023. The take of Ho'okipa occurred on Unit 1 of the Marconi Point Condominium Property Regime (CPR), owned by Yue-Sai Kan.

A joint investigation by the department's Division of Conservation and Resources Enforcement (DOCARE) and the United States Fish and Wildlife Services' (USFWS) Office of Law Enforcement determined that Ms. Kan's agents intentionally conducted the actions that resulted in Ho'okipa's death and the dire situation was exacerbated by Ms. Kan's unpermitted iron fences.

DOFAW requests the Board issue the maximum fine authorized under section 183D-12, Hawaii Revised Statutes (HRS), and section 13-124-8, HAR, for the following reasons:

- (1) Ms. Kan was aware of the presence of Ho'okipa, her mate, and their nest on her property;
- (2) Despite being informed multiple times of best practices of having legally protected indigenous birds on her property by the USFWS and the North Shore Community Land Trust (NSCLT), Ms. Kan failed to take protective or remedial measures to ensure the safety of Ho'okipa;
- (3) The iron fences, which contributed to Ho'okipa's death, were placed upon the Yue-Sai Kan Trust property without the required permit(s) and continue to exist despite Notices of Violations from the City and County of Honolulu Department of Planning and Permitting; and
- (4) Ms. Kan allowed actors, on behalf of the Yue-Sai Kan Trust, to conduct land-clearing activities in the immediate vicinity of Ho'okipa, her mate, and their nest, which directly resulted in Ho'okipa's death.

II. **BACKGROUND:**

The Marconi Point CPR is located in the Ko'olauloa district, within the Kahuku ahupua'a, and sits along the coastline between Turtle Bay and James Campbell National Wildlife Refuge (JCNWR). The Marconi Point CPR is on Tax Map Key (TMK) (1) 5-6-003:053 and has approximately 26 units governed by CPR bylaws. It was established under Chapter 514B, HRS. The Marconi Point CPR property is zoned "Preservation" along the coast and "Agricultural" under the Hawaii land use laws and "AG-2" under the City and County of Honolulu zoning ordinances. Most of the Marconi Point CPR property requires a special State Land Use permit, SP72-124.

Two albatross species occur in the Hawaiian islands: mōlī, or the Laysan Albatross (*Phoebastria immutabilis*) and ka'upu, or the Black-footed Albatross (*Phoebastria nigripes*)¹. Both species prefer the same habitat type: open, sandy areas above the high tide line, usually in areas with little vegetation.

Mōlī are listed as an indigenous species of Hawaii and nest throughout the Northwestern Hawaiian Islands and on Kaua'i, O'ahu, and Lehua Island off Ni'ihau.

¹ Ka'upu is listed as an endangered species of Hawaii and is considered "rare" by the International Union for Conservation of Nature (IUCN). Ka'upu nest primarily in the Northwestern Hawaiian Islands, with small populations on Lehua Island and Kaula Island off Ni'ihau. Ka'upu are seen around the islands of Kaua'i and O'ahu, but there are few to no records from Maui Nui or Hawaii island. Climate change, marine pollution, and habitat loss are some of the biggest challenges hampering Ka'upu population recovery.

Human disturbance and conflict, predators, marine pollution, and climate change constitute some of the biggest obstacles that mōlī face. Although mōlī are not listed as threatened or endangered, the species is considered to be *near threatened* by the USFWS. (USFWS, 2005). Mōlī are protected under Hawai'i law as wild birds and indigenous wildlife. See HRS § 183D-62; HAR § 13-124-3. Mōlī are protected under federal law under the Migratory Bird Treaty Act of 1918. 16 U.S.C. 703-712.

III. DISCUSSION:

1. Albatross at the Marconi Point CPR property; Importance of the Marconi Point CPR property habitat for the species

Over 95% of mōlī, or Laysan Albatross, nest on low-lying islands, including atolls in the Northwestern Hawaiian Islands. Those atolls are vulnerable to storm events and become inundated as sea levels rise. Ka'upu, or Black-footed Albatross, also primarily nests in the Northwestern Hawaiian Islands and the Bonin Islands off of Japan.

Beginning in the 1970s, biologists observed mōlī visiting and establishing nesting colonies in the Main Hawaiian Islands. Mōlī use the Kahuku Point and Marconi Point area from November through July for nesting, resting, and socializing. From August through October, mōlī are primarily foraging at sea. Three sites on Oahu host established mōlī colonies, and adults regularly prospect for new sites in suitable habitat across the island.

A population of ka'upu has been established at JCNWR within a fenced area via egg translocation efforts from the Northwestern Hawaiian Islands.

The Marconi Point CPR is an ecologically significant nesting site for mōlī because (1) it is a site in the Main Hawaiian Islands; (2) it is relatively close in proximity to the few other established nesting sites in the main Hawaiian Islands; and (3) mōlī populations have increased since first nesting attempts were observed in the 1970s due to habitat restoration and predator control on the adjacent property. In areas resistant to sea level rise, colonies like this one will be required for mōlī to survive into the future. Because non-breeding adult mōlī visit other natal colonies looking for new breeding sites, protecting multiple nesting sites in the Main Hawaiian Islands helps avoid inbreeding depression within colonies by ensuring nesting site connectivity.

Hawaii Marine Animal Response (HMAR) volunteers, community members, and staff from USFWS and NSCLT have identified over 227 mōlī adults using the area from Kahuku Point through Marconi Point. The animals are identified using unique color-coded and numbered leg bands that can be seen from a distance.

Mōlī have attempted to nest on and around the Marconi property for decades², but their nests were unsuccessful until predator control was initiated on an adjacent parcel after

² <https://pacificrimconservation.org/wp-content/uploads/2013/10/64.pdf>

2017. There are reports of breeding attempts in the area starting in 1979, but no nests were successful due to predation and nests being crushed by off-road vehicles³.

In 2017, the NSCLT began restoration activities on the newly acquired conservation easement at Kahuku Point (Turtle Bay Makai). When mōlī were found nesting in Turtle Bay Makai, NSCLT and USFWS Coastal Program added predator control (primarily for mongoose) as an onsite conservation measure. The following year, there were seven mōlī nests in the Marconi/Kahuku Point area, and three chicks fledged. Since then, the population has been steadily increasing with a record 18 nests found this year (Table 1). Three chicks fledged during the seasons starting in 2018, 2019, and 2020, one chick fledged in 2021, and seven chicks fledged in 2022 (Table 1). Community members, HMAR volunteers, NSCLT, and USFWS staff monitor the nests and chicks daily.

Table 1. Mōlī nest numbers and successful nests on Turtle Bay Makai and Marconi property on Oahu from 2018 – 2024 (Plentovich unp. data).

Season	Turtle Bay Makai		Marconi		Total nests
	Nest	Total Successful	Nest	Total Successful	
2018/19	4	2	3	1	7
2019/20	6	2	3	1	9
2020/21	8	2	5	1	13
2021/22	12	1	5	0	17
2022/23	12	6	4	1	16
2023/24	10	tbd	8	tbd	18

2. Significance of each adult mōlī and specifically Ho'okipa

Losing a single adult animal in a small but growing population is a significant blow to the colony. Mōlī return to their nesting area yearly and can live and reproduce for over 70 years. Approximately 25 albatross pairs have nested on site since 2018, but only about ten animals nest there regularly (usually every year, Plentovich unpublished data). The loss of a single reproductive female translates into the loss of decades of breeding seasons and opportunities to produce chicks and contribute to the O'ahu population.

Ho'okipa had a USFWS band labeled "V389." Most of the mōlī with bands are referred to by their leg band labels, but some special, noteworthy birds are given names by the HMAR volunteers who look out after them.

³ Eilerts 1987

Ho'okipa and her mate (V967) were the first breeding pair to nest at Turtle Bay Makai, which the NSCLT currently manages. More recently, Ho'okipa and her mate moved to Unit 1 of the Marconi Point CPR property, which abuts the Turtle Bay golf course.

Since first selecting this area as their nesting grounds, Ho'okipa and her mate had nested in Turtle Bay Makai for six consecutive years and successfully raised chicks. Biologists estimate that Ho'okipa and her mate should have been able to nest for at least 50 more years. Mōlī typically nest every other year and have a fledgling success rate of 50%, resulting in a total loss of at least 12 chicks over her lifetime. Mōlī known to raise chicks successfully are considered significant to the population.

Wisdom, another well-known female Mōlī who regularly nests at Midway Atoll and bears identification band Z333, has been documented to be at least 73 years old and has successfully fledged at least 30 chicks throughout her lifetime. DOFAW staff reasonably expected Ho'okipa would have a similarly long life and nesting success rate.

3. The Current Landowner (Yue-Sai Kan, as the Trustee of the Yue-Sai Kan Trust) was on Notice and Aware of the Presence of Protected Species, Specifically Mōlī, and Habitat on or Adjacent to her Property Through Discussions with Agencies and Previous Negative Outcomes for Mōlī on her Property.

A. Developers and other unit owners

Multiple emails were sent back and forth between USFWS Coastal Program Coordinator Dr. Plentovich and Marconi Point CPR developer and unit owner Jeremy Henderson about the protected species on the Marconi Point CPR property. These emails have been shared with the Department and USFWS Office of Law Enforcement (OLE) and can be shared again if needed.

Several incidents with mōlī have occurred in other parts of the Marconi Point CPR property, not on Unit 1/Ms. Kan's property, but unfortunately, there was insufficient evidence to bring to this Board.

- i. **December 9, 2023:** A mōlī nest was found on the eastern part of the Marconi property within an active construction zone. A tractor was within 20 feet of the nest. With the permission of the Marconi Point CPR manager, the NSCLT worked with USFWS and Pacific Rim Conservation to collect the egg so it could be fostered and hopefully discourage the adults from staying in the active construction zone.
- ii. **January 2024:** On January 6, 2024, sometime between Friday evening and Saturday mid-day, one of the mōlī nests near the middle of the Marconi property (Lot M4) was disturbed, and the adult was likely injured. The egg was shattered, and the well-developed embryo was dead with dirt

and sand on it. There was a blood trail leading away from the nest, indicating the adult (V043) was hurt. Clear safety glasses were found next to the nest that weren't there on Friday afternoon. Because there were no feathers and the embryo was still intact, it doesn't appear to result from a mongoose, cat, or dog. The adult V043 has not been seen since the incident.

B. Yue-Sai Kan and the Yue-Sai Kan Trust

The Yue-Sai Kan Trust owns Unit 1 of the Marconi Point CPR property (Unit 1). DOFAW staff believes that Ms. Kan resides at Unit 1, at least part-time, and that she or agents manage its day-to-day operations on her behalf.

As trustee of the Yue-Sai Kan Trust, Ms. Kan has been made aware of the presence of mōlī on her property at the Marconi Point CPR on numerous occasions since she purchased the property in 2021. The agencies that informed Ms. Kan of the mōlī presence also educated her on the significance of mōlī and what she could do to support the species.

There are several iron fences in Unit 1. DOFAW staff has been unable to locate any City and County of Honolulu Department of Planning and Permitting permits for these fences. DOFAW staff believes that Ms. Kan has received a Notice of Violation from the DPP for these fences.

There have been multiple incidents of injury or death of mōlī on the Marconi property, in addition to ongoing issues with unpermitted wrought-iron fences built on Ms. Kan's property in March 2022. The unpermitted iron fences constitute a threat to the mōlī population and have been documented to inhibit the mōlī natural behaviors. DOFAW staff believe that the unpermitted iron fences directly contributed to Ho'okipa's death.

The iron fences on Unit 1 have not only caused direct harm to two mōlī eggs and an adult mōlī but are also a daily problem for adult mōlī who land within the fence. Mōlī that land within the fence often don't have enough room to run and generate enough lift to get into the air (think of mōlī like planes... they need a runway). This becomes especially problematic when it's not very windy. DOFAW staff has multiple videos of mōlī failing to clear the fence that are available upon request to DOFAW.

4. The prior incidents with mōlī that have occurred in Unit 1, as well as numerous communications from agencies, placed Ms. Kan and her Trust on notice that her activities in Unit 1 detrimentally affect mōlī.

A. 2021: Ms. Kan was contacted by Adam Borrello at NSCLT soon after she bought the property in 2021. On December 13, 2021, Dr. Sheldon Plentovich (USFWS Coastal Program) reached out to Ms. Kan initially via email (Appendix 1) to inform Ms. Kan of the legally protected species (including mōlī, ka'upu, and others) on her property and to offer assistance if Ms. Kan was interested in

learning more about these legally protected species or wanted help enhancing her property. This email was also an attempt to address the harassment of mōlī on Ms. Kan's property that community members had documented since (suspected unpermitted) construction began in 2021. The email recommends staying at least 30 feet away from mōlī.

B. December 2021: Community members and HMAR volunteers reported construction activities within 2 meters of a nesting mōlī on Ms. Kan's property. No permits were on file at the City and County of Honolulu Department of Planning and Permitting (DPP) for construction within the Special Management Area and flood zone. Videos of the incubating mōlī reacting to the activities are available upon request. After Ms. Kan was notified, she built a wall within a meter of the incubating mōlī while it sat on the nest, visibly stressed and reacting to all the activity around it (Figure 1). DOFAW and USFWS biologists can opine that the mōlī was visibly stressed based on typical behavioral patterns, including beak snapping and body posture. Community members also documented this in videos, and those are available upon request. USFWS Office of Law Enforcement was notified. Unfortunately, the egg failed soon afterward.



Figure 1. A wall of wood and shade cloth was erected while the Mōlī was incubating during unpermitted construction on Ms. Kan's property in December 2021.

DOFAW staff are unaware of any voluntary conservation actions Ms. Kan took, beyond erecting the above-depicted wood and shade cloth. However, DOFAW staff does not find the wood and shade cloth to be a beneficial conservation action for nesting mōlī because this bird was visibly stressed.

C. March 2022: In March 2022, a wrought iron fence was built on Unit 1/the Yue-Sai Kan Trusts' property. In some places, the fence is over 6 feet tall and built without the required permits within the flood zone and Special Management Area. See Exhibit 3.

D. December 2022 - February 2023: Ho'okipa and her mate nested within a 10-meter radius of their original nest site every year since 2017, and this pair was the first to produce a successful nest in the Kahuku Point / Marconi area.

On November 28, 2022, Ho'okipa made a nest and laid her egg adjacent to the fence but on the Turtle Bay side.

Just a week or so later, in December 2022, community members and HMAR volunteers became concerned after they observed the parents being obstructed from accessing their nest because of the new iron fence (Figure 2 and see attached video). Each adult will incubate for 1 to 2 weeks and usually will not leave the egg until they are relieved of duty by their mate. The parents were observed trying to access the nest on many occasions but were inhibited by the fence (Figure 2).

After a couple of weeks, the egg was observed alone with a parent on the other side of the fence, attempting to get to the nest to incubate the egg. USFWS and NSCLT staff physically moved the bird from one side of the fence to the other so the parent could incubate the egg on at least two occasions. Ms. Kan was notified of the situation on several occasions. Eventually, in mid-February 2023, she allowed USFWS staff to coordinate a fence contractor to lift a panel of the iron fence in hopes that the Ho'okipa and her mate could walk under and access the nest.

On February 5, 2023, Dr. Plentovich contacted Ms. Kan to inform her of the issue and provide potential solutions that would allow the parents to access their nest to incubate their egg (Appendix IV). Ms. Kan agreed to let Dr. Plentovich work with a fencing contractor to raise a section of the fence so that the mōlī could walk under it. Dr. Plentovich found funds from USFWS and coordinated with Gerry Kaho'okano at Pono Pacific, who modified the panel in mid-February 2023. Unfortunately, it was too late for this nest, and the egg never hatched, likely because it went for days without an incubating adult due to the fence barrier.

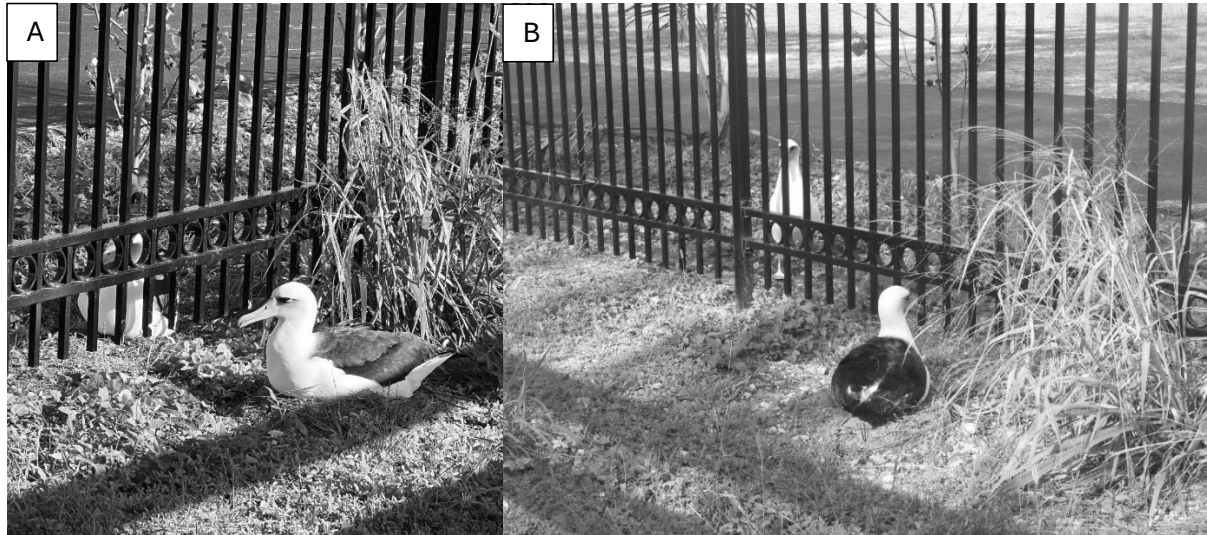


Figure 2, A & B. Parents (V389, known as Ho'okipa, and her mate V967) attempt to switch incubation duties but are prevented from accessing the nest due to the unpermitted iron fence.

IV. INCIDENT UNDERLYING THE INSTANT REQUEST

1. December 2, 2023

Ho'okipa and her mate returned and again nested adjacent to Ms. Kan's fence. This time, they made their nest on the east side of the fence in Unit 1, the property owned by the Yue-Sai Kan Trust.

Ho'okipa laid their egg on November 29, 2023.

On November 30, 2023, USFWS biologist Dr. Plentovich texted Ms. Kan and her office manager. Dr. Plentovich, Ms. Kan, and her office manager agreed to have NSCLT staff control predators on Unit 1 to support a positive outcome for Ho'okipa's nest. Dr. Plentovich asked if there were any plans for Unit 1 that could harm the birds and their nest, and Ms. Kan stated no.

On Saturday December 2, 2023, Dr. Plentovich received a call from HMAR volunteers and staff that monitor the nesting mōlī daily, and they said that one of the adult mōlī, later determined to be Ho'okipa, was entangled in the fence by the egg and was no longer able to incubate it (Figure 3). HMAR volunteers reported that there were yard workers on the Unit 1 property with weedwhackers. USFWS and HMAR staff observations indicated it was clear from the grass around the nest that a weedwhacker had gone right up to the nest.

DOFAW staff have observed weedwhackers causing severe distress in mōlī on other occasions and would assume the mōlī was trying to flee from the weedwhackers but could not because of the unpermitted fence.

Ho'okipa was disentangled from the iron fence by HMAR volunteers. When HMAR volunteers approached Ho'okipa and disentangled her from the fence, they saw that she was bleeding from her mouth.

HMAR volunteers, in contact with Dr. Plentovich, responded and transported Ho'okipa to Feather and Fur Animal Hospital for emergency veterinary treatment. Ho'okipa died in the vehicle before the veterinarian at Feather and Fur could see her. Feather and Fur took x-rays of Ho'okipa and made notes on her condition (Appendix II).

Then Dr. Plentovich coordinated Ho'okipa's transport - to the United States Geological Service National Wildlife Health Center for a necropsy, which Dr. Thierry Work performed.

Dr. Work's examination confirmed HMAR volunteers' report that the deceased mōlī was Ho'okipa, the female mōlī known to nest on Ms. Kan's property. The necropsy results indicated that the mōlī died from blunt force trauma to the right side of the head (Appendix III).

Dr. Work concluded that gross lesions pointed to severe head trauma as the cause of death, which appeared to originate from the right side of the head. Dr. Work's report stated that he has seen this kind of trauma in birds hit with large objects (e.g., golf clubs, large sticks, golf balls) on the head or running headlong into obstacles while in full flight. Dr. Work stated that given his understanding of the events preceding Ho'okipa's death, it was unlikely that Ho'okipa was startled by the weedwhacker and sustained such an injury from running into the iron fence. Dr. Work recommended that the agencies ferret out what large object could have hit Ho'okipa in the head.

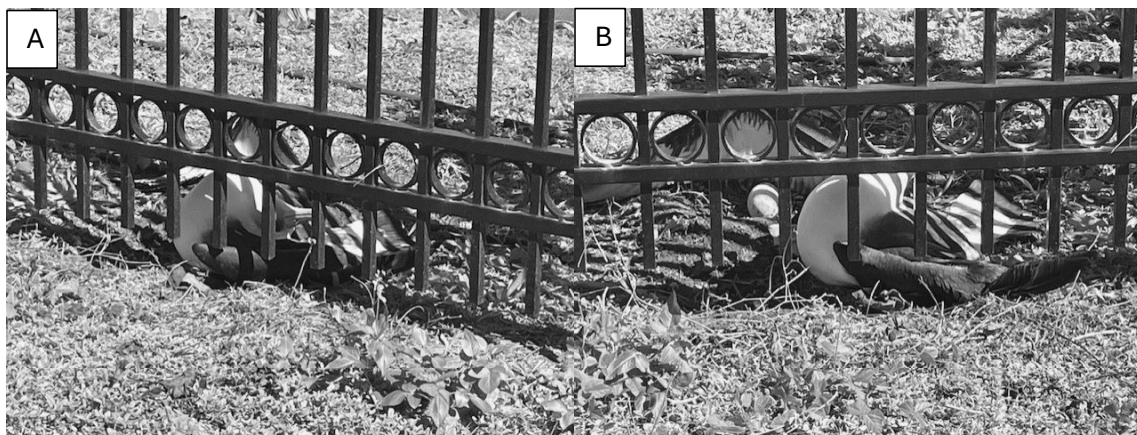


Figure 3, a & b. Ho'okipa (V389) immediately after being disturbed and struck with a blunt object while incubating her egg. Here, she is entangled in an unpermitted iron fence, which prevented her from fleeing from a threat. Photographs taken by HMAR volunteers on December 2, 2023, as they approached Ho'okipa in distress.

In response to Dr. Work's necropsy report, USFWS observations, and the HMAR volunteers' observations immediately before Ho'okipa became entangled with the iron fence, DOFAW staff requested that DLNR's Division of Conservation and Enforcement Resources (DOCARE) investigate the circumstances that led to Ho'okipa's death.

DOCARE officers worked closely with USFWS special agents to investigate this incident further. DOCARE's report is documented under report number OA-24-00135.

Of note, the egg that Ho'okipa was incubating was placed under a foster parent in a protected location and successfully hatched. DOFAW is hopeful that it will fledge.

2. January 2024

In January 2024, large sheets of plastic debris from Ms. Kan's greenhouses⁴ began tearing off the (unpermitted) structure. DOFAW staff observed the same thing occur in 2023 in the other greenhouse. The large sheets of plastic blew over onto the Turtle Bay property, endangering wildlife and humans. The NSCLT contacted Ms. Kan both times this happened.

In January 2024, she asked NSCLT staff to take care of it for her. NSCLT staff entered the property, cleaned up the debris, and weighted it to prevent it from endangering others.

DOFAW staff is unaware of any voluntary actions by Ms. Kan or the Yue-Sai Kan Trust to prevent further incidents with the unpermitted iron fences and the plastic debris from the greenhouses.

V. APPLICABLE LAWS:

Indigenous wildlife is regulated by Hawai'i Revised Statutes Chapter 195D and the administrative rules promulgated thereunder, which includes Hawai'i Administrative Rules (HAR) Chapter 13-124.

Wild birds are regulated by Hawai'i Revised Statutes Chapter 183D and the administrative rules promulgated thereunder, which are found in Hawai'i Administrative Rules (HAR) Chapter 13-124.

HAR Chapter 13-124 was promulgated under the Board's authority to adopt rules found in HRS §§ 195D-6 and HRS 183D-3.

⁴ DOFAW staff are unaware of any actual use of the greenhouses located on Unit 1 of the Marconi Point CPR. Based on DOFAW staff's observations of the greenhouses, DOFAW staff believes that the greenhouses are not used for any purpose, agricultural or otherwise.

The purpose of HAR Chapter 13-124 is “to conserve, manage, protect, and enhance indigenous wildlife[.]” HAR § 13-124-1.

The Board has statutory authority to set, charge, and collect civil and administrative fines for violations of HRS Chapter 183D and the administrative rules adopted thereunder. HRS § 183D-12.

The Board has statutory authority to set, charge, and collect civil and administrative fines for violations of HRS Chapter 195D and the administrative rules adopted thereunder. HRS § 195D-9.

DOFAW staff has assessed the circumstances relating to the death of Ho'okipa on December 2, 2023, and identified the applicable laws to be as follows:

A. LAWS RELATING TO INDIGENOUS WILDLIFE:

It is unlawful for any person to, or attempt to, catch, possess, injure, kill, destroy, sell, or offer for sale any indigenous wildlife or transport such species, or any young or egg, or the dead body or skin therefrom. HAR § 13-124-3(a)(1).

It is also unlawful for any person to remove, damage, or disturb the nest of any indigenous wildlife. HAR § 13-124-3(b).

“Indigenous wildlife” is defined as any species or subspecies of animal, including migratory forms, occurring or living naturally in Hawai'i without having been brought to Hawai'i by humans and listed in, but not limited to, the exhibit entitled “Exhibit 1, Chapter 13-124, Indigenous Wildlife of Hawai'i, 11/1/14” and as updated, which is located at the end of this chapter and incorporated by reference. HAR § 13-124-2.

Exhibit 1 to HAR Chapter 13-124, List of Species of Indigenous Wildlife in Hawai'i, dated 11/1/14, includes mōī or Laysan Albatross (*Diomedea immutabilis*).

HAR § 13-124-3 was adopted pursuant to the Board's authority to make administrative rules for HRS Chapters 183D and 195D.

B. PENALTIES

The Board is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative costs of the department or payment for damages or the cost to correct damages resulting from a HAR Chapter 13-124 violation. HAR § 13-124-8(d).

The Board may impose a fine of not more than \$10,000 for a first violation. HAR § 13-124-8(d)(1).

In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife taken, killed, injured, or damaged in violation of HRS chapter 183D or any

administrative rule adopted thereunder. HAR § 13-124-8(e). Further, any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the provisions of HAR chapter 13-124 may be seized and subject to forfeiture, as provided by HRS § 199-7 and HRS chapter 712A. HAR § 13-124-8(g).

First violation administrative fine:	\$10,000
Plus	+
<u>Additional \$5,000 per animal killed:</u>	<u>\$5,000</u>
Total administrative fines:	\$15,000

DOFAW staff recommends imposing the maximum administrative fine of \$15,000 for the intentional injury and resulting death of Ho'okipa for the following reasons:

Ms. Kan, as the Trustee of the Yue-Sai Kan Trust, owns Unit 1 of the Marconi Point CPR property. Ms. Kan has been advised numerous times by various agencies and the NSCLT about the indigenous and other endangered species that live in Unit 1. Ms. Kan has repeatedly ignored the City and County of Honolulu Department of Planning and Permitting regulations and has erected several unpermitted iron fence lines across Unit 1. USFWS, DOFAW, and NSCLT have documented several occasions where the unpermitted fences have resulted in adverse outcomes for the mōlī.

Ms. Kan knew that land management activity could disturb the mōlī, but still allowed her hired workers to conduct land-clearing activities with a weedwhacker near Ho'okipa and her nest. Further, Ms. Kan appears to have not advised her workers of the importance of giving the mōlī space when conducting their work. DOCARE's investigation revealed no emergency or good reason for the workers to clear the vegetation/grass near Ho'okipa and her egg. As a result of being hired by Ms. Kan or her agents, the workers threw a rock at Ho'okipa, ultimately striking her in the head and causing her death.

DOFAW did not seek previous administrative fines for the loss of Ho'okipa's egg in February 2023, which DOFAW staff finds most likely died as a direct result of the parent mōlī being unable to properly tend to their egg as a result of the unpermitted iron fence.

Despite the documented difficulties of indigenous species due to her iron fences, Ms. Kan has not taken any remedial measures to make her property safer for indigenous and endangered species.

DOFAW staff finds that the iron fences directly adjacent to Ho'okipa and her mate's nest on Unit 1 of the Marconi Point CPR constitute "equipment" that directly contributed to Ho'okipa's death. DOFAW staff believes that the iron fences constitute an ongoing nuisance for the mōlī that nest in the area. Every day that the iron fences remain, they continue to negatively impact legally protected wildlife in the area.

Lastly, DOFAW staff did not request a fine amount to pay for damages or the cost to correct damages as a result of Ms. Kan's agent's violation of HRS chapter 183D or HAR 13-124 because DOFAW staff is unable to quantify the monetary damage done by the killing of Ho'okipa.

DOFAW staff find that conservation protections need to be established to ensure that Ms. Kan, agents of the Yue-Sai Kan Trust, and all other landowners in the Marconi Point CPR property never again intentionally kill any mōlī or conduct activities (construction, land clearing, etc.) that are known to negatively impact legally protected wildlife.

DOFAW believes the only way to ensure such preservation and protection of Hawai'i's endangered and indigenous species at the Marconi Point CPR property is through a Conservation Easement granted to an appropriate non-profit through the procedures outlined in HRS Chapter 198.

FINDINGS:

Based on the above-summarized information, DOFAW staff has concluded the following:

1. That Ho'okipa, a large bird bearing identification tag "V389," is a mōlī, which is an indigenous species protected under HAR chapter 13-124;
2. That Ms. Yue-Sai Kan hired agents to conduct land clearing activities on Unit 1 in early December 2023, despite being aware of the presence of Ho'okipa, her mate, and their nest;
3. That Ms. Yue-Sai Kan, individually and as the Trustee of the Yue-Sai Kan Trust, impermissibly failed to properly inform and notify her workers of the legal restraints of doing land clearing activities near Ho'okipa and her nest and the legal prohibitions on harassing, injuring, and killing mōlī within the State of Hawai'i, despite Ms. Kan's clear understanding and repeated communications from the USFWS;
4. That Ms. Yue-Sai Kan, individually and as the Trustee of the Yue-Sai Kan Trust, through the activities of her duly hired agents, did authorize, cause, or allow the injuring and killing of a mōlī, specifically Ho'okipa;
5. That Ms. Yue-Sai Kan, individually and as the Trustee of the Yue-Sai Kan Trust, through her duly hired agents, did authorize, cause, or allow such injury and kill of Ho'okipa without legal authority to do so;
6. That the unpermitted iron fences on Unit 1 of the Marconi Point CPR, owned by the Yue-Sai Kan Trust, directly contributed to the killing of the mōlī on December 2, 2023, by impairing her ability to flee from the threat of the weed whacking agents of Ms. Kan;

7. That the unpermitted iron fences on Unit 1 of the Marconi Point CPR property, owned by the Yue-Sai Kan Trust, constitute an ongoing threat to the endangered and indigenous species that reside there and are harmful to the ecosystem(s) of the area; and
8. The unpermitted iron fences on Unit 1 of the Marconi Point CPR, owned by the Yue-Sai Kan Trust, constitute "equipment" used in violation of HRS Chapter 183D and HAR Chapter 13-124 and are, therefore, subject to seizure and forfeiture under HAR § 13-124-8(e).

AS SUCH, STAFF MAKES THE FOLLOWING RECOMMENDATIONS:

That the Board adopts the findings and conclusions set forth above and imposes the following:

- A. Pursuant to HAR § 13-124-8, Ms. Yue-Sai Kan, individually and in her capacity as Trustee of the Yue-Sai Kan Trust, is fined \$15,000 for violating the provisions of HAR § 13-124-3(a) through her agent's intentional injuring of and killing of Ho'okipa;
- B. As all of the above-listed actions were intentionally taken by Ms. Yue-Sai Kan's hired agents for the benefit of the Yue-Sai Kan Trust property, Ms. Yue-Sai Kan and the Yue-Sai Kan Trust shall be held jointly and severally liable for all fines imposed;
- C. That the \$15,000 fine imposed on Ms. Yue-Sai Kan, individually and in her capacity as Trustee of the Yue-Sai Kan Trust, shall be paid to the department within ninety (90) days;
- D. Under HAR § 13-124-8(g), the department shall initiate a seizure and forfeiture action in the Circuit Court of the First Circuit, State of Hawai'i, to seize and forfeit the unpermitted iron fences on Unit 1 of the Marconi Point CPR property, owned by the Yue-Sai Kan Trust, within thirty (30) days;
 - i. Alternatively, the Yue-Sai Kan Trust can voluntarily remove and dispose of the unpermitted fences on Unit 1 within fourteen (14) days at its own costs;
- E. In the event of a failure to comply with any order herein, this matter shall be turned over to the Department of the Attorney General for disposition, including all administrative costs incurred in such an effort;
- F. Delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation from the Board, subject to review and approval by the Department of the Attorney General; and

G. Delegate authority to the Chairperson to enter into a settlement agreement with Ms. Yue-Sai Kan, individually and in her capacity as Trustee of the Yue-Sai Kan Trust, subject to the following conditions at a minimum:

- i. Conveyance of a conservation easement of the Laysan Albatross habitat on Unit 1 of the Marconi Point CPR property to an appropriate entity, with no cost to the State, under HRS Chapter 198, to preserve and protect the land's natural conditions;
- ii. Such an appropriate entity must be a non-profit organization with the experience and means to monitor the conservation easement and prepare an annual report to the Board; and
- iii. Permanent signage will be erected in the area to educate the public and other landowners about the rare species that live there, as approved by DOFAW.

Respectfully Submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson

Exhibits:

Exhibit 1: DOCARE Report

Exhibit 2: letter from USFWS

Exhibit 3: Department of Planning and Permitting website

Exhibit 1: DOCARE Report

**Contains protected personally identifiable information and
is not subject to Sunshine Law**

Exhibit 2 – letter from USFWS

From

Aaron Nadig
Deputy Field Supervisor - Programmatic Operations
Pacific Islands Fish and Wildlife Office
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawaii 96850

Via email

To

Marigold Zoll
Oahu Branch Manager
2135 Makiki Heights Drive
Honolulu HI 96822

Responses to DLNR

22 January 2024

1) Information on the quality, quantity, distribution, and diversity of the coastal vegetation on this property: The coastal vegetation on the Marconi property extended makai along the entire parcel. The diverse vegetation assemblage was dominated by the shrubs naupaka (*Scaevola taccada*) and beach heliotrope (*Heliotropium foertherianum*) with an understory including but not limited to 'aki'aki (*Sporobolus virginicus*), Alena (*Boerhavia repens*), *Fimbristylis* sp., Hinahina (*Heliotropium anomalum*), kīpūkai (*Heliotropium curassavicum*), Pōhuehue (*Ipomoea pes-caprae*), Ohelo-kai (*Lycium sandwicense*), 'Akulikuli (*Sesuvium portulacastrum*), 'Ilima (*Sida fallax*), 'Akoko (*Euphorbia degeneri*), Pa'u-o-Hi'i-aka (*Jacquemontia sandwicensis*) and Hawaiian nama (*Nama sandwicensis*, Plentovich pers obs). The coastal vegetation along the Marconi property was robust (large, healthy naupaka with dense leaf cover) and diverse relative to coastal vegetation at other areas around Oahu. This could be attributed to the area being relatively wet (higher rainfall) and reduced human disturbance/traffic along the coastline likely due to lack of nearby public access points. The high quality coastal strand has been noted by others including Jacobi & Warshauer (2017).

2) Presence of endangered yellow-faced bees at this location including but not limited to *Hylaeus anthracinus*, observations regarding the abundance and distribution of *Hylaeus* at this site: To the best of my knowledge, *Hylaeus anthracinus* was first noticed in the area in 2013 by Dr. Karl Magnacca who was doing island-wide surveys for native bees (Magnacca et al. 2013). By 2018 when Dr. Sheldon Plentovich (USFWS Coastal Program) began regularly working in the area, the bees were abundant from the boundary with Turtle Bay to James Campbell National Wildlife Refuge (JCNWR). Dr. Plentovich, who does collaborative research on *H. anthracinus* on Oahu, noted that the bees seemed as or more abundant on the Marconi parcel than the other Oahu sites (i.e, Ka Iwi, Marine Corp Base Hawaii, Kaena Point). She also noted that the bees were observed well above the high tide line because of the presence of healthy coastal strand habitat dominated by tall and lush naupaka. This tends to be rare because much of the coastal strand on Oahu is bound by development. The bees were especially abundant towards the center of the parcel. Also of note, *Hylaeus longiceps* was observed at nearby JCNWR within the past five years and was seen on the Turtle Bay property in 2013 (Magnacca et al. 2013) so was possibly also present on the Marconi parcel.

3) The conservation status of any *Hylaeus* found at this location, the importance of this site to the conservation of the species, and how removal of the habitat and individuals at this site may or may not impact the ability of the species to recover: *Hylaeus anthracinus* is limited to relatively small, often very narrow, patches of coastal habitats just above high tide line on Oahu, Hawaii, Maui, Lanai and Molokai. The Kahuku coastline is one of four areas with persistent, robust populations on Oahu. The area is of high conservation value because it is relatively large (with good habitat extending from Turtle Bay through Marconi and JCNWR to Kahuku Golf Course) with bees present throughout (Plentovich pers. obs). The Marconi habitat was especially important because it is free of yellow crazy ants which extirpate native bees (Plentovich et al. 2021) and had especially robust coastal strand vegetation. The loss of the section of habitat along the Marconi property fragments the Kahuku coastline population, making the subsequent, smaller and isolated populations more vulnerable to stochastic events and other perturbations. Bee biologists did not do regular timed surveys on the Marconi property prior to clearing, however large numbers of bees were always noted by experts during site visits from 2018 – 2023 (Krushelnyky & Plentovich pers. obs). The robust population was attributed to tall and lush coastal vegetation, especially naupaka, which provides floral resources and nesting habitat to the bees (Graham et al. 2021). The plant is a dominate component on Oahu’s coastal strand vegetation and was over six feet tall at this site which is rare on Oahu.

4) Any observations regarding the use of this habitat by *Hylaeus*. Dr. Plentovich regularly visited the site between November and July from 2018 – the present to implement restoration activities at Kahuku Point and to monitor the budding Laysan Albatross colony. She regularly noted large numbers of bees “swarming” around naupaka, beach heliotrope and other plants as they collected floral resources and entered hollow stems to nest and rest (Graham et al. 2021). Pictures & videos are available upon request.

5) History of Laysan albatross at this site, their use of this site for nesting or other purposes, nest success, conservation importance of this site, and any knowledge of past “take” of the animals. Laysan Albatross and more recently Black-footed Albatross use the Kahuku Point/Marconi area from November through July. Laysan Albatross use the area for nesting, resting and socializing. Black-footed Albatross became regular visitors in 2022 and currently only use the area for resting and socializing. The site is significant because over 95% of Laysan Albatross nest on low-lying islands and atolls in the NW Hawaiian Islands that are being lost as sea level rises. Colonies like this one, in areas resistant to sea level rise, will be required for this species to survive into the future. The Hawaii Marine Animal Response volunteers, community members and staff from USFWS and North Shore Community Land Trust have identified over 227 albatross using the area, identified using color coded and numbered leg bands that can be seen from a distance.

Laysan Albatross have attempted to nest on and around the Marconi parcel for decades. There are reports of breeding attempts in the area starting in 1979, but none were successful due to predation and nests being crushed by off-road vehicles (Eilerts 1987). In 2017, the North Shore Community Land Trust began restoration activities on the newly acquired conservation easement at Kahuku Point. When Laysan Albatross were found nesting in the conservation easement, NSCLT and USFWS Coastal Program added predator (primarily mongoose) control to the list of conservation actions occurring onsite. The following year, there were 7 Laysan Albatross nests in the Marconi/Kahuku Point area and three chicks fledged. Since then, the population has been steadily increasing with a record 18 nests found this year (Table 1). Three chicks fledged during the seasons starting in 2018, 2019 and 2020, one chick fledged in 2021 and seven chicks fledged in 2022 (Table 1). The nests and chicks are monitored daily by community members, HMAR volunteers (the “mōlī mammas”), NSCLT and USFWS staff.

Table 1. Laysan Albatross nest numbers and successful nests over time on the Turtle Bay and Marconi property on Oahu from 2018 – 2024 (Plentovich unp. data).

Season	Turtle Bay		Marconi		Total nests
	Nest Total	Successful	Nest Total	Successful	
2018/19	4	2	3	1	7
2019/20	6	2	3	1	9
2020/21	8	2	5	1	13
2021/22	12	1	5	0	17
2022/23	12	6	4	1	16
2023/24	10	tbd	8	tbd	18

Losing a single adult in a small, but growing population is a significant blow to this colony. Laysan Albatross return to their nesting area year after year and can live and reproduce for more than 70 years. Approximately 25 albatross pairs have nested on site since 2018 and only about ten of those nest there regularly (usually every year, Plentovich unp data). So, the loss of a single reproductive female translates into the loss of decades of breeding seasons and opportunities to produce chicks and contribute to the Oahu population.

There have been multiple incidents of “take” of Laysan Albatross on the Marconi parcel in addition to ongoing issues with an unpermitted iron fence built in March 2022 that is a barrier that the birds cannot navigate. The fence itself has directly caused harm to two eggs and an adult albatross and is an ongoing, almost daily, problem for adults who land inside the fence and often don’t have enough room to run and generate enough lift to get into the air (think of albatross like planes...they need a runway). This is especially problematic when it’s not very windy and we have multiple videos of the birds failing to clear the fence that are available upon request.

Aside from these ongoing issues, five egregious incidents are described below:

December 2021: Community members and mōli volunteers reported construction activities within 2 meters of a nesting albatross on Ms. Kan’s property. There were no permits on file at the Department of Planning and Permitting (DPP) for construction within the Special Management Area and flood zone. Videos of the incubating bird reacting to the activities are available upon request. Ms. Kan was notified and the response was to build a wall within a meter of the incubating bird while it sat on the nest, visibly stressed and reacting to all the activity around it (Figure 1). Community members also documented this on videos and those are available upon request. USFWS Office of Law Enforcement was notified. The nest failed soon afterwards.



Figure 1. Wall of wood and shade cloth erected while the Laysan Albatross was incubating during unpermitted construction on Unit 1 owned by Yue-sai Kan.

December 2022 - February 2023: In March 2022 a wrought iron fence was built on Marconi CPR Unit 1 owned by Ms. Kan. The fence is over 6 feet tall in some places and was built without the required permits within the flood zone and Special Management Area. On November 28, 2022, a well-known female albatross named Ho'okip (V389) made a nest and laid her egg adjacent to the fence. She and her mate have nested on the property within a 10-meter radius of their original nest site every year since 2017, and this pair was the first to produce a successful nest. In 2022, she and her mate returned to their nest site which was bisected by the new fence. They nested adjacent to the fence, but on the Turtle Bay side on November 28, 2022. Just a week or so later in December 2022 community members and mōlī volunteers became concerned after they observed the parents being obstructed from accessing their nest because of to the new fence (Figure 2 and see attached video). Each adult will incubate for 1 to 2 weeks and usually will not leave the egg until they are relieved of duty by their mate. The parents were observed trying to access the nest on many occasions (Figure 2). After a couple of weeks, the egg was observed alone with a parent on the other side of the fence attempting to get to the nest to incubate the egg. USFWS and NSCLT staff physically moved the bird from one side of the fence to the other so the parent could incubate the egg on at least 2 occasions. Ms. Kan was notified and eventually in mid-February USFWS staff were able to coordinate a fence contractor to lift a panel in hopes the albatross parents could walk under and access the nest. However it was too late; the nest failed, most likely due to the parents' inability to adequately incubate their egg because of the fence.

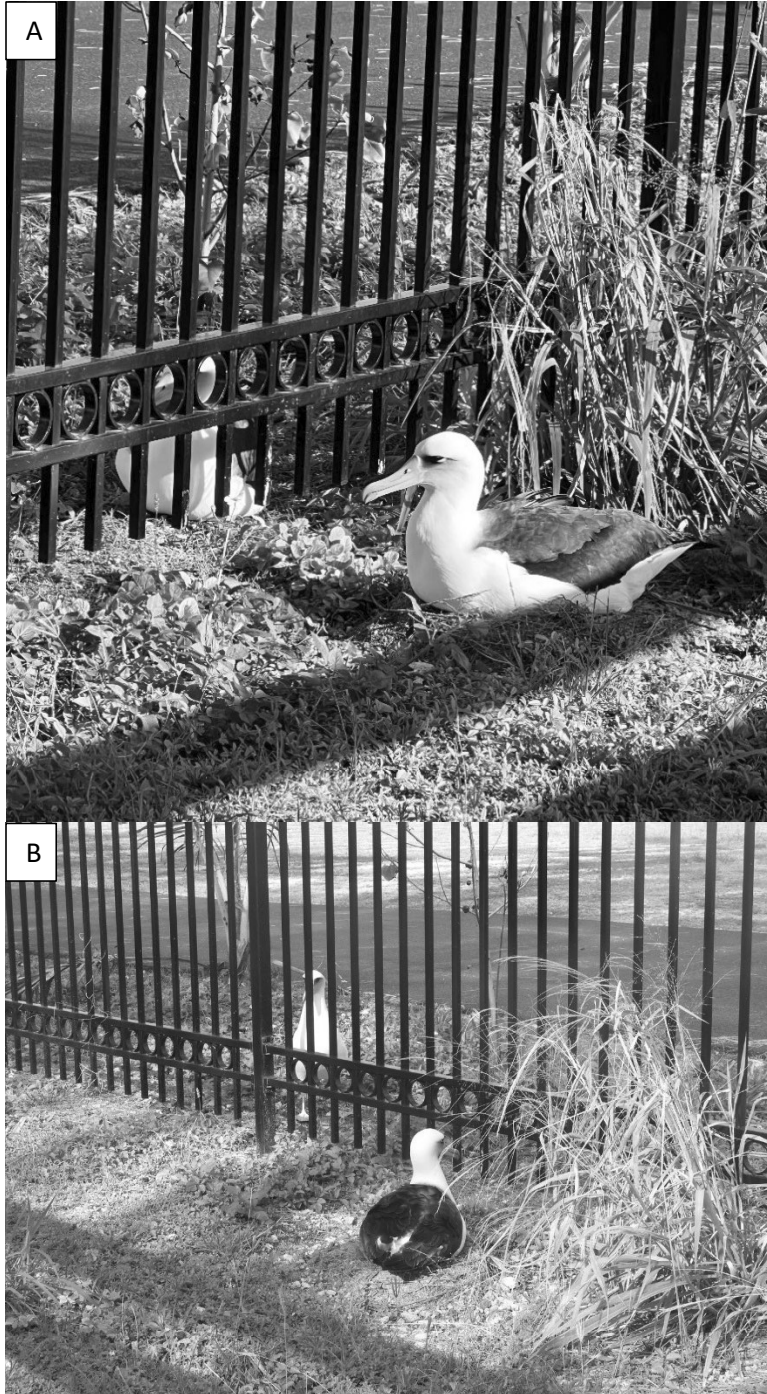


Figure 2, A & B. Parents (V389 known as Ho'okipa and her mate V967) attempting to switch incubation duties but prevented from accessing the nest due to the unpermitted iron fence.

December 2, 2023: Ho'okipa and her mate returned for the six year in a row and again nested adjacent to the unpermitted fence, laying their egg on 11/29/23. However, this time, they were on the east side of the fence and in the property owned by Ms. Kan. Ms. Kan was notified by USFWS staff on December 1, 2023 and plans were made to have the North Shore Community Land Trust staff conduct predator control on her property to increase chances of a positive outcome for the nest. USFWS staff asked Ms. Kan and her office manager if there were any activities planned for the property that could harm the

nest or incubating adult and she and her office manager said no. The next day, Saturday December 2, 2023, Dr. Plentovich received a call from the HMAR volunteers and staff that monitor the albatross daily and they said that the female albatross, Ho'okipa (V389) was horribly entangled in the fence by the egg and was no longer able to incubate it (Figure 3). There were yard workers on the property with weedwhackers and it was clear from the grass around the nest that a weedwhacker had gone right up to the nest. Our team has observed weedwhackers causing serious distress in Laysan Albatross on other occasions and would assume the albatross was trying to flee from the weedwhacker, but could not because of the unpermitted fence.

A plan was made to disentangle the bird and transport it to Feather and Fur Animal Hospital for medical attention. The volunteers approached the bird and disentangled it from the fence and saw that it was also bleeding from the mouth. The bird died in the vehicle before it could be seen by the vet at Feather and Fur. Feather and Fur took x-rays of the bird and made notes on its condition (Appendix II) and it was then transported to Dr. Thierry Work at the USGS National Wildlife Health Center for necropsy. Necropsy indicated that the bird died from blunt force trauma to the right side of the head (Appendix III). On December 7, 2023 Dr. Thierry Work followed up the necropsy with a call to Dr. Plentovich. Dr. Plentovich asked if the weedwhacker could have kicked up a rock that hit the bird in the head. Dr. Work replied that, based on his examination of the bird, it was his opinion that a rock kicked up by the weedwhacker could not generate enough force to kill the bird. He said that Ho'okipa's injury looked similar to the injuries he had seen when Nene were intentionally hit in the head with a golf club.



Figure 3, a & b. Ho'okipa (V389) dying after being disturbed and struck with a blunt object while incubating her egg. Here she is entangled in an unpermitted iron fence which would have prevented her from fleeing a threat, presumably a weedwacker in this instance.

December 9, 2023. A Laysan Albatross nest was found on the eastern part of the Marconi parcel within an active construction zone. There was a tractor within 20 feet of the nest. With the permission of the Marconi manager, the NSCLT worked with USFWS and Pacific Rim Conservation to collect the egg so it could be fostered, hopefully discouraging the adults from staying in the active construction zone.

January 2024: On January 6, 2024 sometime between Friday evening and Saturday mid-day, one of the Laysan Albatross nests near the middle of the Marconi property (M4) was disturbed and the adult was likely injured. The egg was shattered and the well-developed embryo was dead with dirt and sand on it. There was a blood trail leading away from the nest indicating the adult (V043) was hurt. There were clear safety glasses found next to the nest that weren't there on Friday afternoon. Because there were no feathers and the embryo was still intact, it doesn't appear to be the result of a mongoose, cat or dog.

6) History of green sea turtles at this site, their use of this site for nesting or other purposes, nest success, conservation importance of this site, and any knowledge of past “take” of the animals: The “Oahu Green Sea Turtle Nesting Team” first found nests along this stretch of beach in 2021 when 33 nests or false crawls (i.e., the female digs a pit but doesn’t deposit eggs) were found from Kahuku Point east along the beach in front of the conservation easement and the Marconi parcel. Sixteen of these were found on the beach in front of the Marconi Parcel. Multiple hatchlings from at least one nest in front of the Marconi parcel were disoriented by lights and walked inland (Herrera & Plentovich unpub data). In addition, one hatchling from nest 19 became entangled in fishing line as it emerged and was unable to emerge on its own. We have pictures and videos available upon request. In 2023, there were ten nests along the stretch and all were on the beach fronting the conservation easement.

7) Past verbal and/or written communication with the current or former landowner(s) and/or their agents regarding the presence of protected species and habitat on or adjacent to their property. There were multiple emails sent back and forth between USFWS Coastal Program Coordinator Dr. Plentovich and Marconi owner Jeremy Henderson talking about the protected species on the Marconi parcel. These emails have been shared with DLNR and USFWS OLE and can be shared again if needed.

There was also considerable communication with Yue-Sai Kan (Owner of CPR Unit 1 adjacent to the conservation easement on Turtle Bay). Ms. Kan was contacted and engaged by Adam Borrello at the North Shore Community Land Trust (NSCLT) soon after she bought the property in 2021. Dr. Sheldon Plentovich (USFWS Coastal Program) reached out to Ms. Kan initially via email on December 13, 2021 (Appendix 1) to inform Ms. Kan of the protected species on her property and to offer assistance if Ms. Kan was interested in learning more about the species or wanted help enhancing her property. This email was also to try and address the harassment of Laysan Albatross that had been documented by community members since unpermitted construction began in 2021. The email clearly says to stay at least 30 feet away from albatross. On December 1, 2021, community members reached out to the NSCLT and Hawaii Marine Animal Response (HMAR) when unpermitted construction within the Special Management Area and the flood zone was being conducted within 2 meters of a Laysan Albatross nest (video attached). Ms. Kan was contacted and in response built a wall within 1 meter of the incubating bird (Figure 1). The nest failed soon after.

In December 2022 community members notified the NSCLT, HMAR and USFWS Coastal Program that the parents of the Laysan Albatross nest that was laid on 11/28/22 were not able to access their nest because of an unpermitted fence that was constructed in March 2022 (see previous question for additional details).

In December 2023 community members and mōlī volunteers discovered Ho’okipa (V389) horribly entangled in the fence by her egg and no longer able to incubate it (Figure 3). There were yard workers on the property with weedwhackers and it was clear from the grass around the nest that the weedwhacker had gone right up to the nest. Our team has observed weedwhackers causing serious distress in Laysan Albatross on other occasions and would assume the albatross was trying to flee from the weedwhacker, but could not because of the unpermitted fence. A plan was made to disentangle the bird and transport it to Feather and Fur Animal Hospital for medical attention. The volunteers approached the bird and disentangled it from the fence and saw that it was also bleeding from the mouth. The bird died in the vehicle before it could be seen by the vet at Feather and Fur. Feather and Fur took x-rays of the bird and made notes on its condition (Appendix II) and it was then transported to Dr. Thierry Work at the USGS National Wildlife Health Center for necropsy. Necropsy indicated that the bird died via blunt force trauma to the right side of the head (Appendix III). On December 7, 2023 Dr.

Thierry Work followed up the necropsy with a call to Dr. Plentovich. Dr. Plentovich asked if the weedwacker could have kicked up a rock that hit the bird in the head. Dr. Work replied that, based on his examination of the bird, it was his opinion that a rock kicked up by the weedwacker could not generate enough force to kill the bird. He said Ho'okipa's injury looked similar to the injuries he had seen when Nene were intentionally hit in the head with a golf club.

In January 2024 large sheets of plastic debris from Ms. Kan's unused greenhouses began tearing off the unpermitted structure. The same thing happened the previous year to the other greenhouse. The large sheets of plastic blew over onto the Turtle Bay property endangering wildlife and humans. Ms. Kan was contacted both times this happened by the NSCLT. In January 2024 she asked staff from the NSCLT to take care of it for her. NSCLT staff entered the property and cleaned up the debris, then weighted it to keep it from endangering others.

8) Past verbal and/or written communication with the current or former landowner(s) and/or their agents regarding voluntary conservation actions for protected species and their habitats and whether or not these actions were conducted.

2021: Ms. Kan was contacted in early December 2021 by USFWS law enforcement after community members reported unpermitted construction within 2 meters of a Laysan Albatross nest. Ms Kan responded by having her employees build a wall within 1 meter of the incubating bird (Figure 1). She was contacted again by USFWS staff on December 13, 2021, (in regard to ongoing issues with the unpermitted fence), and via text on December 1st and 2nd 2023. In addition, the North Shore Community Land Trust has communicated with her about similar issues on multiple occasions. No voluntary conservation actions were taken by Ms. Kan.

2022/23: After multiple notifications from community members regarding the Laysan Albatross pair (V389 known as Ho'okipa and her mate V967) not being able to access their nest and egg. On February 5, 2023, Dr. Plentovich contacted Ms. Kan to inform her of the issue and provide potential solutions that would allow the parents to access their nest to incubate their egg (Appendix IV). Ms. Kan agreed to allow Dr. Plentovich to work with a fencing contractor to raise a section of the fence so that the albatross could walk under it. Ms. Kan agreed and Dr. Plentovich found funds from USFWS and coordinated with Gerry Kaho'okano at Pono Pacific who modified the panel in mid-February 2023. Unfortunately, it was too late for this nest and the egg never hatched likely because it went for days without an incubating adult due to the fence barrier.

2023/24: A Laysan Albatross nest was made on Ms. Kan's property adjacent to the fence. It was the same pair that nested at the site the previous year (V389 known as Ho'okipa and her mate V967). Dr. Plentovich contacted Ms. Kan the morning after the egg was laid on 11/30/23. Via text, Dr. Plentovich and Ms. Kan and her office manager made plans to have North Shore Community Land Trust staff control predators on Ms. Kan's property to support a positive outcome for the nest. Dr. Plentovich asked if there were any plans for the property that could harm the bird and Ms. Kan said no. The next day, Saturday December 2, 2023, Dr. Plentovich received a call from the HMAR volunteers that monitor the albatross daily and they said that the female albatross, Ho'okipa (V389) was horribly entangled in the fence by the egg and no longer able to incubate it (Figure 2 and 3). The remaining details are above. No voluntary conservation actions were taken by Ms. Kan.

9) The names and contact information of any possible witnesses that USFWS is aware of that may have information relating to the coastal vegetation clearing in October 2023 and any of the albatross takings that occurred in 2023.

Vegetation Clearing: Cynthia King (cynthia.b.king@hawaii.gov), Paul Krushelncky (pauldk@hawaii.edu), Debbie Herrera (debbie@malamainahonu.org)

Laysan Albatross harm: Laura Zoller found the albatross injured (zoller201516@gmail.com), Karen Turner found the albatross injured (karenturnr@aol.com), Christine Tarski (ctarski@gmail.com), Jon Gelman (jon.gelman@h-mar.org), Dr. Thierry Work (thierry_work@usgs.gov)

Literature cited:

Eilerts, B. 1987. April field trip report Kaena Point Natural Area Reserve. Elepaio 47:70.

Graham, J.R., Campbell, J.W., Plentovich, S. and King, C.B., 2021. Nest Architecture of an Endangered Hawaiian Yellow-Faced Bee, *Hylaeus anthracinus* (Hymenoptera: Colletidae) and Potential Nest-Site Competition from Three Introduced Solitary Bees1. *Pacific Science*, 75(3), pp.361-370.

Jacobi, J.D., and Warshauer, F.R., 2017, Hawaiian Islands Coastal Vegetation Survey 2013-2015: U.S. Geological Survey, <https://doi.org/10.5066/F7TT4PVB>.

Magnacca, K.N. and King, C., 2013. Assessing the presence and distribution of 23 Hawaiian yellow-faced bee species on lands adjacent to military installations on O 'ahu and Hawai'i Island.

Plentovich S, Graham JR, Haines WP, King CBA (2021) Invasive ants reduce nesting success of an endangered Hawaiian yellow-faced bee, *Hylaeus anthracinus*. *NeoBiota* 64: 137-154. <https://doi.org/10.3897/neobiota.64.58670>

Appendix I. Email to Yue-sai Kan (owner of CPR Unit 1 on the Marconi Parcel) from Dr. Sheldon Plentovich (USFWS Coastal Program) to inform her about the protected species on her land, how to keep them safe and to offer assistance with any issues or questions.

1/25/24, 10:57 AM

Mail - Plentovich, Sheldon - Outlook

From: Plentovich, Sheldon <sheldon_plentovich@fws.gov>
Sent: Monday, December 13, 2021 12:53 PM
To: yue-sai kan <yuesai@gmail.com>
Cc: Adam Borrello <adamborrello808@gmail.com>
Subject: Re: [EXTERNAL] Look look

Aloha Ms. Kan,

Wow! That is so cool that a Laysan Albatross is nesting on your property. You are the only private landowner on Oahu with such a privilege. Thank you for trying to protect this magnificent seabird. We advise that people stay more than 30 feet (~10 meters) away from Laysan Albatross adults and their nests. We know that might be difficult on your property, but appreciate you protecting this bird and her nest. If all goes well the egg will hatch in two months.

As Adam mentioned, we would love to give you a tour of the ecological restoration project just adjacent to your property at Kahuku Point. This is a community - lead project with the goal of removing invasive species and restoring native species diversity so we can protect nesting seabirds, sea turtles and other coastal species. We also work to restore the sand dunes to protect the site against sea level rise.

In addition to the beautiful Laysan Albatrosses, there are Hawaiian Green Sea Turtles that nest on your property between May and November. I've attached a picture taken at one of those nests. Sadly one hatchling became entangled in discarded fishing line as it tried to emerge. In addition to discarded fishing line, artificial lighting is also an issue for sea turtle hatchlings. When they come to the surface, artificial lights (like flood lights, street lights and even indoor lights when curtains are open) disorient them and cause them to walk inland and die of exhaustion. We know you care about these species and will keep the beach dark as you build. If you have questions about sea turtle friendly lighting, please let me know and I will be happy to help any way I can.

And one more really cool note...you also have endangered Hawaiian yellow-faced bees on your property. These bees are Hawaii's only native bees. This species lives in the coastal vegetation just above high tide line and they nest in twigs. Males have yellow faces and females have solid black faces. I've attached a couple of pictures of a male Hawaiian yellow-faced bee so you can see how cute they are. These bees are important pollinators and vital to the survival of many native plant species. Both the Hawaiian Green Sea Turtles and Hawaiian yellow-faced bees are protected under the Endangered Species Act.

I know that is a lot of information and thank you for reading 😊

You are the only person on Oahu to have not only Laysan Albatrosses, but also Hawaiian Green Sea Turtles and Hawaiian yellow-faced bees on your property. What a privilege! Here are the ways you can help support these creatures,

1. Stay at least 30 feet or ~10 meters away from albatrosses
2. Clear plastic and fishing debris from the shoreline
3. Turn off unnecessary lights and make sure necessary lights are shielded and use amber bulbs, especially during the sea turtle hatching season starting in July
4. Protect the remaining patches of natural coastal habitat to help the bees

Please reach out with any questions. I look forward to meeting you and showing you some of these cool animals in person.

Mahalo!
Sheldon

<https://outlook.office365.com/mail/d/AAMkAGQ1MTdIMzU5UWNhMmYhNDM2N04NzNhLWQyYWJOTg3ODJlYQBGAAAAADCHUZQ82dTTaimFpG...> 1/2

Appendix II: Report from Feather and Fur Animal Hospital in Kailua on the Laysan Albatross known as Ho'okipa (V389) from December 2

1/24/24, 1:51 PM

Mail - Plentovich, Sheldon - Outlook

[EXTERNAL] Laysan Albatross 12/2/23

Rachael Sitzer <rachael@hawaiiwildlifecenter.org>

Mon 12/18/2023 6:27 PM

To Plentovich, Sheldon <sheldon.plentovich@hwa.gov>

Cc Juan Carlos Guerra, DVM <juan@hawaiiwildlifecenter.org>

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Sheldon,

Here is a summary of events and findings surrounding the adult Laysan Albatross brought to Feather and Fur Animal Hospital for care on 12/2, banded with left leg 1997-10275 (metal) and aux band V389 (plastic, white on purple):

- HWC staff had been notified prior to the bird arriving and were on stand-by ready to receive the bird. Dr. Pluska from Feather and Fur was also ready on-site to assist. Unfortunately the bird was face down in the box, dead upon arrival around 2:15pm. The transporter reported that the bird was still alive when picked up (although not in good condition based on pictures) and was heard being active in the box at some point during transit.
- Radiographs were performed on the bird and there were no significant findings (no broken bones or a specific cause of death).
- There was a significant amount of green liquid present and coming up into the mouth (assumed to be stomach contents).
- There was dried blood in the mouth and on the outside of the beak, pointing to some sort of head trauma. There was also a tiny amount of dried blood present on the feathers of the abdomen, underside of the tail feathers, and on the right leg band (aux band). This was superficial and the only source of the blood appears to be the mouth.
- The bird felt like it was in good body condition and weighed 2.34kg.
- The bird had a brood patch indicating it was incubating an egg.
- There was a few tiny spots of bruising on the webbing of the left foot but very insignificant.
- The vent had a red sore along the caudal half of the opening.

I wouldn't be able to give a definitive cause of death, but there appeared to be some head trauma. Based on the pictures and witness accounts provided, it sounds like the bird was going through a very stressful and traumatic event (physical and emotional) while trying to defend/incubate an egg. The extreme stress of the situation paired with the head trauma are the biggest concerning factors that might have contributed to this bird's death from my point of view based on the information I have been able to collect.

Feel free to let us know if you have any questions. If you don't mind sharing the necropsy report, it would be great if we could add it to our records.

Thank you,

Rachael Sitzer
Oahu Wildlife Rehabilitation Manager
Hawaii Wildlife Center
Main Line: 808-884-5000
Direct Line: 808-937-8134

Appendix III. Necropsy conducted by Dr. Thierry work at the USGS, National Wildlife Health Center.

DIAGNOSTIC CASE REPORT

U. S. GEOLOGICAL SURVEY-BIOLOGICAL RESOURCES DIVISION
NATIONAL WILDLIFE HEALTH CENTER-HONOLULU FIELD STATION
P. O. BOX 50167, 300 ALA MOANA BLVD., Rm. 8-132
HONOLULU, HAWAII 96850
Tel: 808-792-9520, Fax: 792-9596, Email: thierry_work@usgs.gov

Case Number: 25939

Submitter Name:

Dr. Sheldon Plentovich
US Fish and Wildlife Service
PO Box 50088
Honolulu, Hawaii 96850
United States

Species submitted (n):

Albatross: Laysan (1)

Location:	Yue-sai Kan Property	DateCollected:	12/02/2023
Area:	Honolulu	DateSubmitted:	12/4/2023
State:	Hawaii	DateReceived:	12/4/2023
Country:	United States	DateExamined:	12/4/2023

SPECIMENS SUBMITTED: Carcass-Fresh

History: Submitter reports this bird was found dead reportedly after running into a fence trying to escape weed whacking activity.

Findings: Accession 1-laysan albatross adult female in good body condition. Significant gross lesions included severe trauma to the head and bleeding in the brain, most severe on the right. See attached photos.

Final diagnosis: Accession 1-Trauma-blunt force.

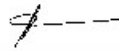
Comments: Gross lesions pointed to severe head trauma as cause of death. The trauma appeared to originate from the right side of the head. We have seen this kind of trauma in birds hit with large objects (e.g. golf club, large stick, golf ball) on the head or running headlong into obstacles whilst in full flight. Given my understanding of the the history (bird startled by weedwhacker, running into fence), it is difficult to see how trauma seen here could result from such a scenario.

Management: Ferretting out what kind of large object could have hit this bird on the head.

Report Date (mm/dd/yyyy): 12/7/2023

Necropsy report: Available upon request

Copies of this report sent to:



If you have questions regarding this case, contact Thierry M. Work MS, DVM, MPVM at 808-792-9520. Include above Case Number. Diagnostic findings may not be used for publication without the pathologist's knowledge and consent.

NOTE: Information in this report supersedes any information from previous reports regarding this case

Appendix IV. Email to Yue-sai Kan in February 2022 to provide more information regarding ongoing issues with her unpermitted fence and to attempt to find a solution by modifying a small part of the fence.

1/25/24, 11:35 AM

Mail - Plentovich, Sheldon - Outlook

From: Plentovich, Sheldon <sheldon_plentovich@fws.gov>
Sent: Sunday, February 5, 2023 7:06 PM
To: Yue-Sai Kan 靳羽西 <jinyuxi@gmail.com>
Cc: Adam Borrello <adamborrello808@gmail.com>
Subject: Iron Fence preventing breeding albatross from taking care of their egg

Aloha Yue-Sai,

I hope you are doing well.

It's Sunday evening here and we are responding to community concerns about an albatross parent not being able to protect its egg because the iron fence on your property is a barrier. The adult is sitting on the other side of the fence right by the unattended egg. This is the second time we have been contacted by community members about this issue in the last 10 days. We expect the egg to hatch any day now and when there is a chick, this problem is going to be magnified. Albatrosses return to the same nesting area each year so unless we overcome this challenge, it will continue into the future.

In a nutshell, the iron fence that was placed along the boundary of your property is preventing at least one pair of albatrosses from accessing and properly caring for their egg on the Turtle Bay property. I've attached a couple of pictures where you can see one member of the pair attempting to go to the nest. Usually the pair meets at the nest and swaps places, but in this situation, the incubating adult leaves and the arriving adult can't access the egg. I've attached a video of the unattended egg and the adult trying to get to it. The pair responsible for this nest is our oldest nesting pair at Turtle Bay and are beloved and watched over by volunteers and community members. They produced the first chick that ever fledged from Turtle Bay. They have a nest on the Turtle Bay side of your iron fence. One member of the pair is a customary (from previous years) to landing on the Marconi side and walking over. Now that the fence is there, this bird cannot access the nest. Albatrosses did not evolve with these kinds of barriers in their environment so they are not able to overcome them.

Our team is hoping you would be willing to help address this problem. There was talk of incorporating a small gate into the fence that could be left open during albatross season, but I was told your partner did not allow it to proceed. Thus, I am reaching out to you in an attempt to overcome this challenge. We are open to solutions and are happy to work with you on them since we have a good understanding of the behavior and nesting sites for these birds.

Please let us know if this is something you would consider so that the birds are able to care for their babies. As I mentioned, the birds are very site faithful so we can expect them to continue to nest in this area in the future. I've cced Adam Borrello at the North Shore Community Land Trust as he is aware of the problem and of the involvement and concern of the local community.

Sincerely,
Sheldon

Sheldon Plentovich, PhD (she/her/hers)
Pacific Islands Coastal Program Coordinator

United States Fish & Wildlife Service, 300 Ala Moana Blvd Rm 3-122, Honolulu, HI 96850
Phone: 808-792-9428
Website: <https://www.fws.gov/pacificislands/articles.cfm?id=149489698#>



CITY AND COUNTY OF HONOLULU
 Department of Planning and Permitting (DPP)

Aloha. We provide services and information on building permits, development projects, and planning activities for the City and County of Honolulu.

Permitting Searching DPP Home Sign In

Tax Map Key

- Details
- Warnings
- Conditions
- Building/Sign Permits
- Subdivision Permits
- Other Permits
- Owners
- History
- Assessments
- Str Setbacks

Description

2016/ADV-683 (Advisory created) 2016-10-06
 BLDG. PERMIT COUNTER, ZONING & RESIDENTIAL EXAMINERS: See Comment box below for details on building permit processing and routing.

2017/ADV-315 (Start) 2017-04-21
 Parcel 53 has been condominiumized into more than 20 CPR units. Please refer to 2016/LD-29 and 2020/SUB-25 (2017/SUB-55 closed 9/22/17) for the subdivided lots.

2021/ADV-208 (Advisory - amended) 2021-03-01
 DO NOT CLOSE BUILDING PERMITS for RCA Buildings 1, 2, 3 and 4. The structures cannot be enclosed with walls below the BFE. The flood fringe certifications on file do not cover wall enclosures.

2022/ADV-4 (Advisory created) 2022-01-03
 TRIPLE FEE PENALTY. BV BV [TMK: 5-6-003: 053] Unpermitted grading and fence construction within the SMA and possibly the shoreline setback on Parcel 1 which abuts the neighboring Turtle Bay Golf Course.

2023/ADV-1011 (Advisory created) 2023-10-05
 Marconi Wireless Telegraphy Station - Registered Historic Place / SIHP No. 50-80-02-09112 / NRHP Reference No. 13000352

2024/ADV-11 (Advisory created) 2024-01-05
 TRIPLE FEE PENALTY. BV 56-1089 Kam Hwy [TMK: 56003053 & *766518] Renovations and repairs to an existing historical buildings without the required building permit.

2024/ADV-196 (Advisory created) 2024-03-18
 TRIPLE FEE PENALTY. BV 56-1089 Kam Hwy Unit 8 [TMK: 56003053 & *766518] AG structure converted to a Farm Dwelling and 2 existing AG structures constructed without the required building permit.

2024/ADV-197 (Advisory created) 2024-03-18
 TRIPLE FEE PENALTY. BV 56-1089 Kam Hwy Unit 9 & 10 [TMK: 56003053 & *766518] Existing AG structure (Greenhouse) constructed without the required building permit.

2024/ADV-198 (Advisory created) 2024-03-18
 TRIPLE FEE PENALTY. BV 56-1089 Kam Hwy Unit 13 [TMK: 56003053 & *766518] Two-story AG structure converted to a Farm Dwelling and 3 existing AG structures (Greenhouse, Shed/Office, Shed) constructed without the required building permit.

2024/ADV-199 (Advisory created) 2024-03-18
 TRIPLE FEE PENALTY. BV 56-1089 Kam Hwy Unit 12 [TMK: 56003053 & *766518] A two-story AG Structure converted to a Farm Dwelling and 2 shipping containers installed without the required building permit.

2024/ADV-7 (Advisory created) 2024-01-04
 TRIPLE FEE PENALTY. BV 56-1089 Kam Hwy [TMK: 56003053 & *766518] Partial demolition of historical building and AG exempt structures doing electrical and plumbing work without the required building permit.

Submit Cancel

City and County of Honolulu, Department of Planning & Permitting
 650 S. King Street, Honolulu, HI 96813
 Email: dpp@honolulu.gov | epplans@honolulu.gov
 Phone: (808) 768-8000 | Fax: (808) 768-6743
 © Copyright Honolulu City & County. All Rights Reserved.