

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 23, 2024

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

PSF No.: 23OD-132

OAHU

Grant of Term, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Utility Purposes; Issuance of Immediate Right-of-Entry Permit; Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-017; portion of 020.

APPLICANT:

Hawaiian Electric Company, Inc. a Hawaii profit corporation. (“HECO”)

LEGAL REFERENCE:

Sections 171-13, 17, 55 and 95, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located in Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-017; portion of 020, as shown on **Exhibit A1 to A3**.

AREA:

Easement E-4: 2,020 square feet, more or less, subject to review and approval by the Department of General and Accounting Services, Survey Division.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: P-2

TRUST LAND STATUS:

Acquired after Statehood, i.e., non-ceded.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No.

CURRENT USE STATUS:

Encumbered by Governor’s Executive Order No. (“EO”) 4102 dated March 7, 2005 setting aside to the Department of Land and Natural Resources, Division of State Parks for Kawainui Marsh State Park Reserve purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove electrical transmission lines, poles, guy wires and anchors over, under and across State-owned land, including the right to trim and keep trimmed any trees in the way of its appliances and equipment.

TERM:

65 years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section (“HAR”) 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Part 1, Item No. 39 that states, “creation or termination of easement, covenants, or other rights in structures or land.” See **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u> </u>
Registered business name confirmed:	YES <u> x </u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u> </u>

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
3. Process and obtain subdivision approval at Applicant's own cost.

REMARKS:

The subject parcel, together with other parcels in the vicinity, was condemned to protect,

preserve, and enhance cultural, historical, educational and recreation values of the Kawainui Marsh in the late 1980s. At its meeting of May 27, 1988, under agenda item F-12, the Board also authorized setting aside the subject parcel to the Division of State Parks for Kawainui Marsh State Park Reserve purpose. EO 4102 was eventually signed by the Governor in 2005.

The subject parcel is encumbered by other easements, including a perpetual easement granted to the applicant in 1970 and recorded in Liber 6957, page 401.

As part of the planned expansion of the adjacent industrial park owned by a private entity, HECO plans to relocate an existing 12kV distribution line onto the adjacent Kapaa Quarry Road. The proposed relocated power line will cross over a portion of the subject State parcel before returning to the power grid covered by the perpetual easement mentioned above. Therefore, HECO requests the issuance of another perpetual easement covering the subject area.

However, it is the current position of Land Division to only recommend term easements for utility purposes.

Department of Planning and Permitting and Division of State Parks have no comment on the subject request. Division of Aquatic Resources, Department of parks and Recreation, and Department of Facility Maintenance, and Office of Hawaiian Affairs have not responded to a request for comment before the deadline.

Board of Water Supply requested that HECO adjust the alignment of the proposed easement to maintain both horizontal and vertical clearance from an existing 36-inch waterline. HECO revised the easement as outlined in red on Exhibit A3.

Division of Forestry and Wildlife (DOFAW), by its response dated February 22, 2024 (**Exhibit C**), questioned the potential impacts of the subject easement, including artificial lighting, nighttime construction, and permanent lighting, on the protected State and Federally listed seabirds. HECO has engaged in consultation with DOFAW and received a response from DOFAW on July 25, 2024 noting that “with the implementation of the avoidance and minimization actions [HECO] provided as part of the proposed project and responses to [DOFAW] concerns, along with the incorporation of these addition recommendations, we believe the project will not adversely affect listed species”.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

HECO also requested an immediate construction and management right-of-entry to facilitate the construction of the requested improvement.

There are no other pertinent issues or concerns. Staff recommends the Board authorize the issuance of the requested easement and right-of-entry.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Hawaiian Electric Company, Inc. covering the subject area for utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of construction right-of-entry permit to Hawaiian Electric Company, Inc. covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Delegate to the Chairperson authority to approve any continuation or renewal of the right of entry for additional one-year periods for good cause shown; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson *KSM*

RT



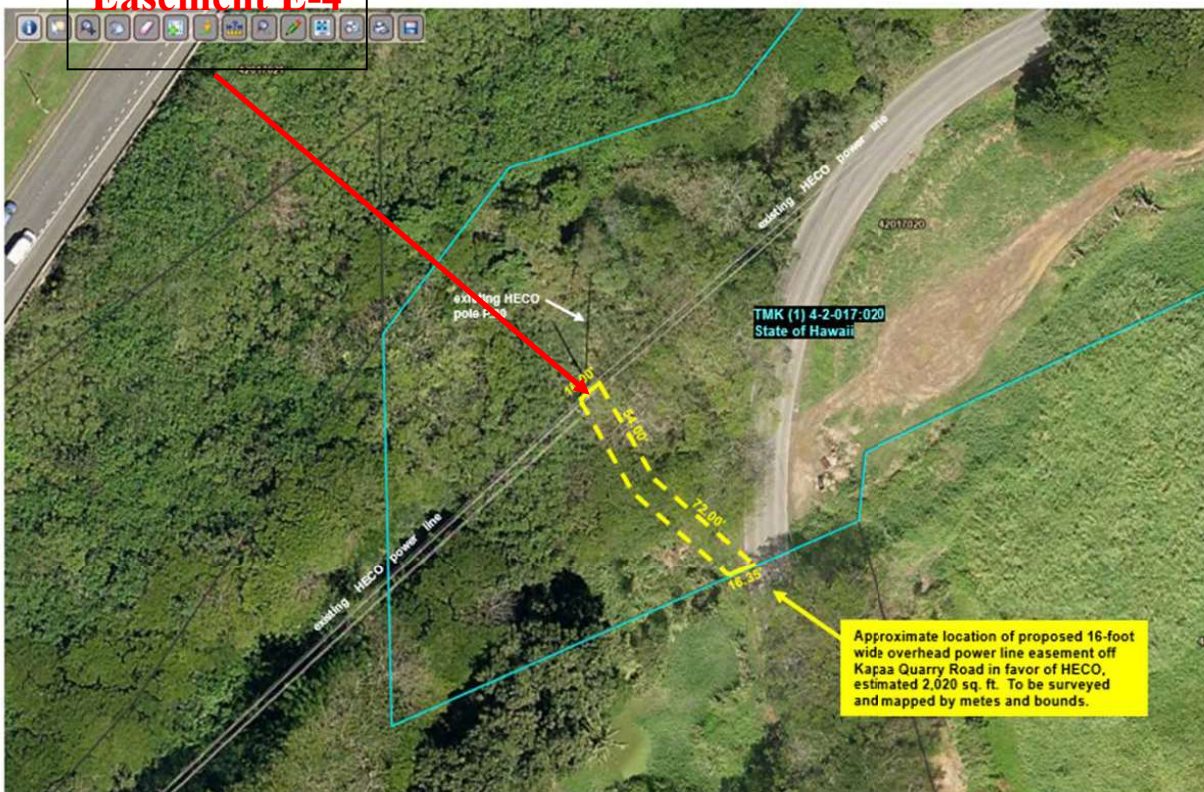
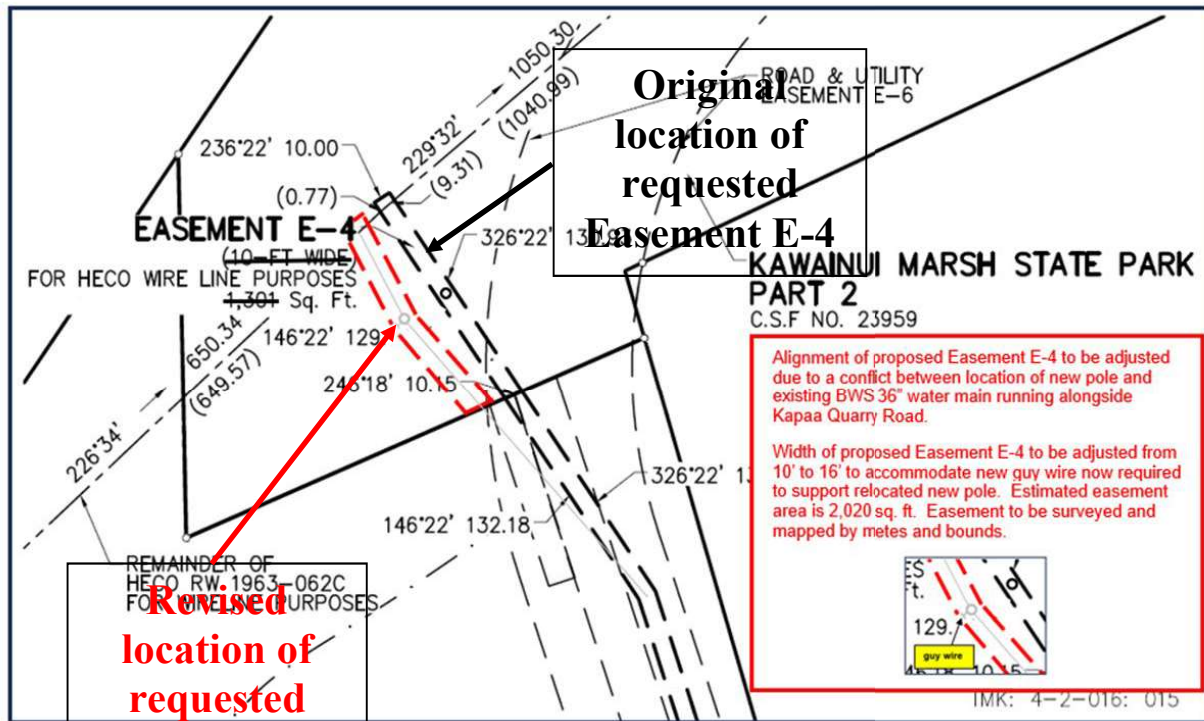
TMK (1) 4-2-017: portion of 020

EXHIBIT A1



**(1) 4-2-017: portion of 020
Subject Location**

EXHIBIT A2



EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Grant of Term, Non-Exclusive Easement to Hawaiian Electric Company, Inc.

Reference No.: PSF 23OD-132

Project Locations: Kailua, Koolaupoko, Oahu, TMK (1) 4-2-017: portion of 020

Project Description: The request is to issue a term easement for utility purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rules Section 11-200.1-15 and -16 and the exemption list for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Part 1, Item No. 39 that states, "creation or termination of easement, covenants, or other rights in structures or land."

Cumulative Impact of Planned Successive Actions in Same Place Significant? Staff believes that there would be no significant cumulative impact.

Action May Have Significant Impact on Particularly Sensitive Environment? Staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties: Agencies as noted in the submittal.

Analysis: Staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

EXHIBIT B

Recommendation:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

February 29, 2024

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
DEAN D. UYENO
ACTING 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

Log no. 4370

MEMORANDUM

TO: BARRY CHEUNG, District Land Agent
Land Division

FROM: LINDSEY NIETMANN, Acting Wildlife Program Manager
Division of Forestry and Wildlife

SUBJECT: Division of Forestry and Wildlife Comments for the Land Board's Submittal Regarding Request for Grant of Term, Non-Exclusive Easement for Utility Purposes in Kailua, Koolaupoko, on O'ahu

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received the draft Land Board Submittal regarding the Hawaiian Electric Company, Inc. (Hawaiian Electric) request for Easement for Utility Purposes in Kailua, Koolaupoko, on the island of O'ahu; TMK (1) 4-2-017: portion of 020. The request is for Easement E-4 adjacent to Kawainui Marsh State Park and is approximately 1,301 square feet in area. The character of use would include the right, privilege, and authority of Hawaiian Electric to construct, use, maintain, repair, replace, and remove electrical transmission lines poles, guy wires and anchors over, under, and across State owned land, including the right to trim and keep trimmed any trees in the way of the appliances and equipment for a term of 65 years. The subject parcel is encumbered by other easements, including a perpetual easement granted to the applicant in 1970 and recorded in Liber 6957, page 401. As part of the planned expansion of the adjacent industrial park, Hawaiian Electric plans to relocate an existing 12kV distribution line onto the adjacent Kapa'a Quarry Road. The proposed relocated power line will cross over a portion of the subject State parcel before returning to the power grid covered by the perpetual easement covering the subject area. Therefore, Hawaiian Electric requests the issuance of another perpetual easement covering the subject area. It is the current position that Land Division would only recommend term easement for utility purposes.

The State listed 'ōpe'ape'a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup-rearing season (June 1 through September 15). During this period, woody plants greater than 15 feet (4.6 meters) tall

EXHIBIT C

should not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

The current proposed Hawaiian Electric distribution line relocation project falls within State land and runs through important flyways for protected State and Federally listed seabirds such as the 'ua'u or Hawaiian Petrel (*Pterodroma sandwichensis*) and the 'a'o or Newell's Shearwater (*Puffinus newelli*), and the indigenous 'ua'u kani or wedge-tailed shearwater (*Ardenna pacifica*) protected by the Migratory Bird Treaty Act (MBTA). Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledging season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/>

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai'i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

These listed seabirds have been documented to collide with power lines throughout the Main Hawaiian Islands, including O'ahu. Based on a 2021 scientific study on the Hawaiian island of Kaua'i in which Travers et al. analyzed the number of detected grounded 'ua'u and a'o, in relation to the number of observed powerline collisions, it is speculated that only a small fraction of seabirds is found after they have collided with powerlines and fall to the ground. The data indicates that dedicated ground searches by trained personnel underestimate the number of powerline collisions due to seabirds flying or gliding outside of the search area, the dense vegetation and rugged terrain hiding downed birds, as well as the environment being extremely tough to traverse for effective recovery. This resulted in an underestimation of total collisions by 78-88%, equating to thousands of birds in this particular study. These findings indicate that the magnitude to which powerline collisions cause substantial injury and death in seabird species on the Hawaiian islands is most likely vastly underestimated¹. Therefore, a proposed project like this one to move a distribution line, especially in proximity to Kawainui Marsh State Park, should use the precautionary principle to avoid and minimize the potential impact on these protected species.

¹ Travers, M. S., S. Driskill, A. Stemen, T. Geelhoed, D. Golden, S. Koike, A. A. Shipley, H. Moon, T. Anderson, M. Bache, and A. F. Raine. 2021. Post-collision impacts, crippling bias, and environmental bias in a study of Newell's Shearwater and Hawaiian Petrel powerline collisions. *Avian Conservation and Ecology* 16(1):15

The State endangered pueo or Hawaiian Short-eared owl (*Asio flammeus sandwichensis*) could potentially occur in the project vicinity. Pueo are most active during dawn and dusk twilights. Remove and exclude non-native mammals such as mongoose, cats, dogs, and ungulates from the nesting area. Minimize habitat alterations and disturbance during pueo breeding season. Pueo nest on the ground and active nests have been found year-round. Before any potentially disturbing activity like clearing vegetation, especially ground-based disturbance, DOFAW recommends a qualified biologist conduct surveys during crepuscular hours and walk line transects through the area to detect any active pueo nests. If a pueo nest is discovered, notify DOFAW staff, minimize time spent at the nest, and establish a minimum buffer distance of 100 meters from the nest until chicks are capable of flight.

State-listed waterbirds such as ae'o or Hawaiian stilt (*Himantopus mexicanus knudseni*), 'alae ke'oke'o or Hawaiian coot (*Fulica alai*), or 'alae 'ula or Hawaiian gallinule (*Gallinula chloropus sandvicensis*), could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the O'ahu Branch DOFAW Office at (808) 973-9778 and establish a buffer zone around the nest.

With State and Federally protected seabirds, waterbirds, and the pueo transiting and or nesting the broader habitat area in which the project site is overlapping, DOFAW requests that Hawaiian Electric perform a radar and visual survey within the seabird breeding season to determine the use of the project area as a flight corridor for protected seabird species. We also strongly recommend that you install LED or reflective flight diverters on the power lines in efforts to minimize potential collisions. Furthermore, with the known high risk for these specific species colliding with powerlines leading to potential injury and death, we recommend that Hawaiian Electric provides an assessment of the potential long-term impacts that the movement of the distribution line from the Industrial Park to the nearby Kapa'a Quarry Road, will have on protected transiting seabirds and waterbirds who reside in Kawainui Marsh State Park. This is recommended to be determined through a post-construction acoustic monitoring protocol implemented by a qualified biologist for at least one full breeding season (Feb-Nov). Please consult DOFAW for further insight into the recommended avoidance, minimization, and survey protocols. Depending on the results of the post-construction acoustic monitoring survey and the measured magnitude of the impact as well as the measured likelihood of risk, an HCP may be appropriate to issue Hawaiian Electric an authorized Incidental Take License with the State of Hawai'i as well as an Incidental Take Permit with the U.S. Fish and Wildlife Service.

DOFAW recommends using native plant species for landscaping that are appropriate for the area; i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to www.plantpono.org for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid 'Ōhi'a Death), vertebrate and invertebrate pests (e.g., Little Fire Ants, Coconut Rhinoceros Beetles, etc.), or invasive plant parts (e.g., Miconia, Pampas Grass, etc.) that could harm our native species and ecosystems. We recommend consulting the O'ahu Invasive Species Committee (OISC) at (808)

266-7994 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* is found on the islands of O'ahu, Hawai'i Island, Maui and Kaua'i. On July 1, 2022, the Hawai'i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O'ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes a) entire dead trees, b) mulch, compost, trimmings, fruit and vegetative scraps, and c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to freshwater, near-shore waters, and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Kathrine Cullison, Programmatic Habitat Conservation Planning Coordinator, at kathrine.cullison@hawaii.gov.

Sincerely,

Lindsey Niemann

LINDSEY NIEMANN
Acting Wildlife Program Manager