

Amendment to the Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan

On November 3, 2011, Kaheawa Wind Power, LLC submitted a request to the U.S. Fish and Wildlife Service (“Service”) and the Hawaii Department of Land and Natural Resources (“DLNR”) for an amendment to Incidental Take Permit TE-118901-0 and Incidental Take License ITL-08, respectively (collectively, the “Permits”). The requested amendment (the “ITP/ITL Amendment”) would reduce the take authorized under the Permits for the Hawaiian petrel and the Newell’s shearwater (the “Seabirds”) and remove the Notably Higher Take scenario for the Seabirds from the Permits. Upon approval of the ITP/ITL Amendment, conforming changes to the Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan (“HCP”) will be needed. This document (the “HCP Amendment”) reflects the revisions needed to conform to the ITP/ITL Amendment. This HCP Amendment also revises the HCP to reduce take under the Higher Take scenario and remove the Lower Take scenario for the Seabirds.

Revisions to HCP

Upon the effective date of the ITP/ITL Amendment, the following changes will be deemed incorporated into the HCP. Please note that, prior to the ITP/ITL Amendment, two errata pages have been incorporated into the HCP. Where applicable, the following changes include references to the errata pages.

I. HCP Section V

1. The first full paragraph of HCP Section V p.42 will be amended to read as follows:

There is also the possibility of unavoidable, accidental vehicle strikes of downed birds by maintenance personnel. During construction the possibility also exists for birds to collide with the crane, which is comparable in height to the turbine towers. Based on the above analyses, Kaheawa Wind Power estimates that the incidental take permit should allow for up to one adult or recently fledged bird of each species to be taken per year of project operation. In addition to the direct take, the potential for indirect take due to the loss of eggs or nestlings is estimated at 0.5 individual per year, i.e., approximately half of the direct take will also result in an indirect take. This take applies to the entire project, including all 20 turbines combined over an entire year of operation. Accordingly, the Incidental Take License (ITL) proposed by DLNR will allow the take of up to 25 individuals over the 20-year term of the ITL for the Hawaiian petrel and up to 4 individuals over the 20-year term of the ITL for Newell’s shearwater, subject to all applicable ITL conditions.

2. The second full paragraph of HCP Section V. p. 42 will be amended to read as follows:

This plan addresses take of 38 Hawaiian petrels and 8 Newell's shearwater over the 20-year term. As stated in Special Condition #3, the incidental take authorized by the ITL can be increased provided that mitigation has been implemented such that benefits to the species outweigh the losses as detailed in the HCP. As further stipulated in Special Condition #4 and #5, incidental take of either species exceeding a running average of two per fiscal year, or greater than five in any one fiscal year, requires the development and implementation of adaptive management strategies approved by DLNR and USFWS and reviewed by the Endangered Species Recovery Committee in accordance with the HCP.

3. The third full paragraph of HCP Section V p. 42 will be amended as follows:

There is a low risk of adverse population or cumulative impacts for the Baseline levels of adjusted take for the two seabird species in part because the take is very small relative to their estimated populations. For example, total population estimates for the Hawaiian Petrel, based on observations of birds at sea and birds flying inland on Kaua'i, range from several thousand to 34,000 birds. For the Newell's Shearwater, population estimates range between 57,000 and 115,000, with roughly 80 percent of the world's population nesting on Kaua'i (Ainley et al 1997). As previously noted, West Maui breeding populations are suspected for both species but have not been confirmed; hence there are no published estimates of numbers or population trends for this location. Although Hawaiian Petrels have been documented flying over the project area, Newell's Shearwaters have not (Cooper and Day 2004a).

4. The first full paragraph of HCP Section V. p. 43 will be amended as follows:

Levels of adjusted take may present a greater risk for local West Maui populations (if they exist), although the take would still be small compared to the two species' overall populations. To ensure there are no adverse population or cumulative impacts, adaptive management measures have been included in the mitigation plan to address the effects of the higher take scenarios. In the unlikely event that Higher adjusted take does occur, the adaptive management provisions include, (i) increased management and protection of colonies on West Maui, (ii) efforts to protect colonies on East Maui and other islands if opportunities to protect West Maui colonies are insufficient to offset take and (iii) implementation of alternative measures on West Maui and elsewhere (e.g., shielding of urban lighting, expansion of SOS programs, etc.) if warranted.

5. The first bullet point of HCP Section V p. 60 will be amended as follows:

Funding at the Higher Take levels will be made available if take occurs at a lower annual level, but cumulatively reaches these levels before mitigation has been provided.

II. HCP Section VI

1. The second full paragraph of HCP Section VI p. 76, as amended by errata p. 2, will be amended to read as follows:

The applicant is offering other financial assurances as well. Kaheawa Wind Power will provide a rolling letter of credit (LC) or bond in the initial amount of \$500,000, which will be available to fund mitigation in the unlikely event of a revenue shortfall or, in the worst case scenario, bankruptcy. The LC will name the DLNR as beneficiary. The LC will have a term of four years, and will be automatically renewed prior to expiration, unless it is determined to no longer be necessary by the USFWS and DLNR. In the event of a revenue shortfall or bankruptcy the LC could be drawn upon by the DLNR to fund any outstanding mitigation obligations of the project. This LC would be in addition to the \$1.5M LC already in place for DLNR to fund turbine removal and site restoration in the event of bankruptcy. During the first 10 years of operation, the value of the LC or bond would increase to \$1,000,000 in the event that unmitigated take at the Notably Higher Take level occurs for the Nēnē or Hawaiian hoary bat, either annually or as a cumulative total. At the end of year 10, and in subsequent years, if the \$1,000,000 bond is in place, the applicant, in cooperation with the DLNR and USFWS, will conduct an assessment to determine whether the value of the bond is sufficient to assure funding over the remaining years of the HCP. The assessment will be based upon an accounting of the amount spent to date, relative to the maximum \$3.76M amount. The maximum amount of the bond would be the difference between these two, although the actual amount would be determined by DLNR and USFWS at the time the assessment is made.

2. The third full paragraph of HCP Section VI p. 76, as amended by errata page p. 2, is revised as follows:

The applicant will establish an additional, single bond or letter of credit for the value of the three contingency funds (\$384,000). The amount of the bond will increase at 2.5% annually over the term of the HCP. If contingency funds are used, the amount of the bond would be reduced accordingly, and the net amount would continue to increase at a 2.5% annual rate. USFWS, DLNR and KWP shall review the amounts of the two bonds during the annual meetings held pursuant to Chapter VI, Implementation, of the HCP. If circumstances warrant, in accordance with the HCP, the amounts of the bonds may be decreased, increased or eliminated during the annual meetings. If unmitigated Notably Higher Take for the Nēnē or Hawaiian hoary bat is occurring, either during any given year or cumulatively, then KWP shall increase the amount of the \$500,000 Mitigation Bond to \$1 million. If unmitigated Notably Higher Take continues to occur for the

Nēnē or Hawaiian hoary bat during Year 11 or thereafter, USFWS, DLNR and KWP agree during the annual meeting to evaluate the adequacy of the Mitigation Bond based on the amount of mitigation funds already spent in relation to the total mitigation obligation of \$3.76 million for the project. If USFWS/DLNR believe an increase in the Mitigation Bond is warranted after the amount of the Mitigation Bond has been increased to \$1 million pursuant to this paragraph, USFWS/DLNR may require an increase in the Mitigation Bond amount. USFWS/DLNR will consider the following factors in deciding whether such an increase is warranted: length of time the project has operated under the Notably Higher Take scenario for the Nēnē and Hawaiian hoary bat; difference between the unspent portion of the total project mitigation obligation of \$3.76 million and \$1 million; financial condition of KWP; and KWP's history of performance of mitigation obligations.

3. The first full paragraph of HCP Section VI p. 77 will be amended as follows:

Given the strength of the Project's structure and robust financial position, the fact that Kaheawa Wind Power has raised all of the funds to construct the Project, this solution will be much more than adequate to meet the minimum issuance criteria, even in the event of Notably Higher Take of the Nēnē and Hawaiian hoary bat and Higher Take of the Hawaiian petrel and Newell's shearwater.

III. HCP Appendix 10

1. The fourth column of HCP Appendix 10 p. 2 (Petrels and Shearwaters table) entitled "What if Take is Lower?" is removed.
2. The far right (sixth) column of HCP Appendix 10 p. 2 (Petrels and Shearwaters table) entitled "What if Take is Notably Higher?" is removed.

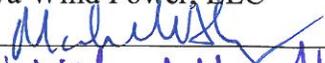
IV. HCP Appendix 11

1. The rows addressing the Seabirds on the fourth page of HCP Appendix 11 (listing mitigation measures for Seabirds under the Lower Take scenario) are removed.
2. The rows addressing the Seabirds on the last (eighth) page of HCP Appendix 11 (listing mitigation measures for Seabirds under the Notably Higher Take scenario) are removed.

<Signatures on following page>

EXECUTED to be effective as of the date the Service approves the ITP Amendment.

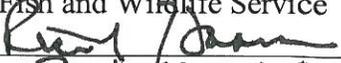
Kaheawa Wind Power, LLC

By: 

Name: Michael U. Alvarez

Title: Viu President

U.S. Fish and Wildlife Service

By: 

Name: RICHARD HAINAN

Title: DEPUTY REGIONAL DIRECTOR

COMMONWEALTH OF MASSACHUSETTS)
) ss.:
COUNTY OF SUFFOLK)

On this 29th day of March, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael U. Alvarez, the Vice President of
Kaheawa Wind Power, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his, signature on the instrument, the individual(s) or the person(s) upon behalf of which the individual acted, executed the instrument.

Linne M. Taylor
Notary Public

My commission expires:

December 2, 2016

