

PSLU Committee

From: Tamara A. Paltin
Sent: Tuesday, September 15, 2020 4:14 PM
To: PSLU Committee
Subject: Fwd: [EXTERNAL] Status of HCP and ITP at Honua'ula project, Maui

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From: Lucienne de naie <laluzmaui@gmail.com>
Sent: Tuesday, September 15, 2020 10:34:59 AM
To: Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Kelly King <ktk@biodiesel.com>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>
Subject: Fwd: [EXTERNAL] Status of HCP and ITP at Honua'ula project, Maui

Aloha For your information.

USFWS response on Section 106 consultation and HCP for the Honua'ula project that was discussed at the Sept 9 PSLU meeting.

It does not appear that USFWS suggested to Mr. Jencks that his project could simply remove the host plants for the endangered Manduca Moth and avoid any need for a Federally approved Habitat Conservation Plan (HCP), Incidental Take Permit (ITP) or Section 106 consultation process with cultural users of the land on impacts to historic resources. Mr. Jencks Sept 9 statements to the PSLU committee appear to have incorrectly portrayed that exchange with USFWS.

Mr. Jencks informed the Maui Planning Commission last year that the project had consulted with USFWS on the Habitat Conservation Plan (HCP) for the Preserve area specified in Change of Zoning Condition 27. He presented that plan and asked them to "adopt" the HCP and satisfy one part of Condition 27, which they did. Condition 27 does not "require" a HCP by name, but it does require a "preservation/mitigation plan" for the preserve area that is reviewed by USFWS and recommendations given by USFWS and others. The USFWS recommendation upon reviewing the original preservation/mitigation plan submitted by HP LLC in 2009 or so, was that a HCP and a "Incidental Takings permit" was recommended.

It appears that Mr Jencks recently announced unilaterally to USFWS, that it was HP LLC's intention, to withdraw from any agreement that would require a "takings permit" or a USFWS reviewed HCP. He apparently did this without any consultation with the local Pacific region USFWS office.

USFWS will keep us informed when the documents from Honua'ula partners come in.

Meanwhile, citizen surveys have shown that the endangered awikiwiki vine plants and their seed banks on the site do still survive, even with the current extremely dry conditions.

We will do our best to keep the public and the Council and the Planning Department /Public Works informed about the Conditions of Zoning compliance for the Honua'ula Project and look forward to presenting at the PSLU meeting on October 22.

Begin forwarded message:

From: "Bogardus, Michelle" <michelle_bogardus@fws.gov>
Subject: Re: [EXTERNAL] Status of HCP and ITP at Honua'ula project, Maui
Date: September 15, 2020 at 9:33:32 AM HST
To: Lucienne de naie <laluzmaui@gmail.com>
Cc: "Raymond, Anan" <anan_raymond@fws.gov>, "Pang, Benton" <Benton_Pang@fws.gov>

Aloha Lucienne,

I hope you and your family are well. Thanks for reaching out with these questions. I know Clare also reached out to Anan, so I'm including him on this email.

Here's what I know so far: Over the last several months, Honua'ula has conducted updates surveys for Blackburn's sphinx moth, yellow-faced bees and their host plants, as well as the 'āwikiwiki. Two weeks ago, we were informed by Honua'ula that they were intending to rescind their application for an Incidental Take Permit and the State's Incidental Take Licence based on the results of updated survey information and changes to their project description that would fully avoid adverse effects to listed species. As a follow up to that email, we responded asking them to submit a formal request to rescind their permit in writing and to include the biological justification for their determination in their request.

As of yesterday, we have not received their formal request. When we do, we will review the information they provide. Since applying for an Incidental Take Permit is a voluntary action, we do not have the authority to force them to continue the application process. However, if we disagree with their biological justification (i.e., we do not agree that the project is likely to fully avoid impacts to threatened and endangered species), we will let them know via formal letter and continue to recommend that they seek coverage under an Incidental Take Permit or further modify their project to adequately avoid impacts to listed species. Any take of a listed animal that occurs without an Incidental Take Permit would be subject to section 9 violations under the Endangered Species Act. While the federal Endangered Species Act does not provide protections for listed plants from private activities, the State Endangered Species Law does (HRS-195D).

So, what does all this mean for the section 106 process? At this point, until we receive the formal request to rescind their permit application - nothing. We will not alter our section 106 process unless their permit application is officially halted. If their request is formalized and their permit application rescinded, we would then conclude the section 106 process and NEPA process since we are no longer a permitting Federal agency. If this happens we would reach back out to all consulting parties that participated in the section 106 process and took valuable time to share with us their concerns and ideas about the project, as well as the history and cultural importance of the area.

I hope this information helps. If you would like early notification when if/when we receive their formal request, I can do my best to let you know. Until then, please let me know if you have any questions on the information I just shared and our process.

Many thanks,

Michelle

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Michelle D. Bogardus  
Maui Nui & Hawai'i Island Team Manager  
Pacific Islands Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
300 Ala Moana Blvd., Room 3-122  
Honolulu, Hawai'i 96850

Office Phone: 808.792.9473  
Email: [Michelle\\_Bogardus@fws.gov](mailto:Michelle_Bogardus@fws.gov)

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**From:** Lucienne de naie <[laluzmaui@gmail.com](mailto:laluzmaui@gmail.com)>  
**Sent:** Monday, September 14, 2020 9:27 PM  
**To:** Bogardus, Michelle <[michelle\\_bogardus@fws.gov](mailto:michelle_bogardus@fws.gov)>  
**Subject:** [EXTERNAL] Status of HCP and ITP at Honua'ula project, Maui

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Aloha Michelle and USFWS staff,

We have recently heard that the proposed Honua'ula project has been determined to need no HCP, etc.

Please find our questions concerning that information. We look forward to any clarification your office can provide.

We have not seen any new Biologicals study for the HP lands, but our 2020 observations show that awikiwiki seed banks and at least one awikiwiki plant have been observed this year, in spite of the relative dryness of the year to date.

In appreciation,

Lucienne de Naie, Sierra Club Maui

Lucienne de Naie  
[laluzmaui@gmail.com](mailto:laluzmaui@gmail.com)  
808 214-0147