

**TESTIMONY OF THE
OFFICE OF THE MAYOR
COUNTY OF KAUA'I**

**TO THE SENATE COMMITTEE
ON INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008**

February 4, 2008
1:15 p.m.

TESTIMONY ON SENATE BILL NO. 2176, AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS AND MAKING AN APPROPRIATION FOR BALL FIELD AND RECREATIONAL FACILITY LIGHT SYSTEM RETRO-FIT, HABITAT CONSERVATION PLAN, AND WAILUA WASTEWATER TREATMENT PLANT UPGRADES FOR THE COUNTY OF KAUA'I

TO THE HONORABLE LORRAINE R. INOUE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Bryan J. Baptiste, Mayor, testifying on behalf of the County of Kaua'i (County).

The County supports Senate Bill No. 2176.

The Bill appropriates approximately \$2,460,000 for capital improvement projects in the County. The requests are \$1,210,000 to retro-fit lights in our stadium, ball fields, and other recreational facilities, \$200,000 to develop a habitat conservation plan to protect endangered birds, and \$1,050,000 for upgrades to the Wailua Wastewater Treatment Plant.

This year, as in prior years, we have not come to you with a long list of requests. In collaboration with the Kaua'i County Council, we have reviewed the many needs of the County, and request assistance to address important issues for which we believe there is a State and County nexus. In addition, we are not asking you to fund these projects in their entirety. The County will match or exceed the State allocation for the projects.

The lighting retro-fit and habitat conservation plan are required to comply with legal requirements protecting endangered and threatened seabirds on the island. We are fortunate to have the State's largest population of endangered sea birds, primarily because we do not have some of the natural predators, such as the mongoose, that exist on other islands. In certain areas, our facility lighting endangers fledgling sea birds. They distract and disorient the birds that often fly circling patterns around the lights until they become

exhausted and fall to the ground causing injury, death or leave them exposed to predators such as dogs or cats. The lighting retro-fit would reduce that condition and help protect the sea birds, and allow the County to avoid the considerable federal fines and penalties. The federal government imposes fines of up to \$25,000 for each bird killed, depending on species. If we are not able to adequately address the current lighting conditions we may be forced to cease all usage of these facilities at night. These facilities are primarily sports facilities used not only by the community but also by the State Department of Education in the support of high school athletics and other school functions.

While the proposed light retro-fit program is a multi-year project, we intend to use the requested funds and the County match in fiscal year 2008-09 to address lights at Vidinha Stadium, Hanapepe Stadium, Isenberg Park softball field and basketball court, Peter Rayno Park softball field, and the Lihue County Park tennis court.

In order to avoid federal fines and penalties the County of Kaua'i must also develop a Habitat Conservation Plan (HCP). The requested \$200,000 would be used to hire a biologist and environmental planner to develop that plan and assist us through the process gaining federal approval. With approximately 70 percent of the world's remaining population of the Newell's Shearwater nesting on Kaua'i it is obvious why we are the focus of federal compliance efforts. The lighting retro-fit and habitat conservation plan will result in significant benefits to the environment and the community, and we humbly ask for your support for this project.

The measure also requests \$1,050,000 for upgrades to the Wailua Wastewater Treatment Plant (WWTP). This plant serves largest population center on island, and was originally developed in the 1960s, with major expansion in the 1970's. Because the Wailua WWTP has been operating for many years, much of the equipment is at the end of its useful life and in need of renovation or upgrades. There has also been growth within the service area, such that presently the plant is nearing its capacity for reliably handling the wastewater flow. The County has been forced to advise potential developers that there is insufficient capacity at the WWTP for their projects.

The community served by this plant has been identified as having several possible sites for affordable housing, including planned affordable housing projects by the County and private developers. The Department of Hawaiian Homelands is a major land-owner of property near the WWTP, and has recently issued a request for proposals for development in the area. Expansion and upgrades of the Wailua WWTP is a crucial step in allowing affordable housing projects sponsored by private developers, the County and DHHL to proceed.

In order to reliably serve existing customers and allow new connections for proposed development, near term improvements in excess of \$14 million are required to this plant. Within the last 2 years the County completed approximately \$4.5 million in Capital Improvements for needed repairs within the Wailua wastewater system. This is in addition to our ongoing planning, operation and maintenance expenses. With County funds, we are initiating design for the next phase of improvements. Our customer base is very small, and

in addition to the Wailua WWTP, the County operates three other WWTPs, each of which has its own Capital Improvement needs. It is clear that our small customer base cannot support the level of expenditures needed in the near term to address the urgent needs of the Wailua WWTP upgrades.

The County's usual source of wastewater system Capital Improvement funds, the State's SRF loan program, is committed to support the City and County of Honolulu, and we have been informed that we should not expect to be able to draw from this fund until 2011. It is unclear how much SRF funding will be available for our projects in the future, however it is clear that the upgrades to the Wailua WWTP are needed in the near term in order to facilitate the development of urgently needed affordable housing on Kaua'i. We ask for your assistance in helping the County make the first steps toward the needed plant improvements.

We thank the Committee for the opportunity to present testimony on this matter.



RE SB 2176

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Crimes Section
P. O. Box 23985
L'Enfant Plaza Station
Washington, DC 20026-3985

Telephone (202) 305-0321
Facsimile (202) 305-0397

May 2, 2007

Attn. Margaret H. Sueoka
Office of the County Attorney
County of Kauai
Mo'ikeha Building
4444 Rice Street, Suite 220
Lihue, Hawaii 96766
Fax: 808-241-6319

VIA TELEFAX AND U.S. MAIL

Re: Bird Deaths

Dear Ms. Sueoka:

By way of introduction, I am a prosecutor with the Environmental Crimes Section, Environment and Natural Resources Division of the U.S. Department of Justice. The United States Fish and Wildlife Service has referred to this office for further investigation and prosecution information concerning, among other things, alleged illegal conduct of the County of Kauai. Specifically, the conduct involves the unauthorized taking of birds protected pursuant to the the Endangered Species Act, specifically Newell's Shearwaters (*Puffinus auricularis newelli*), due to the operation of artificial lights in facilities or on properties owned, operated or maintained by the County.

Based on the information I have reviewed to date, it is appropriate for me to formally notify you that the County of Kauai, as a result of the deaths of such birds allegedly due to the County's operations, is a subject of a federal criminal investigation. The investigation is being conducted by the U.S. Fish and Wildlife Service and this office, with the cooperation of the U.S. Attorney's Office for the District of Hawaii.

The purpose of this letter is to invite an authorized representative of the County and its attorney to meet with me, at a mutually convenient time, to discuss a possible early resolution of this matter. I expect to be in Honolulu on other business the week of May 14 and would be available to meet on either May 15 or 16. Please have the County's attorney contact me as soon as possible and no later than May 8, 2007, if the County wishes to discuss an early resolution of this matter, whether on those dates or at some other mutually convenient place and time in May. If some response is not received by this office by close of business on May 8, 2007, we will proceed with the investigation and consider any appropriate charges accordingly. If you would like further information regarding the parameters of such a meeting, please have the County's attorney call me at the number above.

I look forward to speaking with the County's attorney and other duly authorized representative and resolving this matter expeditiously.

Sincerely,



**Elinor Colbourn
Senior Trial Attorney
Environmental Crimes Section**

**cc: Ron Johnson, AUSA
David Uhimann, Chief, ECS**