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# DEPT. COMM. NO. 83

Ref. No. P-13843

January 22, 2013

The Honorable Donna Mercado Kim, President-Elect  
Hawaii State Senate  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear President-Elect Kim:

**Subject: Senate Resolution No. 86 (2012) Urging the Department of Land and Natural Resources, Department of Health, and Office of Planning to Streamline the Permitting Process for the Restoration of Hawaiian Fishponds**

Senate Resolution No. 86, adopted by the Hawaii State Legislature on April 10, 2012, urges the Department of Land and Natural Resources, Department of Health, and Office of Planning, to streamline the permitting process for the restoration of Hawaiian fishponds. The resolution requested the Office of Planning to consider "a coastal zone management program consistency statement for Hawaiian fishponds," and to submit "recommendations and draft legislation for a streamlined permit process."

The Office of Planning, through its Coastal Zone Management (CZM) Program, is the final authority on one regulatory rubric affecting Hawaiian fishpond activities: CZM federal consistency review pursuant to 16 USC §1456. Streamlining measures for CZM federal consistency reviews are currently established in federal regulations and are implemented by the Hawaii CZM Program. In response to SR 86, the Hawaii CZM Program has already initiated the process of establishing a CZM federal consistency general concurrence for minor federal permit activities for Hawaiian fishpond restoration, repair, maintenance, and reconstruction in the State of Hawaii. Therefore, state legislation is not necessary for streamlining the CZM federal consistency process for Hawaiian fishpond restoration.

The Coastal Zone Management Act (CZMA) federal consistency regulations, 15 CFR Part 930, establish procedures for states to issue general concurrences allowing similar minor work in the same geographic area to avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource (15 CFR §930.53(b)). Federal permit activities which satisfy the conditions of the

general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D.

The Hawaii CZM Program has developed a general concurrence for fishpond restoration activities and has initiated the federal approval process. The general concurrence was sent to the U.S. Army Corps of Engineers on November 15, 2012, for consultation purposes, as required by federal regulations. The Corps responded on January 9, 2013, that there were no objections to the general concurrence. The general concurrence and a copy of our consultation letter are attached. After receiving comments from the Corps, the general concurrence must be submitted to the National Oceanic and Atmospheric Administration (NOAA), Office of Coastal and Resource Management (OCRM), for approval as a "routine program change" for the Hawaii CZM Program. This approval process involves the publication of two public notices in newspapers statewide; the first public notice at the time of submittal to NOAA and the second public notice after receiving approval from NOAA, announcing the availability of the general concurrence. We estimate that the time frame for receiving approval of the general concurrence to be in February 2013.

Federal consistency general concurrence procedures (15 CFR §930.53(b)) require that the applicable federal permit activities and the relevant conditions be included in the Hawaii list of federal permits subject to federal consistency review. The U.S. Army Corps of Engineers permit is the relevant federal permit for Hawaiian fishpond restoration activities. The Hawaii federal permit list includes the following U.S. Army Corps of Engineers permit authorities:

- Rivers and Harbors Act of 1899, Sections 9, 10, and 11
- Marine Protection, Research and Sanctuaries Act of 1972, Section 103
- Federal Water Pollution Control Act of 1972 and amendments, Section 404

Therefore, the Hawaii CZM Program is amending the federal permit list to include the general concurrence provisions for Hawaiian fishponds.

In developing the general concurrence, the Office of Planning relied on its past involvement and efforts with Hawaiian fishpond restoration. The Hawaii CZM Program contracted a series of studies in 1989 and 1990, through the Department of Land and Natural Resources entitled, "Hawaiian Fishpond Study," which was prepared by DHM Inc. The "Hawaiian Fishpond Study" was initially completed for the Islands of Oahu, Molokai, and Hawaii in June 1989, and another study for the Islands Hawaii, Maui, Lanai, and Kauai was published in September 1990. In-depth studies were also completed in September 1990 for the Islands of Hawaii, Maui, Lanai, and Kauai. In January 1992, Governor John Waihe'e appointed the Task Force on Molokai Fishpond Restoration, comprised of individuals from government, the private sector, and the Molokai community. The Office of Planning, Hawaii CZM Program, was a member of the Task Force which published a report in May 1993. In an effort to

The Honorable Donna Merced  
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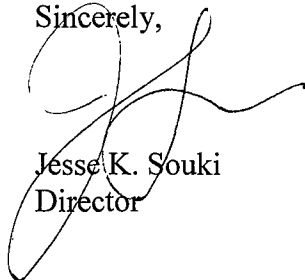
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streamline the regulatory process for fishpond restoration, the Hawaii CZM Program issued a federal consistency concurrence on October 23, 1996, for the U.S. Army Corps of Engineers General Permit (GP 94-1) for Restoration, Repair, Maintenance, and Reconstruction of Fishponds on Molokai, Hawaii.

Recommendation

Based on our experience in dealing with the regulatory requirements for Hawaiian fishpond restoration, we do not believe that permit requirements are, or have been, a deterrent. Factors such as cost, economic viability, and labor, have been impediments to the widespread restoration and reuse of Hawaiian fishponds. We recommend that an existing agency with expertise in fisheries be utilized to coordinate fishpond restoration statewide. The coordinator would facilitate permitting and promote the economic benefits to ensure the viability of the restored fishponds. As noted above, the coordinator or coordinating agency would not have to be newly created but could be assigned to an existing agency in this matter, such as the Aquaculture Development Program within the Department of Agriculture.

Sincerely,



Jesse K. Souki  
Director

Attachments

- c: The Honorable Neil Abercrombie, Governor
- The Honorable Brickwood Galuteria, Chair
- Senate Committee on Tourism and Hawaiian Affairs
- Mr. David Kaiser, OCRM
- Mr. Steve Frano, OCRM
- Department of Health, Clean Water Branch
- Department of Land and Natural Resources,  
Office of Conservation and Coastal Lands
- Historic Preservation Division
- Department of Agriculture,  
Aquaculture Development Program