

State of Hawai‘i  
 Department of Land and Natural Resources  
 Division of Forestry and Wildlife  
 1151 Punchbowl Street, Room 325  
 Honolulu, HI 96813

Incidental Take License Number: ITL-32  
 Date of Issue:                       
 Valid Until: 50 years from date of issue

INCIDENTAL TAKE LICENSE

To accompany:

**Safe Harbor Agreement for Introduction of Endangered Orangeblack Hawaiian Damselfly  
 (*Megalagrion xanthomelas*) to a Conservation Area on the Island of Lāna‘i**

The Board of Land and Natural Resources hereby grants permission, under the authority of Hawaii Revised Statutes §195D-2, 195D-4(h), 195D-22 and all other applicable laws, to:

**Lāna‘i Resorts, LLC dba Pūlama Lāna‘i  
 733 Bishop Street, Suite 200  
 Honolulu, HI 96813**

For take, if such taking is incidental to, and not the purpose of, carrying out of an otherwise lawful activity, of the following species:

Common Name	Scientific Name	No. of Specimens	Location
Pinapinao (orangeblack Hawaiian damselfly)	<i>Megalagrion xanthomelas</i>	All – with damselfly habitat as a surrogate for amount of take	Por. of TMK 2-4-9- 002-061* and Other Areas**
Ae‘o (Hawaiian stilt)	<i>Himantopus mexicanus knudseni</i>	Three (3)	Por. of TMK 2-4-9- 002-061*
‘Alae ke‘oke‘o (Hawaiian coot)	<i>Fulica americana alai</i>	Three (3)	Por. of TMK 2-4-9- 002-061*
Nalo meli maoli (assimulans yellow- faced bee)	<i>Hylaeus assimulans</i>	All	Por. of TMK 2-4-9- 002-061* and immediately adjacent areas

\*The portion of TMK 2-4-9-002-061, identified as the “Conservation Area” in the Safe Harbor Agreement, is located in the Kalulu ahupua‘a, roughly southeast of the intersection of Hawai‘i Route 440 “Mānele Road” and an unnamed rural access road locally referred to as Hi‘i Road or Hi‘i Flats Trail.

\*\*All TMK numbers listed in Appendix B of the Safe Harbor Agreement, except the portion of TMK 2-4-9-002-061 identified as the Conservation Area, are identified as “Other Areas” in the Safe Harbor Agreement. Cumulatively, the “Conservation Area” and “Other Areas” are referred to herein as the “Enrolled Property.”

## I. GENERAL CONDITIONS

1. This Incidental Take License (“License”) only authorizes Lāna‘i Resorts, LLC doing business as Pūlama Lāna‘i (“Licensee”) to incidentally take of *Megalagrion xanthomelas*, *Himantopus mexicanus knudseni*, *Fulica americana alai*, and *Hylaesus assimulans* (“Covered Species”) on the lands owned or otherwise controlled by the Licensee on the island of Lāna‘i, Hawai‘i at the time this License is issued, pursuant to the “Safe Harbor Agreement for Introduction of Endangered Orangeblack Hawaiian Damselfly (*Megalagrion xanthomelas*) to a Conservation Area on the Island of Lāna‘i” dated [REDACTED] (“Agreement”).
2. This License is valid for species protected by federal law only if accompanied by valid federal authorization from the United States Fish and Wildlife Service (“USFWS”). Permit number for the required permit must be provided:  
USFWS permit no. [REDACTED]
3. This License shall become valid upon completion of the following:
  - i. A legal representative of Pūlama Lāna‘i has acknowledged understanding and agreement to abide by its conditions by signing two copies of this License; and
  - ii. Both copies of the signed license must be returned to the Division of Forestry and Wildlife. Upon approval by the Chairperson of the Board of Land and Natural Resources, a copy of the License will be returned to the applicant.
4. The rights and obligations under this License shall run with the land for the term agreed to in the Agreement.
5. The rights to incidental take provided under this License shall survive the expiration, suspension, rescission or sooner termination of the Agreement.
6. Notwithstanding any other law to the contrary, the Board of Land and Natural Resources may suspend or rescind this license if the Board determines that the Licensee, or its successors, have breached their obligations under this License and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the goals of the Agreement will be achieved.
7. Persons in violation of the terms and conditions of this License and/or related or appropriate laws may be subject to criminal and or administrative penalty under §183D-5, 183D-21, 195D-9, and 195D-27, Hawaii Revised Statutes, and §13-124-8, Hawaii Administrative Rules, or as otherwise provided by law, and/or revocation of this permit.

## II. SPECIAL CONDITIONS

1. The allowable incidental take authorized by this License is all *Megalagrion xanthomelas* (“damselflies”) introduced to the Enrolled Property, and their progeny. The allowable incidental take authorized by this License for the other three Covered Species are as listed on the first page of this License.
2. In the event that there are fewer than three adult damselflies observed on each of three consecutive surveys, the Licensee will determine reasons for decreased abundance (e.g., water quality, predation, and other parameters) with assistance from the Megalagrion Working Group.<sup>1</sup>
3. When situations arise that pose a threat of adverse impacts to one or more of the Covered Species on the Enrolled Property, and the Licensee, DLNR, or USFWS have actual knowledge of such situations, then the parties shall confer within 10 working days for the purpose of developing measures to address such situations as indicated below:
  - a. With any unanticipated take of any Covered Species on all Enrolled Property, the Licensee will review avoidance and minimization measures with the Megalagrion Working Group<sup>1</sup>; and
  - b. With any unanticipated take of any Covered Species in the Conservation Area, the Licensee will cease activities that may have contributed to take and modify activities in consultation with the USFWS and DLNR to avoid future take.
4. Without any limitation on the general nature of the incidental take authorized under this Agreement, the Licensee shall not be held responsible for the death or injury of damselflies resulting from a *force majeure* event. The term *force majeure* means events that are beyond the reasonable control of, and did not occur through the fault of, negligence of the Licensee, including but not limited to: sudden actions of the elements, including fire, excessive rainfall, and drought. Should a force majeure event occur that results in injury or death of damselflies, the Licensee should report such an event to DLNR and USFWS within 10 working days of the occurrence.
5. DLNR will be notified 30 calendar days in advance of any planned land use practice (e.g., controlled burning, fencing, construction, tilling, development etc.) which reasonably anticipates, in its sole judgment, will result in the incidental take of any Covered Species on the Enrolled Lands; and provide DLNR with the opportunity to capture and/or relocate any damselflies or other Covered Species that is present at the land use site.
6. DLNR will be notified at least 10 calendar days prior to any planned land use activity occurring during the Hawaiian stilt and Hawaiian coot’s breeding season (approximately March through September) that the Licensee reasonably anticipates could adversely affect any adult, nest or goslings on the Enrolled Property. DLNR shall at its discretion, in consultation with USFWS, determine if any Covered Species should be captured and/or relocated prior to any of Licensee’s planned activities.

7. DLNR will be notified within 10 calendar days of any mortalities, injuries, or disease of the Covered Species observed on the Enrolled Property. Injured individuals or carcasses shall be handled according to guidelines in the Agreement.
8. The feeding of cats on or near the Conservation Area is prohibited.
9. The take of the Covered Species will be incidental to an otherwise lawful activity or, if take is purposeful as defined in the Code of Federal Regulations, it must be necessary for the implementation of this Agreement.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Dawn N.S. Chang, Chairperson and Member  
Board of Land and Natural Resources

The undersigned has read, understands, and hereby agrees to abide by the General Conditions and the Special Conditions stipulated in this license.

Lāna‘i Resorts, LLC dba Pūlama Lāna‘i

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

Lāna‘i Resorts, LLC notarized signature is attached and made part of this document

CC:  
DOFAW  
DOCARE  
USFWS Pacific Islands Office, Honolulu