EARTHJUSTICE

August 21, 2025

Via Electronic Mail

Attn: Endangered Species Recovery Committee (ESRC)
Division of Forestry and Wildlife
1151 Punchbowl Street, room 325
Honolulu, Hawai'i 96813

Re: Agenda Item 2: 2025 Draft Kaheawa Wind Power I Habitat Conservation Plan

Dear Members of the ESRC,

Earthjustice submits this testimony on agenda item 2, 2025 Draft Kaheawa Wind Power I ("Kaheawa I") Habitat Conservation Plan ("HCP"). While Earthjustice fully supports wind energy as a non-fossil-fuel alternative, it is vital that Hawai'i wind farms adhere to the requirements set forth in the Endangered Species Act ("ESA") and Hawai'i state law to ensure that such renewable energy production avoids take of ESA-listed endangered and threated species to the "maximum extent practicable." To comply with the requirements of both state and federal law, Kaheawa I's HCP must implement low wind speed curtailment ("LWSC") with cut-in speeds of 6.5 meters per second ("m/s") or higher, as recommended by this committee's bat guidance for minimizing 'ōpe'ape'a take.[1]

The ESA and Hawai'i law both provide that an incidental take permit can be issued only if an HCP, among other things, minimizes and mitigates the impacts of any incidental take of endangered and threatened species to the "maximum extent practicable." 16 U.S.C. § 1539(a)(2)(B)(ii); *see also* Haw. Rev. Stat. § 195D-4(g). The ESRC's bat guidance provides, based on the best available science, that "a cut-in speed of 6.5 m/s may be the most effective" in minimizing 'ōpe'ape'a take.[2] The guidance further provides that "higher cut-in speeds up to or exceeding 6.5 m/s [are] necessary when the cumulative take of bats poses a risk to island populations."[3] Due to the cryptic nature of the 'ōpe'ape'a and the difficulty in monitoring them,

[1] *See* Endangered Species Recovery Committee ("ESRC") and State of Hawai'i DLNR, Division of Forestry and Wildlife, *Hawaiian Hoary Bat Guidance for Wind Energy Project Habitat Conservation Plans* ("Bat Guidance"), Third Edition Draft, at 29 (Feb. 2024), https://dlnr.hawaii.gov/wildlife/files/2024/03/Draft-HHB-Guidance_Revised_2024-ESRC-for-comment.pdf (last visited Aug. 21, 2025).

[2] *Id.*

[3] *Id.*

it is generally accepted that it is not feasible to determine an actual population estimate.[4] ESRC guidance suggests assuming that the population of ʻōpeʻapeʻa on Maui is not more than 1,500, but the accuracy of this population assessment is questionable as it is based on "extremely limited information."[5] Furthermore, there has been no island wide survey conducted for ʻōpeʻapeʻa on Maui, and estimates of population size and trends are unknown. Draft HCP at 29.

Kaheawa I's draft HCP fails to comply with the mandate to minimize take to the maximum extent practicable. The draft HCP proposes implementing LWSC cut-in speeds of 5.5 m/s annually, from February 15 through December 15, as the facility has done since 2014. Draft HCP at 34, 72. It is well established, however, that a 5.5 m/s cut-in speed results in significant harm to ʻōpeʻapeʻa at Kaheawa I, with five documented ʻōpeʻapeʻa fatalities at the facility since it implemented LWSC with a cut-in speed of 5.5 m/s. *See* Draft HCP at 33-34. Additional fatalities and other take undoubtedly have occurred but have not been documented.[6]

The take of any number of ʻōpeʻapeʻa poses a "risk to island populations," especially when population sizes and trends are completely unknown. Rather than maintain the status quo with cut-in speeds that have continued to cause ʻōpeʻapeʻa take, Kaheawa I's cut-in speeds must be raised to 6.5 m/s or higher. Nowhere in its draft HCP has Kaheawa I carried its burden to establish that raising its cut-in speed would be impracticable.[7] That other wind facilities on Maui implement higher cut-in speeds confirms that this take minimization measure is practicable. As an example, Auwahi Wind, another Maui wind farm, implements LWSC with cut-in speeds of 6.9.[8]

To comply with the ESA and HRS chapter 195D, Kaheawa I must likewise implement LWSC with cut-in speeds of 6.5 m/s or higher to minimize its ʻōpeʻapeʻa take to the maximum extent practicable. Insisting that Kaheawa I implement the maximum practicable minimization of ʻōpeʻapeʻa take is particularly vital given the uncertainties regarding the effectiveness of take

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[4] *Id.* at 9-10.

[5] *Id.* at 21.

[6] *Id.* at 15 ("Fatality monitoring may not detect all bats killed or wounded at wind farms as some individuals may: 1) fall outside the searched area; 2) be removed by scavengers before being detected; 3) deteriorate beyond recognition prior to detection; or 4) remain undiscovered by searchers even when present.")

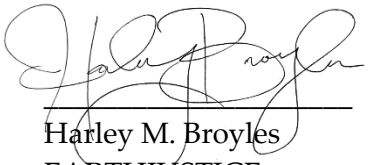
[7] The ESRC's guidance requires that wind facilities include in their HCPs "a detailed description of all considerations used (including economic) to develop a cut-in speed for curtailment." *Id.* at 29.

[8] Tetra Tech for Auwahi wind Energy LLC, *Auwahi Wind Farm Habitat Conservation Plan Final Amendment*, at 1-1 (2019) https://dlnr.hawaii.gov/wildlife/files/2020/01/Auwahi-Wind-HCP-Amendment-FINAL_7-29-2019-BLNR-Amendment.pdf (last visited Aug. 20, 2025).

mitigation measures.[9] Far better to avoid take whenever practicable in the first place than to try to offset harm to this critically imperiled species using measures of questionable efficacy.

Mahalo for the opportunity to submit testimony on this matter.

Respectfully submitted,



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[9] ESRC, *Bat Guidance* at 34.