



August 22, 2025

Via Electronic Mail

Board of Land and Natural Resources
blnr.testimony@hawaii.gov

Re: August 22, 2025 Board Meeting; **Opposition to Agenda Items C.1 and C.4**

Dear Chair Chang and members of the Board,

Earthjustice submits this testimony in opposition to the proposals for the Board to hold public hearings on two draft Habitat Conservation Plans (“HCPs”)—the Second Draft Kaua‘i Island Utility Cooperative (“KIUC”) HCP (agenda item C.1) and the HCP for Kaheawa Wind Power I (agenda item C.4)—before the Endangered Species Recovery Committee (“ESRC”) has made “recommendations, based on a full review of the best available scientific and other reliable data,” “as to whether or not they should be approved, amended, or rejected.” HRS § 195D-25(b)(1). Holding public hearings at this time would waste the Board’s limited resources and would impose unnecessary burdens on the public. We urge the Board to hold off on deciding whether to schedule a public hearing on each of these draft HCPs until after the ESRC makes its recommendation whether, as a scientific matter, the HCP should be approved or disapproved.

When the Legislature amended Chapter 195D in 1997 to allow the Board to issue incidental take licenses, it sought to ensure that permission to kill and otherwise harm Hawai‘i’s imperiled species would be granted only when the best available information supports the conclusion that a proposed HCP would “minimize and mitigate the impacts of the take” “to the maximum extent practicable.” *Id.* § 195D-4(g)(1). The Legislature charged the experts on the ESRC with assessing whether a proposed HCP meets that exacting legal requirement. If the ESRC concludes that, based on the best available information, a proposed HCP falls short and, consequently, recommends disapproval, that conclusion is binding as a matter of science. If “the majority of the endangered species recovery committee recommend[s] disapproval,” the Board is prohibited from entering into an HCP that authorizes incidental take unless, as a political matter, the HCP “is approved by a two-thirds majority vote of both houses of the legislature.” *Id.* § 195D-21(b)(1)(C).

In light of the statutory procedures for HCP approval, it makes no sense for the Board to proceed with a public hearing on a draft HCP unless and until the ESRC has issued its recommendations whether, as a scientific matter, the HCP meets the applicable legal standards. The Board would spend a lot of time and money setting up a public hearing “on the affected island” (Kaua‘i for the KIUC HCP and Maui for the Kaheawa Wind Power I HCP), *id.* § 195D-4(g), and the public would have to mobilize and take the time to show up to testify, when the

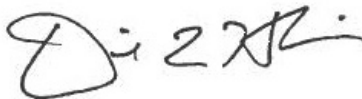
ESRC might later determine that all that time and money was expended for naught because the HCP is scientifically unjustified and cannot be approved. Holding the public hearing before the ESRC issues its recommendation puts the cart before the horse.

The ESRC has never met to evaluate the scientific adequacy of the Second Draft KIUC HCP. The ESRC reviewed an earlier draft of this HCP over two years ago (on February 28 and March 1, 2023) and raised serious questions at that time regarding whether its conclusions about take minimization and mitigation were scientifically justified. *See* Summary Meeting Minutes, available at https://dlnr.hawaii.gov/wildlife/files/2024/04/Final_-ESRC_Meeting_Minutes_02_28_2023_03_01_2023.pdf. Since that time, KIUC has lost access to the Upper Limahuli Preserve at the National Tropical Botanical Garden, which was a key component of KIUC's mitigation strategy, calling into question whether the current draft HCP satisfies legal requirements. *See* June 2025 Draft KIUC HCP at 1-15 & n.5. The ESRC should review the adequacy of KIUC's revised draft HCP at a formal meeting (at which the public, including scientific and other technical experts, can provide input) and make its recommendations before the Board makes any decision about whether to proceed with a public hearing.

As for the Kaheawa Wind Power I HCP, the ESRC is meeting simultaneously with this Board meeting to discuss the draft HCP's adequacy. *See* <https://dlnr.hawaii.gov/wildlife/files/2025/08/August-22nd-2025-ESRC-meeting-agenda.pdf>. Earthjustice is attending that meeting to raise concerns about the adequacy of the proposed take minimization measures. Before the Board commits to a public hearing, with the associated demands on the Board's and the public's limited resources, it should wait to hear whether the ESRC recommends approval of this draft HCP.

Thank you for your consideration of our testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. L. Henkin".

David L. Henkin
Attorney