



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**LUIS P. SALAVERIA**  
**Director**

Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON JUDICIARY**

Tuesday, March 22, 2016  
2:00 p.m.

State Capitol, Conference Room 325  
in consideration of  
**SB 2906, HD1**

**RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997.**

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB 2906, HD1, which removes the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the state's threatened and endangered species. The HD1 requires the Department of Land and Natural Resources (DLNR) to submit to the Legislature a biennial report that details the number and kinds of safe harbor agreements approved and for which approval is pending as well as summary information regarding these safe harbor agreements. DBEDT defers to DLNR on the new reporting requirements proposed by HD1.

Five existing wind energy facilities in Hawaii currently utilize habitat conservation plans and incidental take licenses to allow for the legal taking of protected wildlife species during normal facility operations, while providing a mechanism to help conserve the impacted species. Additional wind farms currently being developed in Hawaii may also be pursuing these tools.<sup>1</sup> Providing for the continued use of these tools could support the development of new renewable energy facilities.

As this measure concerns the conservation of threatened and endangered species, we defer to DLNR on these matters.

Thank you for the opportunity to offer these comments on SB 2906, HD1.

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<sup>1</sup> According to filings with the state Office of Environmental Quality Control, the Na Pua Makani Wind Project in Kahuku, Oahu, and the Lalamilo Wind Farm Repowering Project in South Kohala, Hawaii, have potential to impact protected species and may be pursuing habitat conservation plans and incidental take licenses.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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CONSERVATION AND COASTAL LANDS  
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LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
JUDICIARY

Tuesday, March 22, 2016  
2:00 PM  
State Capitol, Conference Room 325

In consideration of  
SENATE BILL 2906, HOUSE DRAFT 1  
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997

Senate Bill 2906, House Draft 1 proposes to remove the sunset date on the use of new safe harbor agreements (SHA), habitat conservation plans (HCP), and incidental take licenses (ITL) as recovery options for conserving and protecting the State's threatened and endangered species. This measure would also require a biennial report. **The Department of Land and Natural Resources (Department) strongly supports this measure with suggested amendments.**

The Department is requesting an amendment to remove SECTION 2 regarding reporting requirements for SHAs. Pursuant to Section 195D-26, Hawaii Revised Statutes (HRS), the Department prepares annual reports on the status of the issuance of ITLs for endangered, threatened, proposed, and candidate species; and the condition of the endangered species trust fund each fiscal year. The additional biennial reporting requirement for SHAs would be redundant to efforts already conducted by the Department.

The Department also notes that under Section 195D-24, HRS, all information submitted to the Department pursuant to a SHA shall be kept confidential until notice of the agreement is published in the periodic bulletin of the Office of Environmental Quality Control. The requirement for reporting on SHAs for which approval is pending may contradict the intention of the confidentiality currently provided.

SHAs and HCPs are proving to be invaluable tools in the process of recovering the State's endangered species while supporting economic development opportunities. With the increase in development throughout the State and broad partnerships to protect endangered species and their habitats, it is vital that these provisions be made a permanent addition within the State's

endangered species law by removing the sunset date on the approval of new HCPs, SHAs, and ITLs.

With Hawaii being the endangered species capitol of the nation and take of endangered and threatened species being illegal under State and Federal law, HCPs, SHAs, and ITLs have provided flexibility in the law while concurrently addressing recovery needs of listed species. Without the option of HCPs, SHAs, and ITLs, many development projects would be subject to illegal take of threatened or endangered species, and private landowners would lose incentives and assurances to create, restore, or manage wildlife habitat that species can use to increase their populations.

Pursuant to Chapter 195D, HRS, the Department may only issue a temporary ITL as part of an HCP after consultation with the Endangered Species Recovery Committee (ESRC), comprised of dedicated scientists/biologists and technical experts from the State, Federal and private sectors, provided, among other details, that:

- (1) The applicant shall minimize and mitigate the impacts of the take;
- (2) The HCP shall increase the likelihood that the species will survive and recover;
- (3) The HCP takes into consideration the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed;
- (4) The cumulative impact of the activity, which is permitted and facilitated by the license, provides net environmental benefits; and
- (5) The take is not likely to cause the loss of genetic representation of an affected population of any endangered, threatened, proposed, or candidate plant species.

The approval process to receive a temporary ITL from the Department is a very rigorous process, requiring a thorough review by the ESRC to ensure that the biological requirements and that the net recovery benefit criteria are met, in concurrence with a public review and comment period in order to assure the science behind the analysis and assessments are valid, based on the most current scientific methods available, and the plan is in full compliance with state and federal law. The process normally takes over two years as often the ESRC recommends amendments to the plan before it is recommended to the Department for approval.

Since 1997, the Department has approved eleven HCPs throughout the State. The approved plans include development projects, such as highway expansion, wind farms, housing and infrastructure development projects, and a solar telescope. The approved projects have provided over seven million dollars to the endangered species trust fund for conservation projects as well as millions more through private funding channels for the implementation of the mitigation plans. For example, as part of requirements under an approved HCP, two state-of-the-art predator-proof exclusion fences have been built with private funds to protect 10 acres of breeding habitat for endangered Hawaiian Petrels (*Pterodroma phaeopygia sandwichensis*) and Newell's Shearwaters (*Puffinus auricularis newelli*) in the mountainous interior of West Maui, adjacent to Makamaka`ole Stream. The Department is currently processing applications for 14 additional HCPs for development projects throughout the State, such as a utility infrastructure project, additional wind farms, and a housing subdivision.

Since 1997, the Department has also approved six SHAs with private landowners. An SHA provides private landowners the opportunity to contribute some of their private holdings to endangered species recovery efforts without putting them at risk of future infractions of the endangered species laws, as the recovering species thrive in the new habitats provided on these private lands. These approved agreements have facilitated endangered species recovery with new establishments of Nēnē (*Branta sandvicensis*) populations through the reintroduction of Nēnē to Molokai and parts of Maui. The Department is currently processing additional SHAs with landowners throughout the State.

The Department appreciates the opportunity to provide these comments.

## **Testimony to the Committee Judiciary**

**Tuesday, March 22, 2016 2 PM  
Conference Room 325, State Capitol  
RE: SENATE BILL 2906 HD1**

### **RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997**

Chair Rhoads, Vice Chair San Buenaventura and Members of the Judiciary Committee:

Sempra US Gas & Power **strongly supports SB2906HD1.**

Without passage of the pending legislation, DOFAW's ability to issue ITLs through HCPs or SHAs will expire in 2017.

We recently completed the state HCP process when acquiring an ITL for the Auwahi Wind Farm on the island of Maui in 2012 and continue to work with agency staff in ensuring compliance with the HCP and ITL. Based on our experience with this process, we believe that having a permanent mechanism in Hawaii state law could provide for a more efficient HCP and ITL process. Program certainty could encourage the development of clarifying rules or guidelines for the HCP permitting and implementation process.

Sempra is committed to assisting Hawaii in achieving its goal of 100% renewable energy generation. A permanent state approved SHA/HCP/ITL mechanism is essential in the planning process for future wind and potentially other renewable projects.

Thank you for the opportunity to testify.



**Conservation Council  
for Hawai'i**

*Hawai'i's voice for wildlife*

*Kō Hawai'i leo no nā holoholona lōhiu*



Testimony Submitted to the House Committee on Judiciary

Hearing: Tuesday, March 22, 2016 2 pm  
Conference Room 325

Comments on SB 2906 HD 1 Relating to Section 13 of Act 380, Session Laws of Hawai'i 1997

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee.

Aloha. Conservation Council for Hawai'i has concerns about SB 2906 HD 1, which removes the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species, and requires a biennial report.

This type of bill comes up every time the current sunset date is about to expire. It is better to have a sunset date.

With all due respect, the legislature is not providing enough funding for Department of Land and Natural Resources to recover endangered and threatened species, or to prevent species from being listed as endangered or threatened to begin with. Furthermore, the legislature is nickel and diming important DLNR and other state programs to control invasives species and protect watersheds, which also provide habitat for many of imperiled species mauka.

Allowing for the take of endangered and threatened species while not providing enough funding to the state agencies charged with recovery endangered and threatened species is not in the best interest of the targeted species. At best, required habitat conservation plans mitigate the harmful impacts of ungulates, weeds, diseases, and other factor harming the targeted species. This situation is not in the public interest, and more needs to be done by the State to conserve imperiled species.

Please do a better job of protecting our native species and their habitats by providing more funding species and habitat conservation. Ask your colleagues to stop nickel and diming these important programs.

Mahalo nui loa for the opportunity to testify.

*Marjorie Ziegler*

Marjorie Ziegler

Telephone/Fax: 808.593.0255 | email: [info@conservehi.org](mailto:info@conservehi.org) | web: [www.conservehi.org](http://www.conservehi.org)  
P.O. Box 2923 | Honolulu, HI 96802 | Office: 250 Ward Ave., Suite 220 | Honolulu, HI 96814

President: Julie Leialoha | Vice President: Koalani Kaulukukui | Secretary: Wayne Tanaka

Treasurer: Ryan Belcher | Directors: Rick Barboza | Anne Huggins Walton

Executive Director: Marjorie Ziegler | Administrator: Jonnetta Peters





**LATE**

## KAMEHAMEHA SCHOOLS®

### TESTIMONY TO THE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

By A. Nāmaka Whitehead, Ecologist

Kamehameha Schools – Community Engagement and Resources

Tuesday, March 22, 2016

2:00 p.m.

Conference Room 325

Hawaii State Capitol

Good afternoon Chair Rhoads and Vice Chair San Buenaventura and members of the House Judiciary Committee,

#### **Strong Support of SB2906, HD 1, Relating to the Environment.**

As an institution dedicated to the prudent stewardship of agricultural and conservation lands, Kamehameha Schools (KS) is **strongly supportive of SB2906, HD 1**, which removes the sunset date on new approvals and issuances of Safe Harbor Agreements (SHA), Habitat Conservation Plans (HCP), and Incidental Take Licenses (ITL) as recovery options for conserving and protecting the State's threatened and endangered species. All are important and necessary tools for the recovery of threatened and endangered (listed) species in Hawai'i.

SHA and associated ITL encourage private landowners to voluntarily manage their lands to the benefit of listed, proposed, and candidate species, at the same time providing assurances that future legal property uses can be carried on as a result of these conservation efforts.

HCP and associated ITL provide the only available means for the State to authorize limited take of listed species for otherwise lawful activities, such as renewable energy generation and food production. HCP serve to minimize and mitigate negative impacts to listed species incidental to such activities, while also providing an important source of private funding for the conservation of listed species and their habitats, such as seabird and waterbird habitat protection, bat habitat enhancement, and reestablishment of rare plant populations.

Without the option of SHAs, HCPs, and ITLs, Hawai'i would lose a valuable source of funding for listed species and habitat recovery, many projects that might have qualified for an ITL would be subject to civil and criminal penalties for incidental take of listed species,

and private landowners would lose incentives and assurances to create, restore, and/or improve habitats for listed species.

Mahalo for the opportunity to provide testimony in support of this measure that allows these important tools to be made a permanent addition within the State's endangered species law.





LAND USE RESEARCH  
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408  
Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)

**LATE**

March 21, 2016

Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice Chair  
Committee on Judiciary

**Strong Support of SB 2906, HD1, Relating to Section 13 of Act 380, Session Laws of Hawaii 1997 – Endangered Species. (Removes the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species. Requires a biennial report.)**

**JUD Hearing: Tuesday, March 22, 2016, 2:00 p.m., Conf. Rm. 325**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **strong support for SB 2906**, as LURF members have been long-time stewards of Hawaii's lands and native endangered and threatened species, and have, together with the State Department of Land and Natural Resources (DLNR), entered into safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

**SB 2906, HD1.** This measure would remove the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

**LURF's Position.** LURF **strongly supports SB 2906, HD1**, which removes the sunset date on new approvals and issuances of safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species; and requires a biennial report.

The current State law provides the flexibility for DLNR to work cooperatively with its federal counterparts, private landowners, and other government agencies to deal with the complexities of the endangered species situation in Hawaii, and find proactive, workable solutions that will protect and conserve our endangered species while allowing for responsible development activities and economic growth to continue.

According to DLNR, in 1997, the Legislature expanded recovery options in the State Endangered Species Act (State ESA) by establishing a process for the preparation and implementation of habitat conservation plans and safe harbor agreements, while providing for additional incentives to private landowners to conserve endangered species. In addition, the Legislature inserted a five-year, sunset date (July 1, 2002) for the approval of habitat conservation plans and safe harbor agreements and issuance of incidental take licenses. Subsequently, Act 145 of the 2012 Regular Session extended the sunset provision through June 30, 2017.

DLNR has confirmed that to date, eleven habitat conservation plan and six safe harbor agreements have been approved under state law. The DLNR is currently processing fifteen habitat conservation plans and safe harbor agreement applications and several others are in the early planning stages.

In order to achieve the State's goal of 100 percent renewable energy generation by the year 2045, a major part of the State's diverse renewable energy portfolio, will include wind energy generation. According to DLNR, virtually every large wind energy project will require state-approved habitat conservation plans to authorize incidental take associated with their operations, it is essential that the provisions under the law for that authorization be assured beyond a five-year period.

Safe harbor agreements and habitat conservation plans are proving to be invaluable tools in the process of recovering the State's endangered species. It is important that these provisions within the State ESA be made permanent by removing the sunset date and providing public and private landowners with the message that the Legislature is committed to maintaining responsible solutions to conserve Hawaii's endangered species.

For the above reasons, LURF **supports SB 2906, HD1**, and respectfully urges your favorable consideration of this measure.

Thank you for the opportunity to present testimony regarding this matter.