

Victorino, in his official capacity as Mayor of the County of Maui; and Maui Electric Company, Limited (collectively, “Defendants”) as follows:

I. INTRODUCTION

1. On October 31, 2018, Defendants announced their plan to begin installing approximately 4,800 light-emitting diode (“LED”) streetlight fixtures across the County (the “Streetlights Project”) in November 2018.

2. These new LED streetlights threaten harm to imperiled seabirds and sea turtles due to their high blue light content. The lights mimic the moonlight and attract and disorient seabirds (*i.e.*, the threatened Newell’s shearwater, endangered Hawaiian petrel, and declining wedge-tailed shearwater) and sea turtles (*i.e.*, the critically endangered hawksbill turtle and threatened Hawaiian green sea turtle). Fledging seabirds circle the lights until they fall to the ground from exhaustion and become vulnerable to starvation, dehydration, strikes by automobiles, and predation. Turtle hatchlings are drawn away from the ocean toward the lights, where they become vulnerable to the same threats. Adult female turtles avoid nesting on shores with bright lights, including those with a high blue light content.

3. For years, wildlife experts and community members warned the Department and Director of the environmental dangers of lighting with high blue light content, and informed them of the availability of less harmful alternatives.

4. Ignoring the abundant evidence that using lighting with high blue light content threatens significant, adverse environmental impacts, the Director, on behalf of the Department, exempted the Streetlights Project from environmental review, which violated the Hawai‘i Environmental Policy Act (“HEPA”), Hawai‘i Revised Statutes chapter 343.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Haw. Rev. Stat. §§ 343-7, 603-21.5, 603-21.9, 604A-2, Haw. Rev. Stat. ch. 632, and article XI, section 9 of the Hawai'i Constitution.

6. Venue properly lies in this judicial circuit pursuant to Haw. Rev. Stat. § 603-36(5) because the claims for relief arose in this circuit and because it is the location where the Defendants are domiciled.

III. PARTIES

Plaintiffs

7. Plaintiff Hawai'i Wildlife Fund is a Hawai'i non-profit corporation committed to the protection of Hawai'i's native wildlife through research, education, and advocacy. Hawai'i Wildlife Fund's staff, supporters, volunteers, and researchers intensively use coastal areas around Maui for snorkeling, swimming, stand-up paddling, SCUBA diving, whale watching, sea turtle surveys, reef surveys, educating visitors about reef ecology, and conducting naturalist training for students. Hawai'i Wildlife Fund has been involved in an ongoing Hawksbill Sea Turtle Recovery Project in the coastal areas around Maui, which includes surveys to locate turtles and involves spending several hours in the water per survey to swim line transects, record data, and take photographs. Hawai'i Wildlife Fund has also been involved in a Honu Watch program in the coastal areas around Maui to educate the community on the basking behavior of the threatened Hawaiian green sea turtle to ensure that the basking turtles are not disturbed. Hawai'i Wildlife Fund's work also includes a Maui Marine Debris Removal Project at Ka'ehu Beach on the northwest coastline of Maui, which is one of the relatively few nesting beaches for the Hawaiian green sea turtle in the main Hawaiian islands.

8. Hawai'i Wildlife Fund has participated extensively in past efforts to work with County government officials to minimize the harmful effects of outdoor lighting on wildlife, including sea turtles and seabirds. In the early 2000s, Hawai'i Wildlife Fund's executive director, in her official capacity, served on the former Subcommittee on Outdoor Lighting Standards for the Maui County Council. The Subcommittee played a substantial role in developing the County's outdoor lighting standards, Maui County Code Chapter 20.35, which became law and effective in January 2007. Several Hawai'i Wildlife Fund staff, supporters, volunteers, and researchers provided testimony and input on the development of the outdoor lighting standards, emphasizing the need to include measures to mitigate threats to wildlife, including sea turtles and seabirds.

9. To protect its interests in hawksbill turtles, Hawaiian green sea turtles, and other marine life, Hawai'i Wildlife Fund filed a lawsuit in 2012 to preserve these species' habitat and foraging grounds from the County of Maui's Lahaina Wastewater Reclamation Facility, which discharges treated wastewater to the nearshore ocean waters off Kahekili Beach in west Maui.

10. Plaintiff Conservation Council for Hawai'i ("CCH") is a non-profit citizens' organization based in Hawai'i with approximately 5,000 members in Hawai'i (including in Maui County), the United States mainland and foreign countries. CCH is the Hawai'i affiliate of the National Wildlife Federation, a non-profit membership organization with over 5.8 million members and supporters nationwide.

11. CCH's mission is to protect native Hawaiian species, including threatened and endangered species, and to restore native Hawaiian ecosystems for future generations. In this capacity, CCH and its members frequently submit testimony to the Hawai'i State Legislature on various bills relating to the protection of the environment, testify before administrative agencies

on proposed regulations relating to species conservation, communicate with Hawai'i's congressional delegation and staff, review and comment on environmental impact statements, support scientific studies and research, engage in field work to survey Hawai'i's natural resources, participate in service projects to protect native species and ecosystems, prepare educational materials, including an annual wildlife poster featuring native Hawaiian flora and fauna, and publish a periodic newsletter (Kōlea, News from the Conservation Council for Hawai'i) discussing Hawaiian environmental issues. The group's 2013 newsletter describes the observation of Newell's shearwaters as "feel[ing] the pulse of Hawai'i." The group's 2010 wildlife poster, which CCH distributes free of charge to every public, charter, private and Native Hawaiian Language Immersion school in Hawai'i, features the Newell's shearwater.

12. With respect to Hawai'i's rare and endangered species, CCH and its members have worked to establish sanctuaries on each of the main Hawaiian Islands and have testified before the Hawai'i Natural Area Reserves System ("NARS") Commission for the expansion of these areas. CCH was involved in the creation of two NARS that protect important nesting and breeding habitat for Hawaiian petrels and Newell's shearwaters: Nakula on Maui and Hono o Nā Pali on Kaua'i. CCH also regularly submits comments to the Department of Land and Natural Resources on the size of NARS areas and the management of these areas. CCH and its members have regularly testified to the Hawai'i State Legislature in an effort to secure adequate, permanent funding for the NARS.

13. CCH and its members have advocated for increased efforts to remove and exclude feral sheep, goats, deer and pigs from state lands that are biologically-important to the Hawaiian petrel and Newell's shearwater, as feral ungulates eat seabird eggs and chicks and destroy the native vegetation the imperiled seabirds need to establish their nesting colonies. CCH and its

members also have advocated for increased efforts to remove alien vegetation that endangers native Hawaiian ecosystems that provide vital habitat for these imperiled seabirds.

14. CCH conducts educational programs about the seabirds that would be harmed by Defendants' Streetlights Project. As part of their Manu Kai (Seabird) Campaign, CCH educates children about Hawai'i's seabirds—including Hawaiian petrels, Newell's shearwaters and Wedge-tailed shearwaters—and the many threats that they face.

15. To protect its and its members' interests in Hawaiian petrels and Newell's shearwaters, CCH filed lawsuits in 2010 to protect these species from death and injury associated with the activities of the Kaua'i Island Utility Cooperative ("KIUC") and the St. Regis Princeville Resort, including, but not limited to, harm associated with attraction to bright lights at facilities owned and operated by those defendants. CCH's lawsuit against KIUC resulted in KIUC securing incidental take permit coverage for its harmful activities, while CCH's lawsuit against St. Regis culminated in a settlement pursuant to which the resort implemented measures to reduce seabird attraction, committed to secure incidental take permit coverage, and has made monthly contributions to fund projects to benefit the imperiled seabirds.

16. Since 2017, CCH has been involved in efforts, including litigation, to protect Hawaiian petrels and Newell's shearwaters from harm associated with the bright lights at the State of Hawai'i Department of Transportation's harbors and airports on Maui, Lāna'i, and Kaua'i.

17. CCH and its members have advocated increased protection for marine life, including support for a statewide ban on lay gillnets, which can drown green sea turtles, and establishment of marine protected areas, and have participated in beach clean-ups. CCH has also

produced a series of wildlife viewing interpretive signs to help protect marine species, including sea turtles and seabirds.

18. CCH members include wildlife biologists, Native Hawaiian practitioners, farmers, fishers, hunters, educators, artists, community leaders and others who study and enjoy native Hawaiian birdlife, including the Newell's shearwater, Hawaiian petrel, wedge-tailed shearwater, hawksbill turtle and green sea turtle. CCH members who live on the mainland visit the islands to observe and enjoy Hawai'i's native wildlife, including the seabirds and turtles threatened by Defendants' Streetlights Project. CCH brings this action on behalf of itself and its adversely affected members and staff.

19. Defendants' Streetlights Project and the resulting impacts to wildlife, including imperiled seabirds and sea turtles, have adversely affected and continue to adversely affect the environmental, aesthetic, recreational, scientific, and education interests of Hawai'i Wildlife Fund and CCH. Unless the relief requested herein is granted, Plaintiffs will continue to be irreparably injured by Defendants' Streetlights Project, as detailed below. Plaintiffs bring this action on behalf of themselves and their adversely affected members.

Defendants

20. Defendant Department of Public Works is an agency within the executive branch of the County of Maui and is charged with administering and enforcing the County's outdoor lighting standards, Maui County Code chapter 20.35.

21. Defendant David Goode is Director of the Department of Public Works and is named in his official capacity.

22. Defendant Michael P. Victorino is Mayor of the County of Maui and is named in his official capacity. The Mayor heads the executive branch of the County, which includes the Department and the Director.

23. Defendant County of Maui is a municipal corporation that includes the Department, the Director, and the Mayor.

24. The Department, Director, Mayor, and County are responsible for complying with HEPA. *See* Haw. Rev. Stat. §§ 343-2, -5. If ordered by the Court, Defendants have the authority and ability to remedy the harm inflicted by their continued failure to comply with their obligations under HEPA.

25. Defendant Maui Electric Company, Limited, is a corporation that was duly organized under the laws of the Territory of Hawai‘i, and now exists under and by virtue of the laws of the State of Hawai‘i. Maui Electric is named solely as a necessary party for relief. *See* Haw. R. Civ. P. 19.

IV. LEGAL FRAMEWORK

Hawai‘i Environmental Policy Act

26. HEPA is the cornerstone of the State’s statutory environmental protections. Its fundamental purpose is to ensure that State and County agencies fully and publicly examine the environmental impacts of their actions before those actions proceed.

27. HEPA establishes a framework for environmental review of nine categories of actions, including those actions that “[p]ropose the use of state or county lands or the use of state or county funds.” Haw. Rev. Stat. § 343-5(a)(1). HEPA defines “action” to mean “any program or project to be initiated by any agency or applicant,” and defines “agency” as “any department,

office, board, or commission of the state or county government which is a part of the executive branch of that government.” *Id.* § 343-2.

28. Whenever an agency proposes a covered action, the agency shall prepare an Environmental Assessment (“EA”) “at the earliest practicable time to determine whether an environmental impact statement shall be required.” *Id.* §§ 343-5(b). However, “if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may choose not to prepare an [EA] and instead shall prepare an environmental impact statement [(“EIS”)]. . . .” *Id.* § 343-5(b). Without preparation of at least an EA, “the agency and the public are not provided with the necessary information to determine the potential environmental significance of a proposed action.” *Kahana Sunset Owners Ass’n v. Cnty. of Maui*, 86 Hawai‘i 66, 71, 947 P.2d 378, 383 (1997).

29. HEPA allows for procedures pursuant to which actions may be exempted from the requirement to prepare an EA. *Id.* § 343-6(a)(2); Haw. Admin. R. § 11-200-8. These procedures, however, are “intend[ed] to exempt only very minor projects from the ambit of HEPA.” *Kahana Sunset*, 86 Hawai‘i at 72, 947 P.2d at 384.

30. HEPA’s implementing regulations contain eleven exempt classes and require each agency to develop a list of “specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and in [HEPA].” Haw. Admin. R. §§ 11-200-8(a), (d).

31. Determining that an action falls within one of the eleven exempt classes or within one of the agency’s specific exemptions, however, does not end the inquiry. HEPA mandates that an action may be deemed exempt only if the agency evaluates, reflects it considered whether, and concludes “the relevant exemption category can be applied because the activity

does not have a significant cumulative impact and it does not have a significant impact on a particularly sensitive environment.” *Umberger v. Dept. of Land & Natural Resources*, 140 Hawai‘i 500, 524, 403 P.3d 277, 301 (2017) (citing Haw. Admin. R. § 11-200-8(b)). HEPA further mandates that, before making an individual exemption determination, the agency must “obtain[] the advice of other agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.” *Umberger*, 140 Hawai‘i at 524, 403 P.3d at 301 (citing HAR § 11-200-8(a)). Finally, HEPA requires that individual exemption determinations be consistent with the “letter and intent” of HEPA and its regulations, meaning that the agency must evaluate, reflect that it considered whether, and conclude the action “will probably have minimal or no significant effects on the environment.” *Umberger*, 140 Hawai‘i at 524, 403 P.3d at 301 (quoting Haw. Rev. Stat. § 343-6(a)(2)). “If the action fails to satisfy any of [these] requirements . . . it is not exempt from HEPA.” *Umberger*, 140 Hawai‘i at 524, 403 P.3d at 301.

32. Improper exemption determinations deprive agencies and the public of important information gathered and assessed as part of the EA process. HEPA defines an EA as a “written evaluation to determine whether an action may have a significant effect” and requires an EA to “contain, but not be limited to,” information such as identification of agencies, citizen groups, and individuals consulted in making the assessment; a general description of the action’s technical, economic, social, and environmental characteristics; a summary description of the affected environment; identification and summary of impacts and alternatives considered; and proposed mitigation measures. Haw. Rev. Stat. § 343-2; Haw. Admin. R. §§ 11-200-2, -10.

33. If the EA indicates that the proposed action “may have a significant effect on the environment,” the agency must prepare an EIS. Haw. Rev. Stat. § 343-5(c)(4); *see also* Haw. Admin. R. § 11-200-11.2(a)(1). The EIS is an informational document discussing, among other

things: “the environmental effects of a proposed action, effects of the proposed action on the economic welfare, social welfare, and cultural practices of the community and State, . . . measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.” Haw. Rev. Stat. § 343-2.

34. Improper exemption determinations also deprive agencies and the public of important opportunities for information gathering and public input and participation. “[A]t the earliest practicable time,” the agency must “seek . . . the advice and input of the lead county agency responsible for implementing the county’s general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the proposing agency reasonably believes to be affected.” *Id.* § 11-200-9(a)(1).

35. If a finding of no significant impact is anticipated, “a draft [EA] shall be made available for public review and comment.” Haw. Rev. Stat. § 343-5(c)(1). The agency must also respond in writing to any comments on the draft and prepare a final EA so the agency can determine if an EIS is required. *Id.* § 343-5(c)(3).

36. After reviewing the final EA, if the agency “finds that the proposed action may have a significant effect on the environment,” then the agency must undertake a more detailed review that includes consultation with the concerned agencies and citizens, circulation of a draft EIS, written responses to comments, submission of a final EIS to the accepting authority, and a formal decision by the accepting authority to accept or reject the EIS. *Id.* § 343-5(c)(4); Haw. Admin. R. §§ 11-200-15, -21, -22, -23.

37. Ultimately, improper exemption determinations deprive agencies and the public of the legislature’s intended benefits of the HEPA process, specifically, that “environmental

consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.”

Haw. Rev. Stat. § 343-1.

V. BACKGROUND FACTS

Imperiled Seabirds

38. The Newell’s shearwater (*Puffinus auricularis newelli*), or “‘a‘o,” is endemic to Hawai‘i (*i.e.*, it is found in Hawai‘i and nowhere else on Earth) and is listed as “threatened” under the federal Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and Hawai‘i Revised Statutes chapter 195D. It is a medium-sized seabird, 12 to 14 inches in length, with a wingspan of 30 to 35 inches. It has a glossy black top and a white underside, with small white patches observable on the side of the rump in flight.

39. Newell’s shearwaters forage over deep water, generally hundreds of kilometers out to sea, feeding by diving several meters below the ocean’s surface to retrieve squid and fish.

40. Newell’s shearwater colonies are found at high elevations inland, with nests often located under dense vegetation in open native forest dominated by ‘ōhia, with a dense understory of uluhe fern.

41. Compared to most birds, but typical of its family, the Newell’s shearwater has a low rate of reproduction. First breeding does not occur until approximately six years of age, and breeding pairs produce only one egg per year. Pairs may or may not breed every year.

42. The Newell’s shearwater’s breeding season begins in April, when birds return from foraging at sea to previously used nest sites or to prospect for new sites in the case of first-time breeders. Egg-laying begins in the first two weeks of June and likely continues through the early part of July. The single egg is laid at the end of a long burrow, and one adult bird remains

on the egg while the second adult goes to sea to feed. The chick growth period lasts approximately ninety days, and most fledging takes place in October and November.

43. Once the chick has hatched and is large enough to withstand the cold temperatures of the mountains, both parents will go to sea to provide the growing chick with a supply of food.

44. Newell's shearwaters arrive and leave their burrows during darkness, and the birds are rarely seen near land during daylight hours.

45. The Hawaiian petrel (*Pterodroma sandwichensis*), or "ua'u," is an endemic Hawaiian seabird that forages widely across the central, northern, and eastern Pacific Ocean for squid, fish, and crustaceans. It is listed as "endangered" under the federal Endangered Species Act and Hawai'i Revised Statutes chapter 195D. This bird, similar in size to the Newell's shearwater, has a dark grey head, wings, and tail, and a white forehead and stomach.

46. Satellite-tagged birds have been tracked traveling more than 10,000 kilometers on a single foraging trip to and from their breeding colonies in the main Hawaiian Islands.

47. Hawaiian petrels have a low reproductive rate. They do not first breed until five to six years of age and may not breed every year once mature.

48. Hawaiian petrels have breeding colonies on Maui and Lāna'i. On Maui, where the soil is dry and vegetation is scarce, Hawaiian petrels nest in cavities in the volcanic terrain, such as cracked lava tubes. Haleakalā, the volcano forming east Maui, and Lāna'i have the largest remaining Hawaiian petrel colonies in the world.

49. Hawaiian petrels begin arriving on breeding grounds and pairing in mid-February. Each pair produces only one egg per year, and egg-laying generally occurs in May and June.

50. There are only an estimated 450 to 600 breeding pairs of Hawaiian petrels left on Maui.

51. Hawaiian petrel chicks hatch in July and August. Male and female parents share in the feeding of their chicks. After a chick hatches, its parents briefly stay and protect the chick before beginning a routine of extended ocean foraging. The parents will then abandon their young, around September or October of each year, and leave the nesting colony until the next season.

52. Fledging begins in late September, and, by December, adult and successful fledging birds have departed the Hawaiian Islands. Once the chicks leave, they will not return to land for several years, when they return to prospect for nests.

53. The wedge-tailed shearwater (*Puffinus pacificus*), or “ua‘u kani,” breed throughout the Northwestern Hawaiian islands and on the offshore islets of most of the main Hawaiian islands. They can also be found throughout the tropical and subtropical Indian and Pacific oceans. Individuals have long thin wings, a wedge-shaped tail, and a hooked bill. They are polymorphic, having two color phases, dark or light, and sexes are similar. Light-phase adults are grayish brown above with white underparts except for dark trailing edges of wings and tail. Dark-phase adults are uniformly sooty brown.

54. Wedge-tailed shearwaters reach sexual maturity at four years of age. They breed in their natal colonies, form long-term pair bonds, and lay only one egg per season. Most eggs are laid in June. Both parents participate in all aspects of raising young.

55. Wedge-tailed shearwaters breed on low, flat islands and sand spits with little or no vegetation, but also excavate burrows on the slopes of extinct volcanoes and in old volcanic

craters. In locations where nest sites are scarce or the ground is too hard to excavate burrows, individuals will nest in rock crevices or above ground.

56. There are several known breeding colonies for the species on Maui (Kama'ole Beach Park III, Ho'okipa, Hawea Point), Lāna'i (Hulopoe), and Moloka'i (Mo'omomi).

57. Fledging occurs during the months of November and December. Outside of breeding season, wedge-tailed shearwaters migrate to the eastern Pacific Ocean.

58. Attraction to bright lights is one of the leading causes of injury and death to Newell's shearwaters, Hawaiian petrels and wedge-tailed shearwaters. Bright lights, especially in coastal regions, attract and disorient seabirds, causing them to eventually fall to the ground exhausted or increasing their chance of collision with buildings, power lines or other artificial structures (*i.e.*, fallout). Once on the ground, seabirds are unable to fly and are killed by cars, cats, and dogs or die because of starvation or dehydration.

59. The vast majority of Newell's shearwaters that fall victim to bright lights are hatch-year birds, but adult Newell's shearwaters are also subject to injury and death from light attraction. When light attraction injures or kills an adult Newell's shearwater, any chick that is still in the burrow, depending on the adult for food, also likely perishes.

60. Due in large measure to the harm resulting from light attraction, the Newell's shearwater population on Kaua'i—which is the center of abundance of the species—is crashing, with an estimated decline of ninety-four percent (94%) in only twenty years (1993-2013).

61. The Hawaiian petrels that are attracted to lights tend to be adult birds, and their chicks are likely to die when a parent downed by bright lights is unable to continue caring for its young.

62. The majority of wedge-tailed seabirds subject to fallout due to bright lights are fledglings.

Imperiled Sea Turtles

63. The Hawksbill sea turtle (*Eretmochelys imbricata*), or “honu‘ea” or “‘ea,” can be found in tropical and sub-tropical regions around the world, but Hawai‘i’s hawksbill population is isolated from all other hawksbills in the Pacific Ocean. The hawksbill sea turtle is listed as “endangered” under the Endangered Species Act and Hawai‘i Revised Statutes chapter 195D and is classified as “critically endangered” by the International Union for the Conservation of Nature and Natural Resources. The species is named after the turtles’ narrow and pointed hawk-like beak. Hawksbills have five vertebral scutes (bony plates) that run down the middle of the carapace and four costal scutes that run along each side. The hawksbill’s two claws on each flipper and shell are the characteristic “tortoiseshell” color, ranging from golden to dark brown with red, black, and orange streaks. Adult hawksbills can be around 3 feet in shell length and weigh around 250 pounds.

64. Hawksbill sea turtles do not reach sexual maturity until at least 20 to 30 years of age. The delayed age of maturity contributes to the population’s slow growth rate.

65. Hawksbills that live in Hawai‘i migrate around and between the main islands. Adult females lay their eggs every two to four years in late spring and summer months at night on sandy, darkened beaches. They nest on their natal beach, returning to the same geographic location where they hatched. Each nesting female may lay one to 6 clutches (nests) per nesting season, with an average 180 eggs per clutch. During the two- to three-week interval between laying each nest, the females rest in the nearby coral reefs.

66. Hawksbill eggs incubate for about two months. The hatchlings emerge from their nests primarily at nighttime during the months of July through December. After emergence, hatchlings have only a short burst of energy to reach the ocean and begin their swim away from the shore. Any delays in this critical period make it less likely they will survive.

67. Hawksbill sea turtles are so rare that there may be only three to five dozen adult females in all of the Hawaiian Islands. Each year, only 20 to 25 hawksbill females nest in Hawai'i on the beaches of south Maui, east Moloka'i, and the Ka'ū Coast of Hawai'i Island.

68. Green sea turtles (*Chelonia mydas*), or "honu," are found throughout the world, occurring primarily in tropical and subtropical waters. The Hawaiian green sea turtle, however, is genetically distinct from the other green sea turtle populations, nesting primarily in the French Frigate Shoals of the Northwestern Hawaiian Islands and feeding in the coastal areas of the main Hawaiian Islands. Green sea turtles have dark brown or black shells and a much lighter, yellow underside. Their shells have five scutes running down the middle and four scutes on each side. Another distinct characteristic of the green turtle is their two large scales located between the eyes. A mature adult green turtle has a carapace length of 3 feet and can weigh around 350 pounds.

69. Green turtles become sexually mature at 25 to 35 years, and some may be as old as 40 before they reproduce. The lifespan for green turtles is currently unknown but thought to be at least 60 to 70 years.

70. The breeding season occurs in late spring and early summer. Males mate with females on foraging grounds, along migratory pathways, and off nesting beaches. Adult males can breed every year, but females migrate from their foraging areas to nest every two to five years.

71. Every three to four years, female green turtles return to the same nesting beach where they themselves hatched to lay eggs. Green sea turtles in Hawai‘i lay about 100 eggs per nest and 6 clutches of eggs per season, nesting every 2 weeks over several months before leaving the nesting area and returning to their foraging grounds. After about two months, the eggs hatch and the hatchlings make their way to the water.

72. Although Hawaiian green sea turtles nest primarily in the French Frigate Shoals of the Northwestern Hawaiian Islands, an increasing number are now nesting in the main Hawaiian islands, including along Maui and Lāna‘i.

73. Artificial lighting is one of the primary threats to survival of the hawksbill turtle, and a significant and growing threat to the Hawaiian green sea turtle.

74. Hatchling sea turtles orient to the sea using a sophisticated suite of cues primarily associated with ambient light levels. Hatchlings become disoriented and misdirected in the presence of artificial lights behind (landward of) their hatching site. These lights cause the hatchlings to orient inland, whereupon they fall prey to predators, are crushed by passing cars, or die of exhaustion or exposure in the morning sun. A single bright light near a sea turtle nesting beach can misdirect and kill hundreds of hatchlings.

75. Artificial lighting also alters the nocturnal behaviors of adult female sea turtles, specifically, how they choose a nesting site and how they return to the sea after nesting. Studies have shown that artificially lighted beaches are less used as nesting sites. Nesting adults are also sensitive to light and can become disoriented after nesting, heading inland and then dying in the heat of the next morning, far from the sea.

Streetlights Project

76. In January 2007, the Maui County Council passed, and the Mayor approved, the County's outdoor lighting standards, Maui County Code Chapter 20.35. The standards required all streetlights to be fitted with high pressure sodium or low pressure sodium bulbs as well as shielding within ten years, and required the phasing out of mercury vapor streetlight fixtures within ten years. Several stakeholders, including Hawai'i Wildlife Fund, participated in the development of the outdoor lighting standards and raised concerns about the harmful effects of outdoor lighting, especially lights with high blue light content, on wildlife, astronomy, and public health. This input ultimately resulted in standards that mitigated some of the threats posed by artificial lighting to wildlife, including seabirds and sea turtles.

77. On October 31, 2011, at a meeting of the Infrastructure Management Committee of the Maui County Council, the Committee considered amendments to the outdoor lighting standards that would allow for other types of streetlights besides high pressure sodium or low pressure sodium bulbs, including LED streetlights. Director Goode attended the meeting and gave a presentation on the proposed amendments, noting the potential harmful effects of blue lighting to astronomy and wildlife. The Director invited Dr. Joe Ritter, Chair of the Maui County Outdoor Lighting Standards Committee and scientist with the University of Hawai'i, to present at the meeting. Dr. Ritter presented on the various harmful effects of LED lights with a high blue light content on astronomy, human health, and wildlife, including seabirds and sea turtles, and recommended LED streetlights with a blue light content of less than 3.5 percent and a blue-green light content of less than 10 percent to mitigate these effects. Several other stakeholders, including a wildlife biologist for the State Department of Land and Natural Resources, Division of Forestry and Wildlife, raised similar concerns regarding wildlife,

astronomy, and human health. The Committee deferred making a recommendation on the proposed amendments.

78. At a July 20, 2015 meeting, the Infrastructure Management Committee again considered amendments to outdoor lighting standards to allow for LED streetlights and raised concerns about harmful effects to wildlife and astronomy. Director Goode responded that, before choosing a specific lighting technology, the Department would need to amend its administrative rules, which would be subject to a public hearing and public review. The Infrastructure Management Committee recommended that the Maui County Council approve the proposed amendments.

79. In August 2015, the Maui County Council passed, and the Mayor approved, the proposed amendments to the outdoor lighting standards to allow for LED streetlights, and extended the deadline to comply with the outdoor lighting standards by three years.

80. Subsequently, stakeholders contacted the Director and County officials on numerous occasions to raise concerns about LED streetlights with a high blue light content and the resulting harmful effects to wildlife, and to suggest alternative types of LED lighting with a lower blue light content.

81. On or about October 31, 2018, Maui Electric issued a news release announcing that, in partnership with the Department, it would in November 2018 begin installing approximately 4,800 LED streetlight fixtures to replace the high pressure sodium streetlights throughout the County in November 2018. The next day, the Maui News published an article reporting the same.

82. Plaintiffs are informed and believe, and on the basis thereof allege, that the new LED streetlights have a high (20 percent) blue light content, which is harmful to wildlife,

including the Newell's shearwater, Hawaiian petrel, wedge-tailed shearwater, hawksbill sea turtle, and Hawaiian green sea turtle.

83. Plaintiffs are informed and believe, and on the basis thereof allege, that LED streetlights with a low (less than two percent) blue content are available and would mitigate harm to wildlife.

84. Plaintiffs are informed and believe, and on the basis thereof allege, that the County of Hawai'i is currently in the process of replacing its streetlights with those containing less than two percent blue light to minimize harm to wildlife and astronomy.

85. Plaintiffs are informed and believe, and on the basis thereof allege, that the LED streetlights being installed under the Streetlights Project have a higher blue light content than the high pressure sodium vapor streetlights currently installed throughout the County and are, therefore, more harmful to wildlife.

86. Plaintiffs are informed and believe, and on the basis thereof allege, that the Streetlights Project requires use of County lands, including, but not limited to, County roadways.

87. Plaintiffs are informed and believe, and on the basis thereof allege, that the Streetlights Project requires use of County funds.

88. Plaintiffs are informed and believe, and on the basis thereof allege, that the Streetlights Project is occurring in particularly sensitive environments that are subject to seabird fallout and turtle nesting.

89. On November 5, 2018, counsel for Plaintiffs emailed the Director asking whether the County had conducted any environmental review pursuant to HEPA for the Streetlights Project. On November 16, 2018, the Director emailed counsel for Plaintiffs, stating, "Sorry it took a while as it turned out we had not done an EA exemption and needed to do one asap." The

Director attached to the email the Department's formal declaration of exemption, dated November 16, 2018, for the Streetlights Project, as well as the HEPA exemption list applicable to all County departments.

90. The declaration of exemption lists several HEPA exemption classes and County exemption items that the Director claimed exempted the Streetlights Project from HEPA.

91. The declaration, however, lacks any statements or analysis regarding whether "the cumulative impact of planned successive actions in the same place, over time, is significant," or whether the Streetlights Project, even if "normally insignificant in its impact on the environment[,] may be significant in a particularly sensitive environment." Haw. Admin. R. § 11-200-8(b).

92. The declaration includes a list of "Consulted Agencies/Parties" for purposes of determining whether the Streetlights Project was exempt from HEPA: the Infrastructure and Environmental Committee of the Maui County Council; the Budget Committee of the Maui County Council; the Department of Planning; the Office of the Mayor, Office of Economic Development; and a rule making process to "set standards for LED lighting." However, the list does not include "other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption," *id.* § 11-200-8(a), such as the U.S. Fish and Wildlife Service, the state Department of Land and Natural Resources, Division of Forestry and Wildlife, the Maui Nui Seabird Recovery Project, or Plaintiffs.

93. Although the declaration contains the statement that the Director "declare[s] that this project will probably have minimal or no significant negative effect on the environment," it lacks any analysis or reasons to support this conclusion.

94. Plaintiffs are informed and believe, and on the basis thereof allege, that the Department and Maui Electric began installing the Streetlights Project after the Director declared the project exempt from HEPA.

CLAIM FOR RELIEF

(Violation of HEPA)

95. Plaintiffs reallege and incorporate herein by reference each and every allegation in the preceding paragraphs of this Complaint.

96. The Department, led by the Director, is part of the executive branch for the County of Maui and, therefore, must comply with HEPA. Haw. Rev. Stat. §§ 343-2, 5.

97. The Streetlights Project is an action that proposes the use of County lands or County funds, or both, and is therefore, an agency action under HEPA. *See id.* § 343-5(a)(1).

98. The Director's decision, on behalf of the Department, to declare the Streetlights Project exempt from the requirement to prepare an EA violated HEPA.

99. The declaration of exemption fails to evaluate whether "the cumulative impact of planned successive actions in the same place, over time, is significant," or whether the effects of the Streetlights Project "may be significant in a particularly sensitive environment." Haw. Admin. R. § 11-200-8(b).

100. The declaration of exemption fails to reflect that the Director or Department "obtain[ed] the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption." *Id.* § 11-200-8(a).

101. The declaration of exemption is inconsistent with the "letter and intent" of HEPA because it concludes, without any analysis, that the action would "probably have minimal or no significant effects on the environment," even though the Director and Department had received

substantial information from wildlife experts and concerned citizens that the Streetlights Project could have significant, adverse effects on the environment. Haw. Rev. Stat. § 343-6(a)(2).

102. Absent full compliance with the HEPA, the declaration of exemption for the Streetlights Project is null and void, and the Director and Department must, at minimum, prepare an EA for the Streetlights Project.


PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask:

- A. That this Court issue a declaratory judgment that:
 - (1) the Department and Director violated HEPA, Haw. Rev. Stat. ch. 343, by declaring the Streetlights Project exempt from HEPA;
 - (2) the Department's and Director's declaration of exemption for the Streetlights Project is null and void; and
 - (3) the Defendants' installation of the Streetlights Project without complying with HEPA is invalid and illegal;
- B. That this Court order the Department and Director to prepare a legally adequate HEPA environmental review (EA or EIS) for the Streetlights Project;
- C. That this Court issue appropriate injunctive relief;
- D. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgment and orders entered herein;
- E. For such additional determinations, orders, and relief as may be necessary to implement and effectuate the foregoing;
- F. For an award of all costs of suit herein, including an award of reasonable expert witness and attorneys' fees; and

G. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

DATED: Honolulu, Hawai'i, February 12, 2019.



DAVID L. HENKIN
KYLIE W. WAGER CRUZ
EARTHJUSTICE

Attorneys for Plaintiffs
Hawai'i Wildlife Fund and
Conservation Council for Hawai'i

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
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PLAINTIFF, HAWAII WILDLIFE FUND, a non-profit corporation, and CONSERVATION COUNCIL FOR HAWAII, a non-profit corporation	VS. DEFENDANT. DEPARTMENT OF PUBLIC WORKS, COUNTY OF MAUI; DAVID GOODE, in his official capacity as Director of the DEPARTMENT OF PUBLIC WORKS, COUNTY OF MAUI; MICHAEL P. VICTORINO, in his official capacity as MAYOR OF THE COUNTY OF MAUI; COUNTY OF MAUI; and MAUI ELECTRIC COMPANY LIMITED
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PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) DAVID L. HENKIN KYLIE W. WAGER CRUZ EARTHJUSTICE 850 Richards Street, Suite 400 Honolulu, HI 96813 808-599-2436

TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to file with the court and serve upon plaintiff's attorney, whose address is stated above, and answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.

If you fail to obey this summons this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

EX OFFICIO

DATE ISSUED FEB 12 2019	CLERK J. KUBO	