



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

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OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Hawaii Unites	2. Contact Person Tina Lia	
3. Address P.O. Box 1773	4. City Kihei	5. State and ZIP HI 96753
6. Email tinalia@live.com	7. Phone (808) 298-6335	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER

17. Board Action Being Contested

18. Board Action Date

19. Item No.

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection

22. Any Disagreement Petitioner May Have with an Application before the Board

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

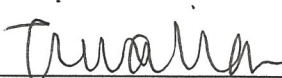
24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Tina Lia
Petitioner or Representative (Print Name)


Signature

03/30/2023
Date

PETITION FOR A CONTESTED CASE HEARING
C. SUBJECT MATTER (Supporting Documents)

17. Board Action Being Contested

We are contesting the Board of Land and Natural Resources' approval of Agenda Item C-2, DIVISION OF FORESTRY AND WILDLIFE: Request Approval of Final Environmental Assessment and Authorization for the Chairperson to Issue a Finding of No Significant Impact for the "Suppression of Invasive Mosquito populations to Reduce Transmission of Avian Malaria to Threatened and Endangered Forest Birds on East Maui."

18. Board Action Date

March 24, 2023

19. Item No.

C-2

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case

Relevant statutes and constitutional provisions covered in this request are: HRS 343; Hawaii Constitution Article XI, section 1, 2, 7, and 9; HRS 92-7; HAR 13-1-29

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection

Hawaii Unites is a 501(c)(3) nonprofit organization dedicated to the conservation and protection of our environment and natural resources. Our mission is honoring and protecting our sacred connection to the natural world. Formed in 2023, Hawaii Unites launched a petition through Change.org to "Demand an Environmental Impact Statement for the Experimental Mosquito Release on Maui" which has received more than 2,700 signatures. Our nonprofit officers and all petition signatories residing in Hawaii, particularly those in East Maui, are directly affected by the actions of the Board on item C-2, which seeks to approve a landscape-scale biopesticide experiment with a project area covering 64,666 acres of East Maui.

The rights of our officers and signatories relevant to these natural areas are protected by the Hawaii State Constitution and state law. Hawaii Unites' officers and signatories have rights to a clean and healthful environment under article XI, section 9 of the Constitution, which mandates a contested case hearing whenever the State makes binding decisions under "laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources."

22. Any Disagreement Petitioner May Have with an Application before the Board

Hawaii Unites opposes the approval of the Final Environmental Assessment and the authorization for the Chairperson to issue a Finding of No Significant Impact for the "Suppression of Invasive Mosquito populations to Reduce Transmission of Avian Malaria to Threatened and Endangered Forest Birds on East Maui" because:

- (a) The Final Environmental Assessment lacks adequate detail as required by HEPA.
- (b) The Final Environmental Assessment fails to identify the *Wolbachia* strain planned for use in this project.
- (c) The Final Environmental Assessment fails to identify and describe the mark release recapture study as a proposed action, and this project may have been improperly segmented.
- (d) The Final Environmental Assessment fails to adequately identify the mosquito packages planned for release into the environment, and the effects on the environment from the release of biodegradable packages with an unknown decay rate are not adequately addressed.
- (e) The Final Environmental Assessment fails to identify biosecurity protocols
- (f) The Final Environmental Assessment does not address the concern of accidental pathogen introduction and does not specify required permits for interstate transport of pathogens
- (g) Viewscape impacts, noise disturbances to forest bird breeding and nesting, and significant environmental consequences, including impacts to the untrammeled, natural qualities of the wilderness character, have not been adequately addressed.
- (h) The potential negative impacts of introducing an invasive species to the islands have not been adequately addressed.
- (i) Biopesticide mosquitoes for this project originate from Palmyra Atoll. *Wolbachia* bacteria for the project originates from Kuala Lumpur in Malaysia. At least one strain of *Wolbachia* planned for import in connection with the project does not exist on these islands.
- (j) Landscape level control of *Culex quinquefasciatus* mosquitoes using the Incompatible Insect Technique (IIT) has never been done before.
- (k) The mosquito species planned for use in this project, *Culex quinquefasciatus*, has never been used for a stand-alone IIT field release.
- (l) Peer-reviewed studies confirm that *Wolbachia* bacteria can cause mosquitoes to become more capable of spreading diseases like avian malaria and West Nile virus (bird and human). The Final Environmental Assessment fails to adequately address these risks.
- (m) Tropical disease expert Dr. Lorrin Pang (private citizen) has expressed concerns about horizontal transmission of the lab bacteria to wild mosquitoes and other insect vectors of disease. The Final Environmental Assessment fails to adequately address these concerns.

- (n) Scientific studies document the risks of horizontal transmission, increased pathogen infection, evolutionary events, population replacement, and accidental release of females (who bite and breed). The Final Environmental Assessment fails to adequately address these risks.
- (o) This project has the potential to cause the extinction of endangered native birds, and it could impact human health.
- (p) Impacts to endangered native Hawaiian hoary bats, native dragonflies, and endangered native damselflies have not been adequately studied or addressed in the Final Environmental Assessment.
- (q) Biopesticide wind drift has not been studied and is not addressed in the Final Environmental Assessment.
- (r) Environmental Justice is not adequately addressed in the Final Environmental Assessment. Human health impacts of this project have not been adequately studied, and the proposed action would impact ethnographic resources and traditional cultural practices.
- (s) The Final Environmental Assessment's assertion of released mosquitoes posing no risk to human health is based on unsound science. The 2010 article by Popovici et al. cited in the Final Environmental Assessment has been discredited by the EPA.
- (t) The EPA has not conducted an Environmental Risk Assessment for this mosquito biopesticide to determine the environmental, ecological, and human health risks.
- (u) The Hawaii Department of Agriculture has applied for an EPA Emergency Exemption for use of the mosquitoes without going through regulatory safety processes. The EPA application is still under review, and the biopesticide mosquitoes have not been approved for emergency release.
- (v) A feasibility study has not been conducted to provide a detailed analysis that considers all of the critical aspects of the proposed project in order to determine the likelihood of it succeeding.
- (w) The U.S. Department of the Interior states that "although used world-wide for human health, *Wolbachia* IIT is a novel tool for conservation purposes and its degree of efficacy in remote forest landscapes is unknown."
- (x) Under the precautionary principle, it is the responsibility of the proponents of this project to establish that the proposed activity will not result in significant harm.
- (y) The subject action will have a significant effect and, therefore, requires the preparation of an Environmental Impact Statement.
- (z) Conflicts of interest have not been disclosed or addressed.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

Hawaii Unites requests that the approval of the Final Environmental Assessment and the authorization for the Chairperson to issue a Finding of No Significant Impact for the “Suppression of Invasive Mosquito populations to Reduce Transmission of Avian Malaria to Threatened and Endangered Forest Birds on East Maui” be denied. The subject action will have a significant effect and, therefore, requires the preparation of an Environmental Impact Statement.

Hawaii Unites also requests that State of Hawaii Board of Land and Natural Resources Chairperson Dawn N.S. Chang and Board Member Vernon Char recuse themselves from participating in any discussion or voting in this matter, given that they have conflicts of interest per HRS §171-4 (d).

Any action taken by the Board of Land and Natural Resources on this Petition for a Contested Case Hearing prior to receipt of said Petition shall be null and void, as any such action is in violation of the Sunshine Law HRS §92-7 and of HAR §13-1-29. Receipt of this Petition shall serve as notice to the Board of Land and Natural Resources that the Petition remains active. Any action taken by the Board of Land and Natural Resources on the March 24, 2023 Agenda Item C-2, a subject within the adjudicatory jurisdiction of the Board, shall be subsequently null and void.

24. How Petitioner’s Participation in the Proceeding Would Serve the Public Interest

Hawaii Unites has provided peer-reviewed studies documenting the serious risks of the proposed project. We have described the concerns of tropical disease and vector expert Dr. Lorrin Pang. In a contested case hearing, we will provide the Board with additional peer-reviewed studies. We will give a detailed description of Dr. Pang’s concerns regarding horizontal transmission of the introduced bacteria strain, which will include information that has not yet been submitted in previous testimony or comments. We will provide a statement by a retired scientist from the EPA Office of Pesticide Programs strongly advising that a full Environmental Impact Statement be conducted. We will provide documentation of petition signatories and public testimony. Our evidence will demonstrate that the project risks and the concerns of the public in opposition to this proposed experiment have not been adequately studied or addressed. Our participation in a contested case hearing will help to ensure that this Board has all the information it needs to make a decision that fully protects the public’s interests and satisfies the Board’s public trust obligations per the Hawaii State Constitution.

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Per HAR §13-1-31 (b) (2), Hawaii Unites represents all petition signatories who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public.

Per HAR §13-1-31 (c), as a 501(c)(3) nonprofit organization dedicated to the conservation and protection of our environment and natural resources, Hawaii Unites can show a substantial interest in the matter.