


**From:** Tina Lia [tinalia@live.com](mailto:tinalia@live.com)   
**Subject:** Re: Notice of Appeal of Sunshine Law Complaint (S APPEAL 23-9)  
**Date:** May 5, 2023 at 1:41 PM  
**To:** OIP [oip@hawaii.gov](mailto:oip@hawaii.gov)

TL

Aloha Lori Kato,

Thank you for your message. I have read the BLNR's response, and would like to clarify these items:

1. The BLNR response states: "At the end of her oral testimony, Ms. Lia requested a contested case hearing. Ex. 3 at 1:19:52. The Chair paused testimony and asked Ms. Lia to clarify if she was requesting the Board decide her contested case hearing request prior to voting, and Ms. Lia confirmed she was requesting the Board vote on her oral request prior to voting. *Id.* at 1:20:20-1:20:36." At no point during the 3/24/23 BLNR meeting did I ask for the Board to vote on my verbal request for a contested case hearing prior to voting on agenda item C-2. In fact, I specifically asked that the board not vote on agenda item C-2 at all. The Board's statement here is a blatant misrepresentation of the facts.
2. The BLNR response states: "The Chair asked Ms. Lia to clarify the basis for her contested case hearing request. *Id.* at 2:16:37. Board Member Yoon moved to deny Ms. Lia's oral request for contested case hearing because she failed to give a basis for her request. *Id.* at 2:18:22." The Board had not yet received our petition for a contested case hearing (due within 10 days of the 3/24/23 verbal request), and therefore had no basis of their own for denying the request. When asked by the Board to state the basis of my request, I was given grossly insufficient time to summarize the detailed subject matter in our petition. At no point during this dialogue with the Board was it made clear that they had improperly added my verbal request for a contested case hearing to the 3/24/23 agenda and were in the process of a vote on the improperly added agenda item. The Board appeared to be uninterested in hearing further details of the request or petition, as it was clear that their intention was to deny the request and petition regardless of the basis.
3. The BLNR's response regarding "Compliance with HRS Chapter 92" references HAR § 13-1-29 in an attempt to justify their actions. Nowhere in the administrative rules is there justification for their actions. In fact, they have misstated the procedures documented in HAR § 13-1-29.
4. Our petition for a contested case hearing is on the agenda for the 5/12/23 BLNR meeting (item C-4). This serves as confirmation that denial of my verbal request for a contested case hearing at the 3/24/23 meeting was invalid due to improper procedure.
5. The petition for a contested case hearing attached as exhibit 4 of the BLNR's response shows the incorrect date stamp of receipt. Please see attached corrected date stamped receipt of petition along with email from Bin C. Li confirming the error. Exhibit 4 is not "a true and correct copy of the written petition for contested case hearing filed by Tina Lia on April 3, 2023." The true and correct copy is hereby attached in my email (see attached).

Please let me know if I may provide any further details or documents regarding this matter.

Mahalo,  
Tina Lia  
Founder and President  
Hawaii Unites  
[HawaiiUnites.org](http://HawaiiUnites.org)  
(808) 298-6335  
[tinalia@live.com](mailto:tinalia@live.com)

On May 5, 2023, at 9:38 AM, OIP <[oip@hawaii.gov](mailto:oip@hawaii.gov)> wrote:

Dear Ms. Lia,

Per your request, I am forwarding BLNR's response dated May 1, 2023, which responds to OIP's Notice of Appeal dated April 3, 2023.

Lori Kato  
Staff Attorney

Office of Information Practices  
State of Hawaii  
No. 1 Capitol District Building  
250 S. Hotel Street, #107  
Honolulu, HI 96813  
Ph: (808) 586-1400  
Facsimile: (808) 586-1412

Email: [oiip@hawaii.gov](mailto:oiip@hawaii.gov)  
Website: <http://oiip.hawaii.gov>

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**From:** Tina Lia <[tinalia@live.com](mailto:tinalia@live.com)>  
**Sent:** Monday, April 24, 2023 8:22 AM  
**To:** OIP <[oiip@hawaii.gov](mailto:oiip@hawaii.gov)>  
**Subject:** [EXTERNAL] Re: Notice of Appeal of Sunshine Law Complaint (S APPEAL 23-9)

Aloha Ms. Kato,

Please let me know the status of the response from the BLNR, and when a copy of that response will be made available to me.

Mahalo,  
Tina Lia  
Founder and President  
Hawaii Unites  
[HawaiiUnites.org](http://HawaiiUnites.org)  
(808) 298-6335  
[tinalia@live.com](mailto:tinalia@live.com)

On Apr 18, 2023, at 11:03 AM, OIP <[oiip@hawaii.gov](mailto:oiip@hawaii.gov)> wrote:

Dear Ms. Lia,

The Board of Land and Natural Resources (BLNR) has until the end of today, April 18, 2023, to respond to the Notice of Appeal dated April 3, 2023 since April 7 was Good Friday and a State observed holiday. OIP will send you a copy of BLNR's response once we receive it.

Lori Kato  
Staff Attorney

Office of Information Practices  
State of Hawai'i  
No. 1 Capitol District Building  
250 S. Hotel Street, #107  
Honolulu, HI 96813  
Ph: (808) 586-1400  
Facsimile: (808) 586-1412  
Email: [oiip@hawaii.gov](mailto:oiip@hawaii.gov)  
Website: <http://oiip.hawaii.gov>

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**From:** Tina Lia <[tinalia@live.com](mailto:tinalia@live.com)>  
**Sent:** Tuesday, April 18, 2023 7:14 AM  
**To:** OIP <[oiip@hawaii.gov](mailto:oiip@hawaii.gov)>

**TO:** OIP <[oiip@hawaii.gov](mailto:oiip@hawaii.gov)>

**Subject:** [EXTERNAL] Re: Notice of Appeal of Sunshine Law Complaint (S APPEAL 23-9)

Attn.: Office of Information Practices (OIP),

Per instructions from the OIP, I'm requesting a copy of the response from the Board of Land and Natural Resources to the Notice of Appeal of Sunshine Law Complaint (S APPEAL 23-9) received by their agency on April 3, 2023 (response due ten business days after receipt: April 17, 2023).

Mahalo,  
Tina Lia  
Founder and President  
Hawaii Unites  
[HawaiiUnites.org](http://HawaiiUnites.org)  
(808) 298-6335  
[tinalia@live.com](mailto:tinalia@live.com)

On Apr 3, 2023, at 2:27 PM, OIP <[oiip@hawaii.gov](mailto:oiip@hawaii.gov)> wrote:

Ms. Lia:

Attached is a letter dated April 3, 2023 from the Office of Information Practices regarding your request for assistance from OIP. Also attached are the Appeal Procedures and Responsibility of the Parties.

Please contact our office if you have difficulty opening the attachments.

Thank you,

Office of Information Practices  
State of Hawai'i  
No. 1 Capitol District Building  
250 S. Hotel Street, #107  
Honolulu, HI 96813  
Ph: (808) 586-1400  
Facsimile: (808) 586-1412  
Email: [oiip@hawaii.gov](mailto:oiip@hawaii.gov)  
Website: <http://oiip.hawaii.gov>



23-04-03  
Hawaii...ing.pdf

**From:** Li, Bin C [bin.c.li@hawaii.gov](mailto:bin.c.li@hawaii.gov)  
**Subject:** Re: Hawaii Unites contested case petition  
**Date:** April 3, 2023 at 4:15 PM  
**To:** [tinalia@live.com](mailto:tinalia@live.com)



We just realized that our stamp clock malfunctioned with a wrong date stamped on the filing. Please see this version for the correction. Sorry for the mishap.

Bin C. Li  
Department of Land and Natural Resources  
Administrative Proceedings Coordinator  
1151 Punchbowl St, Rm 131, Honolulu, Hawaii 96813  
Phone (808)587-1496, [bin.c.li@hawaii.gov](mailto:bin.c.li@hawaii.gov)

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**From:** Li, Bin C  
**Sent:** Monday, April 3, 2023 2:45 PM  
**To:** [tinalia@live.com](mailto:tinalia@live.com) <[tinalia@live.com](mailto:tinalia@live.com)>  
**Subject:** Hawaii Unites contested case petition

Hi Tina,

Per our phone discussion, please see file for record of your contested case petition filing.

Bin C. Li  
Department of Land and Natural Resources  
Administrative Proceedings Coordinator  
1151 Punchbowl St, Rm 131, Honolulu, Hawaii 96813  
Phone (808)587-1496, [bin.c.li@hawaii.gov](mailto:bin.c.li@hawaii.gov)



23-04-03  
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STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED  
 DEPT. OF LAND & NATURAL RESOURCES  
 STATE OF HAWAII  
 2023 APR 13 PM 4:04  
 RECEIVED  
 DEPT. OF LAND & NATURAL RESOURCES  
 STATE OF HAWAII  
 2023 MAR 31 PM 1:02

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**

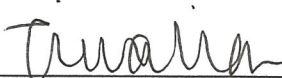
**24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest**

**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.

**From:** Li, Bin C [bin.c.li@hawaii.gov](mailto:bin.c.li@hawaii.gov)   
**Subject:** Re: Hawaii Unites contested case petition  
**Date:** April 3, 2023 at 4:15 PM  
**To:** [tinalia@live.com](mailto:tinalia@live.com)

BL

We just realized that our stamp clock malfunctioned with a wrong date stamped on the filing. Please see this version for the correction. Sorry for the mishap.

Bin C. Li  
Department of Land and Natural Resources  
Administrative Proceedings Coordinator  
1151 Punchbowl St, Rm 131, Honolulu, Hawaii 96813  
Phone (808)587-1496, [bin.c.li@hawaii.gov](mailto:bin.c.li@hawaii.gov)

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**From:** Li, Bin C  
**Sent:** Monday, April 3, 2023 2:45 PM  
**To:** [tinalia@live.com](mailto:tinalia@live.com) <[tinalia@live.com](mailto:tinalia@live.com)>  
**Subject:** Hawaii Unites contested case petition

Hi Tina,

Per our phone discussion, please see file for record of your contested case petition filing.

Bin C. Li  
Department of Land and Natural Resources  
Administrative Proceedings Coordinator  
1151 Punchbowl St, Rm 131, Honolulu, Hawaii 96813  
Phone (808)587-1496, [bin.c.li@hawaii.gov](mailto:bin.c.li@hawaii.gov)



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