

<b>STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT</b>	Court's Minute Order		<b>Electronically Filed FIRST CIRCUIT 1CCV-23-0000594 29-JAN-2024 10:19 AM Dkt. 211 MORD</b>
CASE NUMBER  1CCV-23-0594	FILING PARTY/ATTORNEY NAME & NO., ADDRESS, PHONE, EMAIL		
CASE NAME  HAWAII UNITES, a 501(c)(3) nonprofit corporation; et. al.  vs  BOARD OF LAND AND NATURAL RESOURCES, etc.			

**1/29/2024: Court's Minute Order re: Defendant State of Hawaii's Motion for Summary Judgment and Defendant-Intervenor American Bird Conservancy's Joinder to Defendants Board of Land and Natural Resources, State of Hawaii, and Department of Land and Natural Resources, State of Hawaii's Motion for Summary Judgment**

Defendant State of Hawai'i's Motion for Summary Judgment having come on for hearing on January 17, 2024, before the Honorable John M. Tonaki, Judge of the First Circuit Environmental Court, and the court having heard arguments on the motion and considered Defendant's Memorandum in Support of its Motion for Summary Judgment, Plaintiffs' Memorandum in Opposition to Defendant State of Hawai'i's Motion for Summary Judgment and Defendant State of Hawai'i's Reply in Support of the Motion, the court rules as follows:

In an effort to save native Hawaiian birds which are in danger of extinction, the State of Hawai'i Department of Land and Natural Resources seeks to undertake a project that aims to suppress mosquito populations carrying avian malaria (the main threat to the native bird population) through incompatible insect technology ("IIT"). On March 24, 2023, the Board of Land and Natural Resources ("BLNR") approved a final environmental assessment ("FEA") for the IIT project and issued a finding of no significant impact ("FONSI"), which was published in the Environmental Notice on April 8, 2023. Plaintiffs filed the instant case, claiming that BLNR erroneously accepted the FEA and erroneously issued a FONSI.

Whether an Environmental Assessment ["EA"] is sufficient under HRS chapter 343 is a question of law, which is properly addressed through summary judgment. Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 182(1996) Like an Environmental Impact Statement, courts apply the "rule of reason" to determine whether an EA is sufficient. *Id.* An [EA] need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives. *Id.*

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Hawaii Administrative Rules [“HAR”] § 11-200.1-21 lists the required content for an FEA. The FEA in this case contained detailed discussions of all the required points set forth in § 11-200.1-21. In addition, in determining whether an action may have a significant effect on the environment, the agency evaluates significance criteria set forth in HAR § 11-200.1-13. Pursuant to the analysis of the significance criteria as well as the consideration of the FEA, in its entirety, the BLNR issued a FONSI.

The court finds that the FEA in the instant case was compiled in good faith and set forth sufficient information to enable the BLNR to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.

Plaintiffs argue that the FEA did not adequately disclose or failed to address numerous issues. These arguments are based on their belief and their expert’s belief. A reading of the FEA reveals that many of the alleged issues raised by Plaintiff, were, in fact, addressed in the FEA and that some of the potential impacts of the project were raised as mere possibilities by Plaintiff. Such arguments do not establish that BLNR’s acceptance of the FEA and issuance of FONSI were clearly erroneous. Kilakila `O Haleakala v. University of Hawai`i, 138 Haw. 364, 375-76 (2016).

There is no genuine issue of material fact relating to whether the State of Hawai`i Department of Land and Natural Resources, Board of Land and Natural Resources complied with the requirements under the Hawai`i Environmental Protection Act in approving the FEA for the IIT project and issuing its finding of no significant impact on the environment (FONSI). Defendant State of Hawai`i’s Motion for Summary Judgment and Defendant-Intervenor American Bird Conservancy’s Joinder is granted. Defendant to prepare written order and judgment.

Parties served via JEFS.

/s/ JOHN M. TONAKI  
JUDGE OF THE ABOVE-ENTITLED COURT