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Intermediate Court of Appeals  
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Attorneys for Plaintiffs-Appellants  
Hawai'i Unites and Tina Lia

INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI'I

HAWAI'I UNITES, a 501(c)(3) nonprofit  
corporation; and TINA LIA, an individual,

Plaintiffs-Appellants,

v.

BOARD OF LAND AND NATURAL  
RESOURCES, STATE OF HAWAI'I, and  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES, STATE OF  
HAWAI'I,

Defendants-Appellees,

and

AMERICAN BIRD CONSERVANCY,

Defendant-Intervenor-  
Appellee.

CAAP No.  
Appeal from Civ. No. 1CCV-23-0000594

**NOTICE OF APPEAL**

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs-Appellants HAWAI‘I UNITES and TINA LIA (collectively, “Plaintiffs-Appellants”), by and through their attorneys Margaret Wille and Timothy Vandever of MARGARET WILLE & ASSOCIATES LLLC, pursuant to Hawai‘i Revised Statutes (“HRS”) Section 641-1 “Appeals as of right or interlocutory, civil matters,” sub-section (a) and the Hawai‘i Rules of Appellate Procedure (“HRAP”) Rule 3 “Appeals – How Taken,” hereby appeal to the Intermediate Court of Appeals of the State of Hawai‘i from the Judgment entered on February 6, 2024 in favor of Defendants DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I, and BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I, and Defendant-Intervenor AMERICAN BIRD CONSERVANCY, and against Plaintiffs HAWAI‘I UNITES and TINA LIA, attached hereto as Exhibit “A”.

DATED: Honolulu, Hawai‘i March 1, 2024.

*/s/ Timothy Vandever*  
Margaret (Dunham) Wille  
Timothy Vandever

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Hawai‘i Unites and Tina Lia

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**COURTS**  
**CAAP-24-0000126**  
**CV-23-0000594**  
**01-MAR-2024 06-FEB-2024**  
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**Dkt. 2 EXH Dkt. 221 JDG**

Attorneys for Defendants  
BOARD OF LAND AND NATURAL RESOURCES,  
STATE OF HAWAI'I AND DEPARTMENT OF  
LAND AND NATURAL RESOURCES, STATE OF HAWAI'I

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT**

**STATE OF HAWAI'I**

HAWAII UNITES, a 501(c)(3) nonprofit  
corporation; Tina Lia, an individual,

Plaintiffs,

vs.

BOARD OF LAND AND NATURAL  
RESOURCES, STATE OF HAWAI'I, and  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES, STATE OF  
HAWAI'I,

Defendants,

and

AMERICAN BIRD CONSERVANCY,

Defendant-Intervenor.

CIVIL NO. 1CCV-23-0000594  
(Environmental Court)

FINAL JUDGMENT

Judge: Hon. John M. Tonaki  
Hearing: January 17, 2024 at 9:00 a.m.  
Trial Week: July 29, 2024

**EXHIBIT A**

## **FINAL JUDGMENT**

On May 8, 2023, Plaintiffs HAWAI‘I UNITES and TINA LIA (“Plaintiffs”) filed their Complaint for Declaratory and Injunctive Relief (“Complaint”) against Defendant DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I, and BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I (“State”) [JEFS 1].

On July 9, 2023, the Court approved a stipulation authorizing the intervention of AMERICAN BIRD CONSERVANCY as a Defendant [JEFS 68].

On August 10, 2023, the Court dismissed count II of the Complaint. [JEFS 151].

On February 6, 2024, the Court granted the Defendant State of Hawai‘i’s motion of summary judgment as to the remaining count as well as Defendant-Intervenor American Bird Conservancy’s substantive joinder. [JEFS 215].

The Court has resolved all issues raised in the Complaint. Thus, any and all claims and parties are dismissed. There being no claims or parties remaining in this action, the Court directs that this be entered as a Final Judgment in accordance with Rule 58 of the Hawai‘i Rules of Civil Procedure (“HRCP”).

NOW THEREFORE IT IS HEREBY ORDERED AND ADJUDGED, pursuant to HRCP Rule 58, that judgment is entered in favor of Defendants DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I, and BOARD OF LAND AND NATURAL RESOURCES and AMERICAN BIRD CONSERVANCY and against Plaintiffs HAWAI‘I UNITES and TINA LIA.

DATED: Honolulu, Hawai‘i, February 6, 2024.

/s/ John M. Tonaki



The Honorable John M. Tonaki  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ Timothy A. Vandever

MARGARET D. WILLE  
TIMOTHY A. VANDEVEER

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HAWAI‘I UNITES AND TINA LIA

/s/ Maxx Phillips

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AMERICAN BIRD CONSERVANCY

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*Hawai‘i Unites, et al. v. State of Hawai‘i, et al.*, Civil No. 1CCV-23-0000594; Final Judgment.

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Attorneys for Plaintiffs-Appellants  
Hawai'i Unites and Tina Lia

INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI'I

HAWAI'I UNITES, a 501(c)(3) nonprofit  
corporation; and TINA LIA, an individual,

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v.

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Defendants-Appellees,

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AMERICAN BIRD CONSERVANCY,

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Appellee.

CAAP-24-0000123

Appeal from Civ. No. 1CCV-23-0000594

**CIVIL APPEAL DOCKETING  
STATEMENT**

## CIVIL APPEAL DOCKETING STATEMENT

Notice is hereby given that Plaintiffs-Appellants HAWAI‘I UNITES and TINA LIA (collectively, “Plaintiffs” or “Plaintiffs-Appellants”) by and through their attorneys Margaret Wille and Timothy Vandever of MARGARET WILLE & ASSOCIATES LLLC, and pursuant to the Hawai‘i Rules of Appellate Procedure (“HRAP”) Rule 3.1 “Civil Appeal Docketing Statement,” hereby submit this Civil Appeal Docketing Statement following the format of HRAP Form 6 (Rev. 9/11).

This matter has not previously been before the State of Hawai‘i Appellate Courts and is not a Cross-Appeal. The stage of proceedings is post-dismissal from the State of Hawai‘i Circuit Court of the First Circuit. Plaintiffs-Appellants are appealing the Final Judgment filed on February 6, 2024, granting Defendants DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I (“DLNR”), and BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I’s (“BLNR”) Motion for Summary Judgment as to the remaining count of Plaintiffs’ Complaint as well as Defendant-Intervenor AMERICAN BIRD CONSERVANCY’s (collectively, “Defendants” or “Defendants-Appellees”) Substantive Joinder, attached hereto as Exhibit “A”.

At issue in this case is a massive mosquito biopesticide project (the “Proposed Action”), which could result in the release of over 800 billion lab-reared *Wolbachia*-bacteria-infected mosquitoes in the fragile ecosystems of East Maui with no meaningful mitigation measures in place if things don’t go according to plan.

The stated purpose of the mosquito biopesticide project is to save endangered native birds from avian malaria using the Incompatible Insect Technique (“IIT”) for mosquito population control. The Final Environmental Assessment (“FEA”) for the Proposed Action states that this

experiment will have no significant impact on the environment. However, in its FEA Defendant DLNR, an agency partner of the applicant group Birds, Not Mosquitoes (“BNM”) *and* the accepting agency for the FEA, fails to demonstrate why the Proposed Action will not have a significant contrary and potentially adverse impact on the environment.

Indeed, peer-reviewed studies and documentation from several sources (including government agencies) confirm that the experiment has the potential for significant environmental impacts and may not even work for its intended purpose. Contrary to the assertions in the FEA, the plan could actually pose serious risks to the native birds it seeks to save, as well as other wildlife, the ‘āina, and public health. Further, the IIT method has never been implemented in the Hawai‘i, and the specific experimental technique planned for use in Maui has never been tried before anywhere in the world.

Plaintiffs are asking the Court to require Defendants and their agency partners to properly study the Proposed Action in the form of an environmental impact statement (“EIS”) before moving forward.

## **I. DESCRIPTION OF THE NATURE OF THE ACTION AND RESULT IN THE TRIAL COURT**

On May 8, 2023, Plaintiffs filed their Complaint for Declaratory and Injunctive Relief (“Complaint”) against Defendants DLNR and BLNR (collectively “State Defendants”). The Complaint has two claims for relief: 1) that the BLNR erroneously issued a Finding of No Significant Impact (“FONSI”) and erroneously accepted the FEA and 2) an alleged violation of Hawaii Revised Statutes (“HRS”) Chapter 91 for denying Plaintiffs’ contested case hearing request. *See* Docket “Dkt.” No. 1.

On June 20, 2023, Plaintiffs filed a Motion for Preliminary Injunction. Dkt. No. 37.



On June 26, 2023, State Defendants filed a Partial Motion to Dismiss the Complaint. Dkt. No. 54. On July 9, 2023, the Court approved a stipulation authorizing the intervention of American Bird Conservancy as a Defendant. Dkt. No. 68.

On July 21, 2023, a hearing was held on Plaintiffs' Motion for Preliminary Injunction. Plaintiffs presented testimony from two witnesses, expert witness Dr. Lorrin Pang ("Dr. Pang") and Plaintiff Tina Lia ("Plaintiff Lia"), then rested. State Defendants and Defendant American Bird Conservancy began the presentation of their defense with a live witness, but due to time constraints were unable to finish. The hearing on Plaintiffs' Motion for Preliminary Injunction was continued to 2024.

On August 10, 2023, the Court granted the State Defendant's Partial Motion to Dismiss and dismissed Plaintiffs' second claim for relief (violation of HRS Chapter 91). Dkt. No. 151.

On December 22, 2023, State Defendants filed a Motion for Summary Judgment on the remaining claim in the Complaint ("MSJ"). Dkt. No. 187.

On January 17, 2024, a hearing on Defendant's MSJ was held before Hon. John M. Tonaki. On January 29, 2024, the Court issued a Minute Order granting State Defendants' Motion for Summary Judgment, finding that "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)." See Dkt. No. 211

On February 6, 2024, the Court entered the Final Judgment in favor of Defendants. Dkt. No. 223.

## **II. ANTICIPATED ISSUES PROPOSED TO BE RAISED ON APPEAL**

### **A. Whether there exist material facts in dispute such that granting Summary Judgment was inappropriate**

As demonstrated by Plaintiffs, summary judgment was not appropriate because key material facts are in dispute regarding the sufficiency of information in the FEA about impacts to the environment (including the omission of certain information), mitigation measures, alternatives to the Proposed Action, and improper segmentation of the project.

As Plaintiffs pointed out in their Complaint and pleadings on file, including in the Memorandum in Support of their Motion for Preliminary Injunction, as well as in testimony provided during the hearing on the Motion for Preliminary Injunction, Defendant DLNR's FEA does not contain sufficient information to justify the agency's approval of the Proposed Action. By ignoring peer-reviewed studies and potential alternatives, Defendants gave an incomplete or misleading picture of what those consequences might be. The failure to provide mitigation protocols prevents that approving agency from grasping how an accident (in particular, the threat of horizontal transmission or "sweep" of the *Wolbachia* bacteria) might be contained. This runs contrary to the letter and spirit of the Hawai'i Environmental Policy Act ("HEPA"), Hawai'i Revised Statutes ("HRS") Chapter 343, specifically because it renders the agency's application of the significance criteria fundamentally flawed since they are using incomplete and misleading data. This is tantamount to insufficient evidence and analysis to determine the reasonableness of the decision not to prepare an EIS.

Summary judgment was also inappropriate at this juncture as discovery regarding the above mentioned incomplete and misleading information has not been completed. Further, additional material facts have been discovered since the filing of the Complaint that suggest a

project being carried out in a manner contrary to what was proposed, explained, and/or studied in the FEA.

**B. Whether Summary Judgment was inappropriate due to Defendant DLNR's failure to follow Hawaii Administrative Rules**

In their prior pleadings and again in their Memorandum in Opposition to Defendant's MSJ, Plaintiffs assert that Defendant DLNR's failure to comply with Hawai'i Administrative Rules ("HAR") Sec. 11-200.1-20 and Defendant BLNR's acceptance of the FEA for the proposed biopesticide mosquito Project and issuance of a FONSI based on that flawed document was erroneous and in violation of HRS Chapter 343. *See* Dkt. Nos. 38, 201. Though it appears that this material fact is now undisputed, this issue was not addressed in the Circuit Court's Minute Order/Order granting Defendants' Motion for Summary Judgment. *See* Dkt. No 208 at FN 6; *see also* Dkt. Nos. 211, 215.

**III. PROCEDURAL COMPLEXITIES**

This Appeal does not involve the likelihood of a motion to expedite the appeal, the likelihood of a motion to stay appeal pending resolution of a related case, or other procedural complexities.

I CERTIFY THAT A COPY OF THIS CIVIL APPEAL DOCKETING STATEMENT WAS SERVED ON EACH PARTY/COUNSEL LISTED ON THE CERTIFICATE OF SERVICE.

DATED: Honolulu, Hawai'i March 1, 2024.

/s/ Timothy Vandever  
Margaret (Dunham) Wille  
Timothy Vandever

Attorneys for Plaintiffs-Appellants  
Hawai'i Unites and Tina Lia

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**Dkt. 6 EXH Dkt. 221 JDG**

Attorneys for Defendants  
BOARD OF LAND AND NATURAL RESOURCES,  
STATE OF HAWAI'I AND DEPARTMENT OF  
LAND AND NATURAL RESOURCES, STATE OF HAWAI'I

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CIVIL NO. 1CCV-23-0000594  
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FINAL JUDGMENT

Judge: Hon. John M. Tonaki  
Hearing: January 17, 2024 at 9:00 a.m.  
Trial Week: July 29, 2024

**EXHIBIT A**

## **FINAL JUDGMENT**

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On July 9, 2023, the Court approved a stipulation authorizing the intervention of AMERICAN BIRD CONSERVANCY as a Defendant [JEFS 68].

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On February 6, 2024, the Court granted the Defendant State of Hawai‘i’s motion of summary judgment as to the remaining count as well as Defendant-Intervenor American Bird Conservancy’s substantive joinder. [JEFS 215].

The Court has resolved all issues raised in the Complaint. Thus, any and all claims and parties are dismissed. There being no claims or parties remaining in this action, the Court directs that this be entered as a Final Judgment in accordance with Rule 58 of the Hawai‘i Rules of Civil Procedure (“HRCP”).

NOW THEREFORE IT IS HEREBY ORDERED AND ADJUDGED, pursuant to HRCP Rule 58, that judgment is entered in favor of Defendants DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI'I, and BOARD OF LAND AND NATURAL RESOURCES and AMERICAN BIRD CONSERVANCY and against Plaintiffs HAWAI'I UNITES and TINA LIA.

DATED: Honolulu, Hawai'i, February 6, 2024.

/s/ John M. Tonaki



The Honorable John M. Tonaki  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ Timothy A. Vandever

MARGARET D. WILLE  
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/s/ Maxx Phillips

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*Hawai'i Unites, et al. v. State of Hawai'i, et al.*, Civil No. 1CCV-23-0000594; Final Judgment.

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Attorneys for Plaintiffs-Appellants  
Hawai'i Unites and Tina Lia

INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI'I

HAWAI'I UNITES, a 501(c)(3) nonprofit  
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AMERICAN BIRD CONSERVANCY,

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CAAP-24-0000123  
Appeal from Civ. No. 1CCV-23-0000594

**CERTIFICATE OF SERVICE *for***

**CIVIL APPEAL DOCKETING  
STATEMENT; EXHIBIT "A"**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a copy of the above-named document along with this Certificate of Service were duly served upon the following parties via efilings/JEFS and U.S. Mail:

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Attorney for Intervenor Defendant-Appellee  
American Bird Conservancy

DATED: Honolulu, Hawai'i, March 1, 2024.

/s/ Timothy Vandever  
Margaret (Dunham) Wille  
Timothy Vandever

Attorneys for Plaintiffs-Appellants  
Hawai'i Unites and Tina Lia