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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)

ORDER GRANTING DEFENDANT
STATE OF HAWAII'S [187] MOTION
FOR SUMMARY JUDGMENT

Hearing

Date: January 17, 2024

Time: 9:00 a.m.

Judge: Hon. John M. Tonaki

ORDER GRANTING DEFENDANT STATE OF HAWAII'S [187] MOTION FOR
SUMMARY JUDGMENT

Defendant State of Hawai‘i filed its “Motion for Summary Judgment” (“**Motion**”; JEFS 187) on December 22, 2023. Defendant-Intervenor American Bird Conservancy filed a substantive joinder (“Joinder”) (JEFS 196) to the Motion on December 29, 2023. Plaintiffs Hawai‘i Unites and Tina Lia opposed the Motion in a memorandum (JEFS 201) filed January 9, 2024. Defendant State of Hawai‘i filed its Reply in Support of its Motion (JEFS 208) on January 12, 2024.

The Motion was heard by the Honorable John M. Tonaki on January 17, 2024 at 9:00 a.m. Miranda C. Steed and Danica L. Swenson, Deputy Attorneys General, appeared on behalf of Defendant State of Hawai‘i. Timothy A. Vandever appeared on behalf of Plaintiffs Hawai‘i Unites and Tina Lia. David K. Frankel and Maxx Phillips appeared on behalf Defendant-Intervenor American Bird Conservancy.

The Court having considered the Motion, the memoranda in support and opposition thereto, the argument of counsel and the records and files in this matter, hereby 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 technique (“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, 914 P.2d 1364, 1375 (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.*

Hawai‘i 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 concludes the FEA sets 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 Hawai'i 364, 375-76, 382 P.3d 176, 187-88 (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).

Therefore, the Court hereby grants the Motion and Joinder.

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

/s/ John M. Tonaki



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

APPROVED AS TO FORM:

/s/ Timothy A. Vandever

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HAWAI'I UNITES AND TINA LIA

/s/ Maxx Phillips

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Hawai'i Unites, et al. v. State of Hawai'i, et al., Civil No. 1CCV-23-0000594; Order Granting State of Hawaii's Motion for Summary Judgment [187].