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COUNTY COUNCIL
COUNTY OF MAUI
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www.MauiCounty.us

October 20, 2017

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: Robert Carroll, Chair *Robert Carroll*
Land Use Committee

SUBJECT: **BILL 67 (2017), RELATING TO AMENDING THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT POLANUI, LAUNIUPOKO, LAHAINA, MAUI, HAWAII (LU-35)**

Attached is a copy of the Complaint filed in Na `Ō`io O Makila v. Makila Kai, LLC, et al., Civil 17-1-0369(3), Circuit Court of the Second Circuit, State of Hawaii. I am not aware that the Complaint has yet been served on the County or the Maui County Council.

May I please request you provide a written legal opinion as to whether the Council and its Land Use Committee may schedule Bill 67 (2017) for discussion despite the pendency of this lawsuit? Does the lawsuit impact the Council's ability to make a decision on whether to pass Bill 67 (2017) on second and final reading? Please explain.

I would appreciate receiving a response by **Wednesday, October 25, 2017**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Carla Nakata at ext. 7659, or Clarita Balala at ext. 7668).

lu:ltr:035acc03:cmn

Attachment

cc: Jeffrey Ueoka, Deputy Corporation Counsel
Carol Reimann, Director of Housing and Human Concerns

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FILED

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

STATE OF HAWAII

NA 'Ō'IO O MAKILA, an unincorporated
association,

Plaintiff

vs.

MAKILA KAI, LLC, a domestic limited liability
company, KIPA CENTENNIAL, LLC, a
domestic limited liability company, MAUI
COUNTY COUNCIL, DEPARTMENT OF
HOUSING AND HUMAN CONCERNS,
County of Maui, HAWAI'I HOUSING
FINANCE AND DEVELOPMENT
CORPORATION, State of Hawai'i, and DOES
1-27,

Defendants.

) Civil No. 17-1-0369 (3)
) (Environmental Court)

) COMPLAINT; SUMMONS

COMPLAINT

Plaintiff NA 'Ō'IO O MAKILA, an unincorporated association respectfully submits this Complaint for Declaratory and Injunctive Relief against the MAUI COUNTY COUNCIL (County Council), MAKILA KAI, LLC, KIPA CENTENNIAL, LLC, DEPARTMENT OF HOUSING AND HUMAN CONCERNS, County of Maui, HAWAI'I HOUSING FINANCE AND DEVELOPMENT CORPORATION, State of Hawai'i, and DOES 1-27 (collectively, "Defendants") for violations of Hawaii Revised Statutes (HRS) chapters 91, 201H, and 343, and articles XI, §1 and 9, XII §7 of the Hawai'i State Constitution, due to Defendants' failure to follow environmental review procedures required under state law and violations of the public trust in regard to their development on approximately 79.5 acres in the area of Launiupoko in West Maui, identified for real property tax purposes as tax map keys (2) 4-7-013:003, 004, and 005 ("project"); ultra vires acts; improper rulemaking; usurpation; public trust violations; and failure to have considered feasible protections for native Hawaiian traditional and customary practices.

I hereby certify that this is a full, true and
correct copy of the Original

I. Jurisdiction and Venue.

1. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-21.5, 603-21.9, and 632-1; HRS § 343-7(b); HRS §92-12(c); and Articles I, § 5 and XI, §§ 1, 3 and 9, XII §7 of the Hawai'i State Constitution.

2. Venue properly lies in the Circuit Court of the Second Circuit pursuant to HRS §§ 604A-2, 603-36(5), and 632-1 because claims for relief arose in this circuit and Defendant's actions take place in this circuit and invoke the jurisdiction of the environmental court.

II. Parties.

3. Plaintiff NA 'Ō'IO O MAKILA is an unincorporated association of West Maui residents and supporters who are concerned about protecting and preserving the quality of life and environment for West Maui communities. Na 'Ō'io o Makila members have vigorously participated in public processes concerning review of the project.

4. Defendant MAKILA KAI, LLC is a Hawai'i-based domestic limited liability company (MKL). MKL has proposed to develop the project through procedures provided by HRS chapter 201H.

5. Defendant MAKILA KAI, LLC is a Hawai'i-based domestic limited liability company (MKL). MKL has proposed to develop the project through procedures provided by HRS chapter 201H.

6. Defendant KIPA CENTENNIAL, LLC, an affiliate of the West Maui Land Company, Inc. (Kipa Centennial). Kipa Centennial has proposed to develop another segment of the project through procedures provided by HRS chapter 201H.

7. Defendant MAUI COUNTY COUNCIL is the legislative and policy-making body of the Maui County government, as provided by Section 2-2 of the Charter of the County of Maui. Pursuant to HRS §201H-38, the Council is specifically empowered to approve, approve with modification, or disapprove the project by resolution within forty-five days after submission of project plans and specifications.

8. Defendant DEPARTMENT OF HOUSING AND HUMAN CONCERNS, Maui County, is the county's administrative body to which the State of Hawai'i, Hawai'i Housing Finance and Development Corporation has apparently delegated its authority to process "fast-track" applications for affordable housing under HRS chapter 201H.

9. Defendant HAWAI'I HOUSING FINANCE AND DEVELOPMENT CORPORATION, State of Hawai'i (HHFDC), is the primary agency charged with overseeing

affordable housing finance and development in Hawai'i. HHFDC is led by a nine-member board and executive director. HHFDC is placed within the State of Hawai'i department of business, economic development, and tourism for administrative purposes only. HHFDC is the agency authorized to develop "fast tracked" affordable housing projects under authority of HRS §201H-38 by itself or in partnership with private land developers.

10. Additional Defendants Does 1-27 ("Doe Defendants") are persons or entities who may be liable to Plaintiff or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiff. Plaintiff has reviewed the permits, records, state and federal statutes, and other documents, but are unable to ascertain whether or not all parties liable to Plaintiff are named therein. Plaintiff will identify such Doe 1-27 Defendants when their names and capacities are ascertained, Plaintiff is informed and believe and thereon allege that some of these Doe Defendants and at all times relevant herein, were, in some manner presently unknown to Plaintiff engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for the damages to Plaintiff and the public, as alleged herein.

III. Background Facts

11. Hawai'i's environment, ground waters, air, nearshore ocean, cultural resources, and historic sites of West Maui are public trust resources.

12. The ahupua'a of Launiupoko is located in Lahaina, West Maui.

13. West Maui and the Launiupoko ahupua'a contain public trust resources, natural beauty and natural resources, including land, water, air, minerals and energy sources.

14. West Maui and the Launiupoko ahupua'a contain important cultural and historic resources, which resources are utilized by native Hawaiian traditional and customary cultural practitioners in the area.

15. The proposed project is located in the Launiupoko aquifer system area (ASA), which has a sustainable yield of 7 million gallons per day (mgd).

16. Wells in the same aquifer system, Lahaina Shaft Pump B and C (Well Nos. 6-5240-002 & -003), show historical pumping between approximately 4 mgd and 20 mgd until reporting ceased in 2000. These pumps are operated by Makila Land Company, which has not reported water usage or non-usage since 2000.

17. In September 2015, Makila Kai, LLC sought to make the State Land Use Commission (LUC) the accepting agency for an EIS to be prepared for a proposed 271-acre, 150 unit Makila Rural Community development ("Makila Rural development") that included parcel segments currently proposed for the project.

18. MKL planned to develop the Makila Rural development on 231 acres located at TMK Nos. (2) 4-7-013:001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012.

19. MKL's Makila Rural Development included a proposed reclassification of 40 acres from Agricultural to Urban SLU districts.

20. The Land Use Commission agreed to be the accepting agency.

21. On or about April, 2016, MKL announced that it determined not to pursue the Makila Rural development at that time and requested that the LUC terminate its docket.

22. Subsequently, lands that would have comprised the Makila Rural development were split up into at least three parts: Polanui Gardens (TMK Nos (2) 4-7-013:001 and 002); Makila Kai project (TMK Nos (2) 4-7-013:003, 004, and 005); and Makila Rural East (TMK Nos (2) 4-7-013:006, 007, and 008).

23. On or about March 2017, MKL submitted its application for HRS §201H-38 exemption processes to Maui DHHC ("201H application").

24. MKL proposed to develop the project on 79.5 acres of SLU-agricultural land, 14.6 acres of which have been proposed to be reclassified as "rural" lands under an application submitted to the Maui County Council Land Use Committee.

25. MKL requested, and the County Council granted, exemptions from the county community plan amendment requirements for MKL's proposed reclassification of 14.6 acres from agricultural to rural land designations.

26. The project includes 25 workforce housing units on half-acre lots and 24 market-rate agricultural lots ranging from 1.5 to 2 acres in size.

27. MKL represented that a majority of the soils on the property are grade "B" only if irrigated, yet also stated that the project will not draw from Launiupoko stream or other area non-potable infrastructure.

28. The project includes a proposal to construct a Punakea Loop "underpass" beneath the Lahaina Highway Bypass, which consists in lands dedicated to the state for a highway.

29. The project estimates that it will generate 29,645 gallons per day (gpd) under the expectation that Accessory Dwelling Units (ADUs) will be constructed on the 49 lots constructed. If no ADUs are constructed, the project is estimated to produce 14,822.5 gpd of wastewater.

30. Concurrent with its 201H application for the project, MKL requested that the Maui County Council approve a DBA to reclassify the approximately 14.6 acres of the project planned for the half-acre workforce homes and lots from the SLU Agricultural District to the SLU Rural District.

31. In their comments on MKL's 201H application, the State Land Use Commission stated that the County could not exempt the project from HRS chapter 205, the project should be required to obtain a DBA, the DBA should be required for the entire 79.5-acre development, and that MKL should be required to establish that their proposed market-rate agricultural lots are an appropriate use of the Agricultural district. The LUC identified the project as a portion of the larger Makila Rural development and noted that the parcelization of the property into separate developments was unwarranted.

32. On or about May 8, 2017, Maui DHHC submitted preliminary plans and specifications and MKL's accompanying application for HRS §201H-38 exemptions and recommending approval of the MKL application for the current 79 acre project to the Maui County Council.

33. MKL's application to DHHC discussed certain foreseeable impacts of the project based on the presumption that accessory dwelling units (ADUs) will be built (700 square feet on half acre lots) and 800 square feet on 1.5 acre lots. If built, the ADUs could add another 49 residences, for a total of 98 units in the project.

34. On June 16, 2017, the County Council passed Resolution No. 17-108, "Approving with Modifications the Independent Development Makila Kai, Pursuant to Section 201H-38, Hawaii Revised Statutes" (Resolution or Resolution No. 17-108).

35. The Resolution specified that the project is being independently developed pursuant to HRS §201H-41 and that pursuant to HRS §201H-38, the County Council may approve certain exemptions for the Project.

36. The County Council's resolution approved exemptions for the project from Maui County Code (MCC) Chapter 2.80B (General and Community Plans), MCC Chapter 12.08 (Streets, sidewalks and public places), MCC §§16.04C 16.18B, 16.20B, 16.26B, 16.04C.440 (Building and Fire codes), MCC §§18.04.030, 18.16.020, 18.16.050, 18.16.130, 18.16.220, 18.16.230, 18.16.320 (Subdivisions, Parks & Playgrounds), MCC §§19.30A, 19.29.020, 19.30A.030, 19.68.040, 19.68.020, 19.68.030

(Zoning), MCC §20,08.090 (Environmental protection), MCC §8.04.040 (Refuse collection and landfills), and MCC chapter 14.62 (Traffic and Roadway impact fees).

37. MKL requested, and Maui DHHC and County Council approved, exemptions from Maui's subdivision code, MCC §§18.04.030 and 18.16.020.

38. MCC §18.04.030 prohibits subdivision in lands zoned interim, with specified exceptions. MCC §18.16.020 requires subdivision to conform to the general plan and to take into consideration preliminary plans made in anticipation thereof. Further, "[s]ubdivisions shall conform to the requirements of the reviewing agencies and State and County law and the standards established by this title."

39. On June 16, 2017, the County Council considered Committee Report 17-84 at its regular meeting. The County Council adopted Resolution No. 17-108, which approved the project's HRS chapter 201H application with modifications.

40. Resolution No. 17-108 included exemption from MCC Chapter 19.30A to allow the subdivision of the property in the plat configuration as shown in the project site plan.

41. Resolution No. 17-108 required MKL to develop a well for non-potable water for irrigation with a yield sufficient to meet the non-potable water demand of all 49 lots.

42. Resolution No. 17-108 required each individual wastewater system to be constructed and operated strictly in accordance with all applicable laws and regulations, including HAR §11-62-31.1.

43. Resolution No. 17-108 required ADUs to comply with all applicable laws and only one wastewater disposal system shall be permitted on each of the 49 lots.

44. Resolution No. 17-108 exempted the project from MCC §§19.68.020 and 19.68.030 to exempt it from requirements of filing a DBA application for the 14.6 acres and the procedures associated with DBA applications, including the requirement of holding a public hearing on the DBA application.

45. MKL was not exempted from MCC §19.68.040, under which the County Council is authorized to make decisions on the project DBA application.

46. In July 2017, the County Council considered Bill No. 67, which sought an ordinance to amend the SLU District to move 14.594 acres located at TMKs (2): 4-7-013:004 (por.) and (2) 4-7-013:005 (por.) from the agricultural to rural districts. The County Council voted to refer Bill No. 67 to its Land Use Committee.

47. MKL's project is anticipated to provide second/vacation homes to non-resident buyers as well as current Maui residents.
48. Studies of traffic, engineering, market studies, economic impacts, public fiscal assessments, wastewater, and water resource impacts included in MKL's DHHC application presumed that at least one accessory dwelling unit (ADU) would be build on each lot. DHHC at PDF 48, 66 (and others).
49. The project, inclusive of ADUs, will be in violation of State Department of Health (DOH) wastewater regulations.
50. On July 28, 2017, the County Council considered Bill 67, "A Bill for an Ordinance to Amend the State Land Use District Classification From Agricultural District to Rural District (Conditional Boundary Amendment) For Property Situated at Polanui, Launiupoko, Lahaina, Maui, Hawaii, Tax Map Key Nos. (2) 4-7-013:004 (por.) and (2) 4-7-013:005 (por.), containing a total of 14.594 acres," but referred it to the council Land Use Committee.
51. On August 1, 2017, Kipa Centennial, LLC submitted its HRS Chapter 201H application for the Polanui Gardens development to various agencies for comment.
52. Another 201H development, Makila Rural East, is planned to be proposed for the parcels adjacent to the MKL project.
53. As of the time of this writing, the Maui County Council's Land Use Committee is deliberating on the Makila Kai DBA application and the Polanui Gardens' DBA application.
54. HHFDC did not submit a 201H application for the Makila Kai project to the LUC.
55. The Polanui Gardens development is proposed to be located on TMK (2) 4-7-013:001 and -002, which parcels are adjacent to the project parcels.
56. The Polanui Gardens development is proposed to consist in 50 single family homes and 16 market rate agricultural lots, as well as other improvements covering 54.5 acres in Lahaina.
57. Each of the 66 Polanui Gardens development lots will install individual wastewater systems.
58. The Polanui Gardens draft 201H application also proposes to seek exemptions from MCC §§19.68.020 and 19.68.030 to exempt it from requirements of filing a DBA application for 14.6 acres that Kipa Centennial seeks to reclassify to "Urban" lands and the procedures associated with DBA applications, including the requirement of holding a public hearing on the DBA application, which similar exemptions were granted by the Maui County Council's Resolution No. 17-108 for the Makila Kai project.

IV. Claims for Relief.

COUNT ONE –VIOLATION OF CHAPTER 343, HRS

59. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

60. The County Council, HHFDC, and Maui DHHC are agencies within the meaning of HRS chapter 343.

61. The proposed project entailed triggers described under HRS §343-5 and related case law.

62. The proposed project will use state or county lands, including trails, paths, underpasses, and roads.

63. The proposed project will foreseeably entail the construction of at least fifty individual wastewater units.

64. The proposed project will require subdivision of lands, which will intensify land uses.

65. The project constitutes an “action,” which is defined as “any program or project to be initiated by any agency or applicant” within the meaning of HRS §343-2.

66. The use of state or county lands, the construction of fifty or more individual waste water units, and the subdivision of lands, resulting in intensified land uses triggered obligations to prepare an environmental assessment (EA) under HRS §343-5.

67. Government defendants did not require MKL to prepare an EA.

68. The Maui County Council did not act reasonably in failing to require the applicant, MKL, to prepare an EA.

69. The proposed project may have significant impacts on the environment, traffic, quality of life, recreation, water quality, water resources, wastewater, cultural resources and practices, and other environmental impacts.

70. Actions that may have significant environmental impacts require preparation of an EIS.

71. The Maui County Council did not require MKL to prepare an EIS.

72. Plaintiff seeks a declaratory order that Defendants are in violation of HRS chapter 343 and are required to prepare, at minimum, an EA for the project.

COUNT II- VIOLATION OF HRS CHAPTER 343, SEGMENTATION

73. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

74. HHFDC is the agency proposing the MKL project in partnership with the applicant, MKL.

75. HHFDC is also considering, or will soon consider, a 201H application from Kipa Centennial to develop Polanui Gardens on an adjacent parcel.

76. A third 201H development, called Makila Rural East, is planned for the parcels adjacent to the MKL project.

77. All three properties were previously part of the Makila Rural Community development.

78. HHFDC, in partnership with MKL and other developers, is proposing multiple and phased actions in the Makila region.

79. Development of MKL's project, Polanui Gardens, and Makila Rural East, consist in component phases or increments of the larger total undertaking, which had previously been proposed as the Makila Rural development.

80. The project will share infrastructure with other phases or increments of the larger total planned development.

81. The 201H developments, MKL's project, Polanui Gardens, and Makila Rural East, are each essentially identical and a single environmental impact disclosure document will adequately address the impacts of each individual action and those of the group of actions as a whole.

82. Defendants failed to consider the project as part of the large undertaking as required by HAR §11-200-17.

83. Defendants failed to prepare environmental review disclosure documents or otherwise comply with HRS chapter 343.

84. Defendants' approval and pursuit of the project in the absence of required environmental review procedures constituted a violation of HRS chapter 343.

85. Plaintiff seeks a declaratory order that Defendants are in violation of HRS chapter 343 and are required to consider existing and proposed future developments in the area.

COUNT III - ULTRA VIRES ACTS

86. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

87. Under HRS §201H-38, the legislature authorized HHFDC to develop housing projects, on behalf of the State or with an eligible developer, which may be exempted from laws governing planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon.

88. HRS §201H-41(c) provides that HHFDC may accept and approve housing projects independently initiated by private developers that HHFDC reasonably judges to be primarily designed for lower income housing, provided that: developers furnish a performance bond; the project meets design and sale requirements; the project encompasses the use of suitable lands zoned within an urban land use district or appropriate in its situation and surroundings for more intensive or denser zoning; and satisfy HRS §201H-38(a)(1), (2), and (3) requirements.

89. The County Council did not approve a DBA for the Makila Kai project prior to the submission of and decisionmaking on the 201H application for the project.

90. The County Council did not approve a DBA for the Polanui Gardens development prior to the submission of the 201H application for the development.

91. HRS §201H-38(a)(1), (2), and (3) require: (1) HHFDC to find the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety; (2) the project cannot contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply; and (3) the county council to approve the project.

92. HHFDC is not permitted to approve a 201H project application where the corporation fails to find it is consistent with the purpose and intent of the chapter, and meets minimum requirements of health and safety. HRS §201H-38(a)(1).

93. HHFDC is not permitted to approve a 201H project application that does not comply with the standards and rules of the Maui Department of Water Supply (DWS). HRS §201H-38(a)(2).

94. MKL's project did not comply with HRS §§201H-38 or -41, therefore, HHFDC was not authorized to approve the 201H application for MKL's project.

95. The Maui County Council's resolution states that it was made pursuant to HRS §201H-38, approved Maui DHHC's recommendation to approve MKL's project pursuant to HRS chapter 201H, MKL's project is being independently developed pursuant to HRS §201H-41, and that exemptions offered to MKL's project were authorized under HRS §201H-38.

96. No statute permits HHFDC to delegate its authority to exempt housing projects from planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon to any other agency, including Maui DHHC.

97. Neither HRS §201H-41 nor HRS §201H-38 allows Maui DHHC to develop affordable housing with eligible developers.

98. Neither HRS §201H-41 nor HRS §201H-38 allows Maui DHHC or MKL to develop the Makila Kai project.

99. MKL submitted its 201H application to Maui DHHC and has MKL represented that it may proceed with the project under the authority of the Maui County Council resolution.

100. HHFDC's delegation of the authority to develop a 201H project with MKL to Maui DHHC was ultra vires of HHFDC's authority under HRS chapter 201H.

101. HRS §205-4(a) applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural lands, and lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in HRS §201H-38.

102. HRS §201H-38(a)(4) required that the State LUC approve, approve with modification, or disapprove a DBA within forty-five days after HHFDC submitted a petition to the commission as provided in HRS §205-4.

103. HRS §201H-38 does not authorize the Maui County Council or any other county agency to approve, approve with modification, or disapprove a DBA petition.

104. The LUC did not receive a request for a boundary amendment associated with any 201H application from HHFDC for the Makila Kai project.

105. Maui DHHC's acceptance, processing, and recommendation and proposal to develop the project with MKL was ultra vires of its authority and not authorized by HRS chapter 201.

106. The County Council's resolution approving DHHC's recommendation to develop MKL's project and issuing exemptions to the project were ultra vires of the County Council's authority and not authorized by HRS chapter 201H.

107. Actions by the County Council, and its committees, to approve process or approve the Makila Kai 201H project's DBA were ultra vires of HRS §201H-38(a)(4) and were not authorized by any law.

108. MKL's reliance on Maui DHHC's approval of the 201H application, the County Council's the resolution, and any exemptions from laws represented within the resolution, was mistaken and not supported by law.

109. Plaintiff seeks a declaratory order stating that Defendants' actions in regard to the MKL project were ultra vires of their respective authorities and not permitted by law.

COUNT IV - USURPATION

110. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

111. Maui DHHC's actions to develop a 201H project with MKL is a power invested in the HHFDC by HRS chapter 201H and no other agency.

112. Maui DHHC's acceptance, processing, and recommendation and proposal to develop the project with MKL was not authorized by HRS chapter 201H.

113. The County Council's resolution approving Maui DHHC's recommendation to develop MKL's project and issuing exemptions to the project were not authorized by HRS chapter 201.

114. Actions by the Maui DHHC and the County Council to approve the project as an independent development under HRS §201H-41 are powers invested in HHFDC and no other agency.

115. Actions by the County Council, and its committees, to approve process or approve the Makila Kai 201H application's DBA are powers invested in the LUC by HRS §201H-38(a)(4) and other laws and in no other agency.

116. Actions by the County Council, and its committees, to approve process or approve the Polanui Gardens development 201H application's DBA are powers invested in the LUC by HRS §201H-38(a)(4) and other laws and in no other agency.

117. Plaintiff seeks an order or judgment in the nature of quo warranto to oust Defendants Maui DHHC and County Council from their usurpation of the offices appropriately held by state agencies.

COUNT V - IMPROPER RULEMAKING

118. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

119. Agencies are required to implement specified procedures in adopting, amending or repealing rules, including providing thirty-days' notice of a public hearing, affording interested persons an opportunity to comment, holding public hearings, and publicizing its determinations pursuant to HRS §91-3.

120. HHFDC maintains a "201H Application" document on its website for developers seeking to propose HRS chapter 201H projects.

121. HHFDC's 201H Application directs developers to begin the 201H process by first contacting county agency offices, including those of the Maui DHHC.

122. HRS Chapter 201H does not provide a process for county agencies, including Maui DHHC, to process 201H applications.

123. HHFDC's practice, and policy of delegating its authority to partner with private developers to develop affordable housing projects has not been subject to rulemaking procedures set forth in HRS §91-3.

124. HHFDC has not promulgated rules delegating its authority to develop affordable housing projects or to partner with private developers to develop affordable housing projects in accordance with HRS §91-3 procedures.

125. Plaintiff seeks a declaratory order stating that HHFDC's practice of delegating authority to Maui DHHC to process and recommend approval of 201H applications and to partner with developers to develop 201H affordable housing projects is subject to rulemaking requirements of HRS §91-3 and therefore invalid and void.

COUNT V- VIOLATION OF THE PUBLIC TRUST

126. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

127. HHFDC, the County Council, and the Maui DHHC are obligated to uphold the public trust pursuant to Article XI, § 1 of the Hawai'i State Constitution.

128. West Maui and the Makila ahupua'a contain public trust resources, natural beauty and natural resources, including land, water, air, minerals and energy sources.

129. West Maui and the Makila ahupua'a contain important cultural and historic resources, which resources are utilized by native Hawaiian traditional and customary cultural practitioners in the area.

130. The proposed project may harm existing cultural practices by, amongst other things, reducing the quantity of freshwater resources for growing kalo, water discharges to coastal fisheries, obstructing or destroying historic trails, and obstructing access and views to historic sites.

131. Native Hawaiian practitioners of traditional and customary cultural practices conduct their practices in and near areas that will be affected by the proposed project.

132. HHFDC, the County Council, and the Maui DHHC failed to consider, protect and advance the public's rights in natural, clean air resources at every stage of the planning and decision-making process by failing to require preparation of appropriate environmental review disclosure documents.

133. HHFDC, the County Council, and the Maui DHHC failed to make specific findings and conclusions as to identity the scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; or the feasible action, if any, to be taken by the agency to reasonably protect native Hawaiian rights that are found to exist.

134. Plaintiff was harmed by Defendants' failure to protect their interests informed decisionmaking that may significantly impact public trust resources.

135. Plaintiff seeks a declaratory order determining government Defendants violated their public trust duties by failing to: (1) require HRS chapter 343 environmental review documents for the proposed project; (2) make specific findings and conclusions concerning native Hawaiian traditional and customary practices that may be protected in the project area; and (3) otherwise protect and preserve public trust resources as required of a public trustee.

COUNT VI - INJUNCTION

136. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

137. Plaintiff has been harmed by Defendants' actions, because the latter have deprived public decision-making of environmental impact disclosures, failed to comply with Chapter 343, HRS, conducted ultra vires acts in approving the project, usurpation and violated their duties to protect and preserve public trust resources.

138. Defendants are engaging in unlawful conduct.

139. Plaintiff's right to clean and healthful environment, the right to due process, and rights to conduct native Hawaiian traditional and customary practices have and will be violated by Defendants conduct.

140. By failing to have appropriately considered the environmental impacts of the project and violating laws meant to provide public processes and oversight, Defendants threatened imminent harm to the environment, Plaintiff, and other Maui communities.

141. There is no adequate remedy at law.

142. The proposed use of the project threatens irreparable harm such as the irrevocable commitment of natural resources and the impairment or destruction of cultural resources and practices.

143. Public policy strongly supports the protection of the right to a clean and healthful environment and the right to due process.

144. Plaintiff seeks injunctive relief against Defendants and their agents and employees, and all persons acting under, in concert with, or for them from any conduct in furtherance of the determination of the Project to have no significant impact on the environment until such time as Chapter 343, HRS, Chapter 201H, HRS, and the public trust doctrine have been adequately and properly complied with.

WHEREFORE, Plaintiff respectfully request that the Court:

1. Enter a declaratory judgment that:
 - (a) Defendants are in violation of HRS chapter 343, by failing to prepare an environmental assessment prior to decisionmaking on the project;
 - (b) The Maui County Council's Resolution No. 17-108 approving the 201H application for the project is null and void;
 - (c) Exemptions approved in the Maui County Council's Resolution No. 17-108 for the project are null and void;
 - (d) Defendants are required to prepare, at minimum, an environmental assessment in compliance with HRS chapter 343;
 - (e) Makila Kai, LLC may not utilize the property for its project without full prior compliance with HRS chapter 343; and,
 - (f) HHFDC's procedures, policies, and practice of delegating to Maui DHHC to develop its authority 201H affordable housing projects in partnership with developers, including

Makila Land, LLC, are null, void, and in violation of HRS §91-3.

2. Grant an order or judgment ousting Defendants from unlawfully usurping various offices of the state as follows:

(a) Maui DHHC acting to develop projects in partnership with developers, including Makila Land, LLC under Chapter 201H, HRS;

(b) Maui DHHC accepting, processing, and recommending Makila Land, LLC's proposal to develop a 201H affordable housing project;

(c) The Maui County Council conducted proceedings on a district boundary amendment for the Makila Kai and Polanui Gardens 201H application projects as well as exempting the Makila Kai project from DBA application and hearing procedures;

(d) The Maui County Council approving Maui DHHC's recommendation to develop Makila Kai, LLC's 201H project; and,

(e) The Maui County Council exempting the Makila Kai project from various laws specified in its Resolution No. 17-108.

3. For a preliminary injunction enjoining Defendants, and their employees, agents, servants, and representatives, and any other persons acting in concert with it, under its authority, or with its approval, from making further use of the parcel until Defendants fully comply with HRS chapter 343

4. For the Court to retain continuing jurisdiction to review defendants' compliance with all judgments and orders entered herein.

5. For such additional judicial determinations and orders as may be necessary to effectuate the foregoing.

6. For the costs of suit herein, including reasonable attorneys' fees; and

7. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between plaintiff and defendants.

DATED: Wailuku, Maui, Hawai'i August 30, 2017



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiff

STATE OF HAWAII CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF NA 'O'IO O MAKILA	vs.	DEFENDANT Makila Kai, LLC, a domestic limited liability company, KIPA CENTENNIAL, LLC, a domestic limited liability company, MAUI COUNTY COUNCIL, DEPARTMENT OF HOUSING AND HUMAN CONCERNS, County of Maui, HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, State of Hawai'i and DOES 1-27
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) LAW OFFICE OF LANCE D. COLLINS LANCE D. COLLINS 8246 PO BOX 179336 HONOLULU HI 96817 (808) 243-9292		
<p>TO THE DEFENDANT(S):</p> <p>You are hereby summoned and required to file with the court and serve upon plaintiff's attorney, whose address is stated above, and answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.</p> <p>If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p style="text-align: center;">If you fail to obey this summons this may result in an entry of default and default judgment.</p> <p style="text-align: center;">Pursuant to Rule 4(b) of the <u>Hawai'i Rules of Civil Procedure</u>, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.</p>		
DATE ISSUED AUG 30 2017	CLERK OF COURT /sgd/ D. PELLAZAR (seal)	



In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office at PHONE NO. 244-2969, FAX 244-2932, or TTY 244-2865, at least ten (10) working days prior to your hearing or appointment date.