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Attorneys for Plaintiffs NĀ PAPA'I WAWAE 'ULA'ULA, SURFRIDER FOUNDATION, and
KA MALU O KAHĀLĀWAI

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

NĀ PAPA'I WAWAE 'ULA'ULA, a nonprofit
corporation, SURFRIDER FOUNDATION, a
nonprofit corporation, and KA MALU O
KAHĀLĀWAI, a nonprofit corporation,

Plaintiffs,

vs.

ASSOCIATION OF APARTMENT OWNERS
OF KAHANA SUNSET, a nonprofit corporation,
and DOES 1-27,

Defendants.

) Civil No. _____
) (Environmental Court)
)
) COMPLAINT FOR DECLARATORY
) AND INJUNCTIVE RELIEF;
) SUMMONS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs NA PAPA'I WAWAE 'ULA'ULA, SURFRIDER FOUNDATION, a nonprofit



corporation, and KA MALU O KAHĀLĀWAI, both non-profit corporations (collectively, “Plaintiffs”) respectfully submit this cause of action against Defendants ASSOCIATION OF APARTMENT OWNERS OF KAHANA SUNSET, a nonprofit corporation, and DOES 1-27 (collectively, “Kahana Sunset”) for violations of Hawai‘i Revised Statutes (HRS) chapters 91-14, 171, 183C, 205A, and 343, and public nuisance.

This action arises from Kahana Sunset’s failure to obtain permits and approvals for encroaching structures of its 80- unit condominium, located on Keonenui bay at 4909 Lower Honoapi‘ilani Road, Lahaina, Maui, Hawai‘i; Tax Map Key No. (2) 4-3-003:015 (“property” or “Kahana Sunset”) State shoreline and conservation district lands, and for further development work on these structures and lands.

I. JURISDICTION AND VENUE.

1. This lawsuit is based on violations of HRS chapters 171, 183C, 205A, and 343 and common law public nuisance. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 343-7, 603-21.5, 603-21.9, 607-25, and 632-1; articles I, § 5, XI, §§ 1 and 9, and article XII §7 of the Hawai‘i State Constitution.

2. Venue properly lies in the Circuit Court of the Second Circuit pursuant to HRS §§ 206E-20, 604A-2, 603-36(5), and 632-1, because the claims for relief arose in this circuit and Plaintiffs include those who are organized in and reside in this circuit and invoke the jurisdiction of this Court.

II. PARTIES

3. Plaintiff NĀ PAPA‘I WAWAE ‘ULA‘ULA (“Nā Papa‘i”) is a domestic nonprofit, that advocates for preservation and enhancement of public beach access and preservation of public trust resources. Nā Papa‘i holds in-person and online community meetings with West Maui communities and administers a social media page on facebook.com for a group called “Access Denied!” that has over 5,200 members. Nā Papa‘i officers, directors, and supporters, hold rights and interests in preserving and expanding public beach access for public recreational use, Hawaiian cultural practices, subsistence, aesthetic enjoyment, and ecological protections for West Maui.

4. Plaintiff KA MALU O KAHĀLĀWAI (“Ka Malu”), a domestic nonprofit corpora-

tion, is organized to protect the natural and cultural history and resources of Kahoma and surrounding ahupua'a from mauka to makai. Ka Malu officers, directors and/ or supporters conduct Kānaka Maoli traditional and customary practices of gathering, fishing, and hukilau at Keonenui Beach, and fishing, surfing, canoe paddling, and diving in waters including Keonenui Bay.

5. Plaintiff SURFRIDER FOUNDATION ("Surfrider") is a national nonprofit organization based in California, with approximately 350,000 members and supporters, whose mission includes the protection and enjoyment of our ocean, waves and beaches, for all people. Surfrider has approximately 80 volunteer driven Chapters and 130 School Clubs throughout the U.S. carrying out Surfrider's mission through programs and campaigns. Surfrider has four Hawai'i Chapters, including the Maui Chapter, and eight Hawai'i School Clubs, including three on Maui. Surfrider has approximately 400 current active members in Hawai'i, about 80 of which reside on Maui. For decades, Surfrider has advocated to protect Hawai'i shorelines, including from armoring, and to protect safe and equitable access along Hawai'i beaches.

6. Plaintiffs include those who are concerned about improper development and use of lands within and affected by the property, and their impacts on the environment, nearshore areas, ecosystems, native species, water resources, the exercise and passing on of Kānaka Maoli traditions and customs, archaeological and cultural resources, public welfare and safety, and other impacts to the surrounding area, as well as enforcement of proper public involvement in the enforcement of laws meant to protect Hawai'i's natural and cultural public trust resources.

7. Plaintiffs are appellants in contested case proceedings pending against the Maui Planning Director's issuance of a special management area (SMA) use permit exemption for further construction work on Building "F"/ seawall and a SMA emergency permit for work within the shoreline setback area to shore up Building "A."

8. Defendant ASSOCIATION OF APARTMENT OWNERS OF KAHANA SUNSET ("Kahana Sunset"), is a nonprofit corporation responsible for maintaining common elements of an 80- unit condominium, located at the property. Kahana Sunset is responsible for encroaching hardened shoreline structures at the property.

9. Additional Defendants Does 1-27 ("Doe Defendants") are persons or entities who may be liable to Plaintiffs or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiffs. Plaintiffs have reviewed the permits, records, state and federal statutes, and other documents, but are unable to ascertain whether or not all

parties liable to Plaintiffs are named therein. Plaintiffs will identify such Doe Defendants 1-27 when their names and capacities are ascertained. Plaintiffs are 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 Plaintiffs 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 Plaintiffs and the public, as alleged herein.

III. BACKGROUND FACTS

10. Kahana Sunset is located on Keonenui Bay in West Maui.

11. Hardened shoreline structures may disrupt coastal processes, leading to beach erosion and compromising uses of coastal areas by others in the community and wildlife.

12. Kahana Sunset is responsible for the common elements of the property.

13. Common elements of the property, including a stairway, several seawalls, and other hardened structures, are encroaching into State shoreline lands.

14. In or about 1971, the Kahana Sunset condominium property was constructed along the shoreline at Keonenui Bay.

15. In or about 1975, Kahana Sunset sought to install hardened shoreline structures and has since multiply sought and received permits to install further structures and reinforce them.

16. Kahana Sunset has not obtained a valid shoreline certification since 1978.

17. Through sea level rise, erosion, and other processes, the shoreline has receded mauka of Kahana Sunset's hardened structures, which are now located on State conservation land.

18. Kahana Sunset lacks permits for these encroachments onto State lands, including a lease or right of entry for use of State lands under HRS chapter 171, a permit for use of State conservation district lands under HRS chapter 183C, a shoreline certification for work in the setback pursuant to HRS chapter 205A, and environmental review processes required as a condition of such permitting under HRS chapter 343. These structures include Buildings "A" and "F", stairway, and other hardened structures.

19. Since at least 2012, County agencies have explicitly required Kahana Sunset to complete shoreline certification processes to determine property boundaries, but Kahana Sunset has not complied by obtaining a certified shoreline.

20. In 2023, Kahana Sunset sought further emergency permits and exemptions from

permitting requirements from the Maui Planning Department to reinforce their shoreline structures in the Special Management Area (“SMA”). Plaintiffs timely appealed Kahana Sunset’s SMA permits in July 2023.

21. Appealed SMA permits include conditions requiring Kahana Sunset to obtain a valid shoreline certification for construction on the Building “F” seawall and refer to an outstanding requirement for shoreline certification for work on Building “A”.

22. In August 2023, Kahana Sunset, without obtaining a shoreline certification and in disregard of the pending contested case before the Maui Planning Commission, Kahana Sunset undertook work in the shoreline setback on its Building “A”.

23. On October 2, 2023, Plaintiffs wrote to remind the Maui Planning Department and Kahana Sunset that they could not proceed with further work under the Planning Department permits subject to the appeal.

24. On February 7, 2024, Plaintiffs, and others from the community, notified the State Department of Land and Natural Resources’ Office of Conservation and Coastal Lands, the Director of the Maui Planning Department, and Kahana Sunset of their encroaching hardened structures and consequent violations of law. Kahana Sunset disagreed with Plaintiffs’ statements.

25. Plaintiffs timely file this complaint for declaratory and injunctive relief against Kahana Sunset’s violations of laws intended to protect State shoreline lands, conservation districts, coastal zone management, environmental review processes, public trust resources, the exercise of Native Hawaiian traditional and customary rights, and uses of public trust resources.

IV. CLAIMS FOR RELIEF.

COUNT ONE -UNAUTHORIZED USE OF STATE SHORELINE AND CONSERVATION DISTRICT LANDS

26. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

27. Kahana Sunset’s hardened shoreline structures are encroaching onto State-owned shoreline land.

28. State shoreline lands are within the State conservation district.

29. Kahana Sunset has lacked a valid shoreline certification at all relevant times, including presently and since 1978.

30. Uses of State lands are required to be proposed through requests for authorization to the State Board of Land and Natural Resources (BLNR).

31. Kahana Sunset has not proposed its uses to BLNR and lacks any authorization to utilize these State lands, nor the Conservation District.

32. Kahana Sunset's unpermitted actions encroach on lateral access across the beach and may cause and contribute to the erosion of other beaches, which adversely impacts uses by community Plaintiffs and nearshore ecosystems.

33. Plaintiffs, as community members who utilize these nearshore ecosystems and beaches, are harmed by Defendants' violations and request declaratory and injunctive relief for those harms.

COUNT TWO - VIOLATIONS OF COASTAL ZONE MANAGEMENT ACT

34. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

35. Plaintiffs are parties to a contested case appeal pending before the Maui Planning Commission concerning Kahana Sunset's SMA permits to "repair" and reinforce hardened shoreline structures of Buildings "A" and "F".

36. Kahana Sunset has already acted to "repair" and reinforce hardened shoreline structures of Building "A" outside of the pending contested case.

37. This Court is authorized to grant injunctive relief to prevent Kahana Sunset from taking further action to moot the pending contested case and to require Kahana Sunset to obtain a shoreline certification prior to taking further action, should such action be allowed by the Maui Planning Commission.

38. Plaintiffs are harmed by Defendants' violations because they deprive Plaintiffs' of the ability to protect their rights and interests through contested case procedures pending before the Maui Planning Commission. Plaintiffs request declaratory and injunctive relief for those harms.

COUNT THREE - VIOLATION OF HRS CHAPTER 343

39. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

40. Kahana Sunset is utilizing State lands for its encroaching shoreline structures.

41. Kahana Sunset has not proposed use of these State lands for BLNR approval.

42. Proposed uses of State lands are required to be informed by environmental procedures set forth under HRS chapter 343.

43. Kahana Sunset has not obtained a negative declaration or prepared environmental disclosure documents in violation of HRS chapter 343.

44. Plaintiffs would participate to inform BLNR of adverse environmental impacts consequent to Kahana Sunset's hardened shoreline structures through HRS chapter 343 environmental review procedures.

45. Plaintiffs are harmed by Defendants' violations of HRS chapter 343 and seek injunctive and declaratory relief for those harms.

COUNT FOUR - PUBLIC NUISANCE

46. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

47. Defendants have caused and continue to cause development on State lands makai of the shoreline and lack permits or authorizations for their development.

48. Defendants' unpermitted and unauthorized development produced a substantial, permanent or long-lasting effect and Kahana Sunset knows or has reason to know that it has a significant effect upon the public's rights and has caused and continues to cause Plaintiffs and the public actual, unreasonable, and substantial harm.

49. Defendants have engaged in and continue to engage in a public nuisance by the activities described above. The activities described above annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of people.

50. The continued existence of Defendants' public nuisance on state land has caused and continues to cause Plaintiffs and the public actual and substantial harm. This harm is immediate and irreparable. It is the purpose and intent of this lawsuit to eliminate the effects of Kahana Sunset's unlawful use of state lands.

51. Plaintiffs seek a judgment declaring Kahana Sunset in violation of HRS chapters 171, 183C, 205A, and 343, declaring these violations constitute a public nuisance, and grant preliminary and permanent injunctive relief.

COUNT FIVE - INJUNCTION

52. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

53. Defendants are engaging in unlawful conduct.

54. Plaintiffs' right to a clean and healthful environment, right to conduct native Hawaiian traditional and customary practices and the right to due process have and will be violated by Defendants' conduct.

55. HRS chapters 171, 183C, 205A, and 343 are laws relating to environmental quality.

56. There is no adequate remedy at law for violations of Plaintiff's constitutional rights.

57. Public policy strongly supports the protection of Plaintiffs' constitutional rights and the protection of the environment.

58. Plaintiffs seek a preliminary injunction and a permanent injunction, enjoining Defendants and their agents and employees, and all persons acting under, in concert with, or for them from any conduct in furtherance of the project or other similar projects until such time as HRS chapters 171, 183C, 205A, and 343 have been adequately and properly complied with.

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment that:

a. Defendants violated HRS chapter 171 by failing to obtain land use authorizations for their hardened shoreline structure encroachments onto State lands;

b. Defendants violated HRS chapter 183C by failing to obtain a conservation district use permit for their uses of Conservation District lands;

c. Defendants violate HRS chapter 205A procedures by developing in the shoreline setback while a contested case is pending against the same development and failing to obtain a shoreline certification for this development;

d. Defendants violated HRS chapter 343 by utilizing State lands without complying with environmental review processes;

e. Defendants' have and continue to cause a public nuisance through their violations of the above-referenced laws;

2. For preliminary and permanent injunctive relief 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 taking further action to develop Kahana Sunset and from utilizing State conservation lands until such time as HRS chapters 171, 183C, 205A, and 343 have been adequately and properly complied with.

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

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

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

8. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

DATED: Honolulu, Hawai'i

June 24, 2024

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY, LLC
RYAN D. HURLEY

DATED: Makawao, Hawai'i

June 24, 2024

/s/ Lance D. Collins
LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorneys for Plaintiffs

**STATE OF HAWAI'I
CIRCUIT COURT OF THE
SECOND CIRCUIT**

**SUMMONS
TO ANSWER CIVIL COMPLAINT**

CASE NUMBER

PLAINTIFF'S NAME & ADDRESS, TEL. NO.

PLAINTIFF

NĀ PAPA'I WAWAE 'ULA'ULA, a nonprofit corporation, SURFRIDER FOUNDATION, a nonprofit corporation, and KA MALU O KAHĀLĀWAI, a nonprofit corporation

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DEFENDANT(S)

ASSOCIATION OF APARTMENT OWNERS OF KAHANA SUNSET, a non-profit corporation, and DOES 1-27

TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to filed with the court and serve upon
Lance D. Collins, PO Box 782 Makawao, HI 96768, 808.243.9292
Bianca Isaki, 1720 Huna St. 401B Honolulu, HI 96817, 808.927.5606
Ryan D. Hurley, PO Box 19205, Honolulu, HI 96817, 808.738.7610

_____,
plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

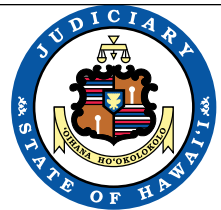
THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

DATE ISSUED _____

Effective Date of 03-Jul-2023
signed by: /s/M. Ferreira
Clerk, 2nd Circuit, State of Hawai'i

The original document is filed in the
Judiciary's electronic case management
system which is accessible via eCourt Koku
a: <http://www.courts.state.hi.us>



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Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.