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CLERK

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Theodore K. Blake

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

THEODORE K. BLAKE,

Plaintiff,

vs.

COUNTY OF KAUA'I PLANNING
COMMISSION, COUNTY OF KAUA'I
PLANNING DEPARTMENT, IAN COSTA)
in his official capacity as planning director,)
DEPARTMENT OF LAND AND)
NATURAL RESOURCES, LAURA)
THIELEN in her official capacity as chair of)
the Department of Land and Natural)
Resources, and ERIC A. KNUDSEN)
TRUST,)

Defendants.

CIVIL NO. 09-1-0069

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; SUMMONS

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

INTRODUCTION

Over three decades ago, the State Legislature declared:

The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such

property for the education, inspiration, pleasure, and enrichment of its citizens. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property.

HRS § 6E-1.

This complaint is based on the failure of the Eric A. Knudsen Trust and various public entities to fulfill their legal obligations pursuant to the public trust doctrine, Native Hawaiian rights, HRS Chapter 6E, HRS Chapter 205A, and HRS Chapter 343. Government entities failed to act with a level of openness, diligence and foresight commensurate with the high priority commanded under the laws of our state.

JURISDICTION

1. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-21.5, 603-21.9, 632-1, 343-7, 205A-6 and 6E-13 and Article XII § 7 of the Constitution of the State of Hawai'i.

PARTIES

2. Plaintiff Theodore K. Blake is a Native Hawaiian and resident of the County of Kauai, State of Hawaii, who engages in native Hawaiian traditional and customary practices in the ahupua`a of Kōloa

3. Defendant Kaua`i County Planning Commission is the authority that grants subdivision approvals in the County of Kaua`i pursuant to the Kaua`i County Charter Article XIV § 14.09(B).

4. Defendant County of Kaua`i Planning Department exists pursuant to Article XIV of the Kaua`i County Charter.

5. Defendant Ian Costa is the Kaua'i County planning director and is named in his official capacity.

6. Defendant Department of Land and Natural Resources implements HRS chapter 6E, the historic preservation program and the state's burial sites program.

7. Defendant Laura Thielen is the Chairperson of the Board of Land and Natural Resources and the state historic preservation officer, and is named in her official capacities.

8. Defendant Eric A. Knudsen Trust owns property on Kaua'i in the ahupua`a of Kōloa and is proposing to develop the Village at Po`ipū.

FACTUAL ALLEGATIONS

9. Plaintiff is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawai'i.

10. Plaintiff's ancestors lived and died in the ahupua`a of Kōloa.

11. Plaintiff has religious and spiritual beliefs and engages in traditional and cultural practices that originate in, and are interpreted from, the traditional Native Hawaiian culture and community.

12. One of the critical tenets of Native Hawaiian traditional and customary practices is the obligation to ensure that iwi (native Hawaiian human remains) remain undisturbed and that they receive proper care and respect.

13. Protection of iwi is a traditional and customary practice of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

14. Also at the heart of Hawaiian culture is malama `aina, or care for the land, a traditional and customary practice of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

15. Plaintiff engages in traditional and customary practices, including malama `aina and protecting iwi, in and around Defendant Eric A. Knudsen Trust's proposed Village at Po`ipū, which comprises approximately 208 acres in the ahupua`a of Kōloa.

16. Defendant Eric A. Knudsen Trust has sought subdivision approval from the Kaua`i County Planning Commission for a development on Tax Map Keys 2-8-14: 19, 21, 30.

17. In 1991, an archaeological inventory survey of these lands identified a total of 75 historic sites.

18. In 2005, additional survey work on parcel 19 identified 33 historic sites.

19. Eighteen of these sites have since been destroyed and only two are slated for preservation.

20. Subsequent survey work on TMKs 2-8-014:001, 2-8-15:25 through 37 and 45-74 resulted in the identification of 4 additional historic sites.

21. According to a May 19, 2006 letter from Defendant DLNR, "although all parcels...have had an archaeological inventory survey completed and approved by SHPD, mitigation measures remain outstanding for many" of the identified historic sites.

22. In November 2006, Defendant Eric Knudsen Trust prepared a Final Environmental Impact Statement for its Village at Po`ipū development because of proposed improvements to Hapa Road/Trail.

23. The November 2006 Final Environmental Impact Statement for Village at Po`ipū did not discuss any proposal to breach the publicly owned historic site Hapa Trail.

24. The Department of Land and Natural Resources has not yet completed the historic review process for the Village at Po`ipū development.

25. The Department of Land and Natural Resources has not given final approval to burial treatment plans or other mitigation plans for historic property on Eric Knudsen Trust's land at the Village at Po`ipū.

26. On or about January 13, 2009, Defendant Kaua`i Planning Commission granted final subdivision approval to Defendant Eric A. Knudsen Trust's Village at Po`ipū development.

COUNT 1
(Breach of public trust)

27. Plaintiff hereby realleges and incorporates by reference all the above allegations.

28. Historic sites, including burial sites and remains, are part of the public trust.

29. Defendants failed to fulfill the obligations imposed upon them by the public trust doctrine in the process of considering Defendant Eric A. Knudsen Trust's Village at Po`ipū development proposal.

COUNT 2
(Failure to investigate and protect Native Hawaiian Rights)

30. Plaintiff hereby re-alleges and incorporates by reference all the above allegations.

31. Defendants failed to thoroughly investigate and protect Native Hawaiian rights in the process of considering Defendant Eric A. Knudsen Trust's application for final subdivision approval of Phase One of its Village at Po`ipū.

COUNT 3
(Violation of HAR Chapter 13-284)

32. Plaintiff hereby realleges and incorporates by reference all the above allegations.

33. Defendants failed to comply with the requirements of HAR Chapter 13-284.

COUNT 4
(Irreparable injury to historic sites, including burial sites)

34. Plaintiff hereby realleges and incorporates by reference all the above allegations.

35. Subdivision approval and construction, based upon an improper and incomplete

historic review process, threaten to cause irreparable injury to burial sites and other historic sites.

36. Relief is needed pursuant to HRS § 6E-13.

COUNT 5

(Noncompliance with Objectives, Policies, and Guidelines of HRS 205A)

37. Plaintiff hereby re-alleges and incorporates by reference all the above allegations.

38. The coastal zone management area includes all the lands of the State of Hawai'i.

39. Defendant Eric A. Knudsen Trust's project is within the State's coastal zone management area.

40. Among the important objectives of HRS Chapter 205A is the protection, preservation, and restoration of historic and prehistoric resources in the coastal zone management area that are significant to Hawaiian history and culture.

41. Among the important policies of HRS Chapter 205A is the identification and analysis of significant archaeological resources, the maximization of information retention through preservation of remains and artifacts, and the support of state goals for protection, preservation, and restoration, interpretation, and display of historic and prehistoric resources.

42. The Kaua'i Planning Commission is obligated to give full consideration of historic and cultural values prior to decisionmaking.

43. Defendant Kauai Planning Commission failed to comply with these objectives in reviewing and granting final subdivision approval for Phase One of Defendant Eric A. Knudsen Trust's Village at Po'ipū.

COUNT 6

(Failure to Require a Supplemental EIS for the Hapa Trail Breach)

44. Plaintiff hereby re-alleges and incorporates by reference all the above allegations.

45. Hapa Trail is an unimproved Kauai county roadway and a registered State Historic property.

46. As a requirement for approval for the zoning amendments granted by Ordinance PM-31-79 and further amended by Ordinances PM-200-90 and PM-201-90, Defendant Eric A. Knudsen Trust agreed to improve Hapa Trail to a bicycle/pedestrian path.

47. As part of its project, Defendant Eric A. Knudsen Trust will breach a portion of Hapa Trail to allow vehicular traffic.

48. The Final Environmental Impact Statement for Village at Po'ipū does not address the impact of this breach.

49. Hawaii Administrative Rules (HAR) 11-200-26 provides in relevant part:

If there is a change in [size, scope, intensity, use, location or timing, among other things] which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter.

50. The breach of Hapa Trail for vehicular traffic is a significant change in scope and use and is, as such, a different action for which a supplemental statement is required.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief as follows:

- A. Declare that Defendants failed to fulfill their public trust responsibilities.
- B. Declare that Defendants failed to investigate and protect Native Hawaiian rights.
- C. Declare that Defendants violated HAR Chapter 13-284.
- D. Declare that Defendants violated HRS Chapter 205A.
- E. Declare that Defendants violated HRS Chapter 343.
- F. Declare that Defendant Eric A. Knudsen Trust must prepare a supplemental EIS for the breach of Hapa Trail prior to receiving subdivision approval.
- G. Declare that the Defendant Kaua'i Planning Commission's final subdivision approval

of the Defendant Eric A. Knudsen Trust's Village at Po'ipū project is null and void.

H. Order Defendant Kauai Planning Commission to fulfill its public trust responsibilities, investigate and protect Native Hawaiian rights, and comply with HAR 13-284 and HRS Chapters 205A and 343 prior to final subdivision approval.

I. Order the Department of Land and Natural Resources and Laura Thielen to complete the historic review process prior to providing comment on the effect of the proposed Village at Po'ipū project on historic sites.

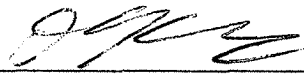
J. Order Defendant Eric A. Knudsen Trust to prepare a supplemental EIS for the breach of Hapa Trail if it wishes to obtain subdivision approval for the Village at Po'ipū project.

K. Enjoin Defendant Eric A. Knudsen Trust from commencing any work on Phase One of its project until all approvals are properly authorized.

L. Grant Plaintiff his attorneys fees and costs, including attorneys fees pursuant to the private attorney general doctrine discussed in *In re: Water Use Permit Applications*, 96 Haw. 27, 25 P.3d 802 (2001).

M. Provide for such other and further relief as the Court shall deem just and proper.

DATED: Honolulu, Hawaii, March 11, 2009.



DAVID KIMO FRANKEL
MOSES K.N. HAIA III
Attorneys for Plaintiff
THEODORE K. BLAKE

STATE OF HAWAII CIRCUIT COURT FIFTH CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CIVIL CASE NUMBER - -
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PLAINTIFF, THEODORE K. BLAKE	VS.	DEFENDANT. COUNTY OF KAUA'I PLANNING COMMISSION, COUNTY OF KAUA'I PLANNING DEPARTMENT, IAN COSTA in his official capacity as planning director, DEPARTMENT OF LAND AND NATURAL RESOURCES, LAURA THIELEN in her official capacity as chair of the Department of Land and Natural Resources, and ERIC A. KNUDSEN TRUST
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PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) DAVID KIMO FRANKEL #5791 Native Hawaiian Legal Corporation 1164 Bishop Street Suite 1205 Honolulu HI 96813 (808) 521-2302	
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TO THE DEFENDANT(S):

You are hereby summoned and required to 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.

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.

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

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

DATE ISSUED	CLERK OF THE ABOVE-ENTITLED COURT	
I do hereby certify that this is a full, true, and correct copy of the original on file in this office.	CLERK	



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. 482-2314, FAX 482-2553, or TTY 482-2533 at least ten (10) working days prior to your hearing or appointment date.