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PLANNING DEPARTMENT
COUNTY OF HAWAII

2006 DEC 14 PM 2:02

Lani Ng

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII**

WALTER JOHN KELLY, et al.,

Plaintiffs,

vs.

1250 OCEANSIDE PARTNERS, a Hawaii limited
partnership, et al.,

Defendants.

) CIVIL NO. 00-1-0192K
) (Other Civil Action)
)
) **FOURTH AMENDED**
) **FINAL JUDGMENT**
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I hereby certify that this is a full, true and
correct copy of the original on file in this office.


Clerk, Third Circuit Court, State of Hawaii

FOURTH AMENDED FINAL JUDGMENT

PROCEDURAL HISTORY

This court previously entered a Final Judgment in the above-captioned case on September 12, 2003, and an Amended Final Judgment on January 21, 2004. This court entered its Second Amended Final Judgment on August 24, 2004, after the Supreme Court ruled on June 8, 2004 (S.Ct. No. 26414) that the judgment entered on January 21, 2004, did not enter all claims against all parties as to Count V of the Fifth Amended Complaint, and after the court delayed entry of its Second Amended Final Judgment at the request of the parties, so that they could pursue mediation. The court entered its Third Amended Final Judgment on August 27, 2004, in order to "correct clerical mistakes ... arising from oversight or omission ..." under Hawaii Rules of Civil Procedure Rule 60(a). Specifically, the Third Amended Final Judgment incorporated additional attorneys' fees and costs awarded in the court's "Order Granting in Part Plaintiff Keopuka Ohana's Motion (1) For Reconsideration of Findings of Fact, Conclusions of Law, and Order Regarding Attorneys' Fees and Costs Filed January 21, 2004 and (2) To Alter or Amend Or Obtain Relief From the Court's January 21, 2004 Amended Final Judgment," filed February 26, 2004. In addition, the Third Amended Final Judgment corrected various typographical formatting errors.

On March 9, 2006, Plaintiff Protect Keopuka Ohana, Plaintiffs Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins, Defendant 1250 Oceanside Partners, Defendants County of Hawai'i, Christopher Yuen, and Dennis Lee, Defendant Department of Health and Dr. Chiyome Fukino, and Defendant Department of Land and Natural Resources and Peter Young, filed their Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Entered August 27, 2004. The Court enters this Fourth

Amended Final Judgment as a result of its "Findings Of Fact, Conclusions Of Law, and Order Granting Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Entered August 27, 2004," filed March 14, 2006.

The Court has made no determination as to what date the time for filing of the notice of appeal begins to run.¹

In accordance with Rule 58 of the Hawaii Rules of Civil Procedure, and pursuant to:

- 1) "Stipulation to Dismiss Without Prejudice Defendant Kala'au Wahilani in His Personal Capacity Only; Order," filed May 3, 2001;
- 2) "Order Granting in Part Defendant 1250 Oceanside Partners' Motion to Strike and/or Dismiss Certain Claims in Plaintiff's Second Amended Complaint, Filed January 25, 2001," filed May 4, 2001;
- 3) "Findings of Fact; Conclusions of Law; Order," filed on August 1, 2001;
- 4) Order Granting Defendants 1250 Oceanside Partners' Motion to Dismiss William P. Kalawaianui's Complaint, Filed November 9, 2000, With Prejudice," filed September 4, 2001;
- 5) "Stipulation for Dismissal of Defendant Na Ala Hele With Prejudice and Order," filed October 5, 2001;
- 6) "Stipulation to Dismiss Count I of the Third Amended Complaint with Prejudice as to Defendant 1250 Oceanside Partners and Order," filed October 22, 2001;
- 7) "Order Granting in Part and Denying in Part Defendants Department of Health's, Bruce Anderson's, and State of Hawaii's Motion for Partial Judgment on the Pleadings or Partial Summary Judgment Filed October 12, 2001," filed November 21, 2001;

¹ See, e.g., Poe v. Hawaii Labor Relations Bd., 98 Haw. 416, 49 P.3d 382 (2002); see also Jones v. Owners and Occupants of Adjoining Lands, et al., 2004 WL 912128 (Hawaii).

- 8) "Order Granting Defendant 1250 Oceanside Partner's Motion for Summary Judgment on Count IX of the Third Amended Complaint," filed November 26, 2001;²
- 9) "Order Granting Defendant 1250 Oceanside Partner's Motion to Dismiss or in the Alternative for Summary Judgment on Plaintiff Protect Keopuka Ohana's Emotional Distress Claims," filed November 30, 2001;³
- 10) "Order Granting in Part and Denying in Part Defendant 1250 Oceanside Partners' Motion to Dismiss Counts VI, VII, and X of Plaintiffs' Fifth Amended Complaint for Declaratory and Injunctive Relief, Filed November 8, 2001 [Filed January 16, 2002]," filed April 1, 2002;
- 11) "Order Granting Defendant Land Use Commission's Motion for Judgment on the Pleadings filed December 27, 2001," filed April 5, 2002;
- 12) "Order Granting Defendant 1250 Oceanside Partners' Motion to Dismiss or in the Alternative for Partial Summary Judgment on Count VIII of Plaintiffs' Fifth Amended Complaint for Declaratory and Injunctive Relief, Filed November 8, 2001," filed April 10, 2002;
- 13) "Order Granting Defendants Department of Health, Bruce Anderson, and State of Hawaii's Motion to Dismiss Plaintiffs Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham, and Michele Constans Wilkins' Claims in the Fifth Amended Complaint Against 1) Defendants Department of Health and Bruce Anderson, 2) State of Hawaii in Counts II & IV, and 3) County of Hawaii, Christopher Yuen, and Dennis Lee in Counts II & IV, and Petition on Good Faith Settlement, Filed April 1, 2002" filed April 17, 2002;
- 14) "Stipulation to Dismiss Resolved Claims, Causes of Action and Allegations and Order," filed May 1, 2002;

² A Judgment and Notice of Entry was filed for this Order on November 26, 2001.

³ A Judgment and Notice of Entry was filed for this Order on November 30, 2001.

- 15) Order Regarding Defendant 1250 Oceanside's Oral Motion for Directed Verdict at the Trial on Count X of the Fifth Amended Complaint," filed May 15, 2002;⁴
- 16) "Findings of Fact and Conclusions of Law; Order Regarding the Trial on Defendant 1250 Oceanside Partners' Cross-Claim Against State of Hawaii, Department of Land and Natural Resources for Declaratory Relief and Plaintiff's Count X in the Fifth Amended Complaint," filed October 9, 2002;⁵
- 17) "Findings of Fact and Conclusions of Law Regarding Defendant 1250 Oceanside Partners' Motion for Judgment on Partial Findings Made on August 14, 2002; Order," filed October 10, 2002;
- 18) "Findings of Fact; Conclusions of Law and Order with Respect to Counts II and V in the Fifth Amended Complaint," filed on October 21, 2002⁶ (amended by "Amended Findings of Fact, Conclusions of Law and Order with Respect to Counts II and V in the Fifth Amended Complaint Pursuant to the Order Granting in Part State of Hawaii Department of Land and Natural Resources' Rule 60 Motion to Amend the October 21, 2002 Findings of Fact and Conclusions of Law and Order with Respect to Counts II and V Filed July 24, 2003, Filed August 6, 2003," filed August 8, 2003);
- 19) "Findings of Fact; Conclusions of Law; and Order as to Count V Regarding Paragraphs 138(b), 139(a), and 139(b) and Count VI (Burial Sites)," filed on December 26, 2002, (amended by "Errata Sheet Regarding Findings of Fact; Conclusions of Law; and Order as

⁴ A "Notice of Appeal" as to Count X-related Orders was filed by Defendant 1250 Oceanside Partners on November 8, 2002; under the *Forgay* Doctrine. The appeal remains pending (S.C. No. 25467). See n. 4 *infra*.

⁵ A "Notice of Appeal" from this Order was filed by Defendant 1250 Oceanside Partners on November 8, 2002, under the *Forgay* Doctrine. The appeal remains pending (S.C. No. 25467).

⁶ A "Notice of Appeal" ("NoA") from this Order was filed by Defendant 1250 Oceanside Partners on July 25, 2003. Specifically, Defendant 1250 Oceanside Partners filed a NoA from the "Final Judgment on Burial Sites Orders" entered June 26, 2003. The Supreme Court dismissed this appeal on November 25, 2003, for lack of appellate jurisdiction. (S.Ct. 25996). The dismissal returned jurisdiction to this court.

to Count V Regarding Paragraphs 138(b), 139(a), and 139(b) and Count VI (Burial Sites) Filed on December 26, 2002," filed on January 27, 2003);

20) "Amended Findings of Fact; Conclusions of Law and Order as to Count V Regarding Paragraphs 138(b), 139(a), and 139(b) and Count VI (Burial Sites)," filed March 17, 2003;

21) "Order Granting in Part and Denying in Part Defendant 1250 Oceanside Partners' Motion for Order Modifying Findings of Facts, Conclusions of Law, and Order Dated December 26, 2002, filed January 15, 2003," filed April 4, 2003;

22) "Order Granting in Part and Denying in Part Defendant 1250 Oceanside Partners' Motion for an Order Clarifying and/or Modifying Finding of Facts, Conclusions of Law, and Order Dated December 26, 2002, filed January 24, 2003," filed April 4, 2003;

23) "Order Nunc Pro Tunc to December 5, 2001, Granting Plaintiffs Protect Keopuka Ohana and Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins' Motion for Order Dismissing All Claims Against Defendants State of Hawaii, Department of Land and Natural Resources, Gilbert Coloma-Agaran, Kala'au Wahilani, and Don Hibbard in their Official Capacities Due to Defendant 1250 Oceanside Partners' Refusal to Sign Stipulation for Dismissal After Formal Presentation filed November 30, 2001," filed April 22, 2003;

24) "Order Granting in Part State of Hawaii Department of Land and Natural Resources' Rule 60 Motion to Amend the October 21, 2002 FOF/COL and Order with Respect to Counts II and V Filed July 24, 2003," filed August 6, 2003;

25) "Amended Findings of Fact; Conclusions of Law and Order with Respect to Counts II and V in the Fifth Amended Complaint Pursuant to the Order Granting in Part State of

Hawaii Department of Land and Natural Resources' Rule 60 Motion to Amend the October 21, 2002 FOF/COL and Order with Respect to Counts II and V Filed July 24, 2003," filed August 8, 2003;

26) "Findings of Fact; Conclusions of Law; Order Regarding Attorneys' Fees and Costs," filed January 21, 2004;

27) "Order Granting in Part Plaintiff Keopuka Ohana's Motion (1) For Reconsideration of Findings of Fact, Conclusions of Law, and Order Regarding Attorneys' Fees and Costs Filed January 21, 2004 and (2) To Alter or Amend Or Obtain Relief From the Court's January 21, 2004 Amended Final Judgment," filed February 26, 2004;

28) "Order Granting in Part Defendant State of Hawaii Department of Health's and Bruce Anderson's Motion to Alter or Amend January 21, 2004 Amended Final Judgment," filed April 30, 2004;

29) "Findings Of Fact, Conclusions Of Law, and Order Granting Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Entered August 27, 2004," filed March 14, 2006; and

30) Any and all other previous Orders entered herein and not vacated by the Court;

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that a Fourth Amended Final Judgment be entered as follows:

1. **Count I:** Count I, alleging Public Nuisance, brought by Plaintiff Protect Keopuka Ohana ("Plaintiff PKO") and Plaintiffs Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham, and Michele Constans Wilkins' ("Kelly Plaintiffs") as listed in the Fifth Amended Complaint (the "Complaint") filed November 8, 2001, against Defendant 1250 Oceanside Partners ("Oceanside") is hereby dismissed with prejudice by stipulation of the parties.⁷

2. **Count II:** On Count II of the Complaint, alleging violation of the Public Trust, judgment is hereby entered in favor of Plaintiff PKO and against Defendants: State of Hawaii, Department of Health, Bruce Anderson, in his official capacity as the Director of Health, State of Hawaii ("Defendant DOH"); the County of Hawaii, Christopher Yuen, in his official capacity as the Planning Director for the County of Hawaii, Dennis Lee, in his official capacity as Chief Engineer for the County of Hawaii ("Defendants County and County Officials").⁸

As to Defendant DOH and Defendants County and County Officials, IT IS HEREBY ORDERED that:

[B]efore permits or approvals are issued by State and County Defendants, the State (DOH) [must] make specific findings and conclusions: (1) as to the value of the pristine waters and natural resources

⁷ See, "Stipulation to Dismiss Count I of the Third Amended Complaint with Prejudice as to Defendant 1250 Oceanside Partners and Order," filed October 22, 2001; *see also* "Stipulation to Dismiss Resolved Claims, Causes of Action and Allegations and Order," filed May 1, 2002.

⁸ See "Findings of Fact, Conclusions of Law, and Order with Respect to Counts II and V in the Fifth Amended Complaint," filed Oct. 21, 2002. The court later amended this Order to remove a reference to DLNR. *See* "Amended Findings of Fact, Conclusions of Law, and Order with Respect to Counts II and V in the Fifth Amended Complaint," Filed August 8, 2003.

within the pristine waters off the Hokulia project; (2) as to the extent to which those resources will be affected or impaired by 1250 Oceanside Partners' ground alteration, storage of materials and other activities and subject to regulation by the State or County; and (3) as to the feasible action to be taken by the State to reasonably protect those natural resources.

IT IS FURTHER ORDERED that the State (DOH) [must] now make specific findings as to 1250 Oceanside Partners' activity's impact on the offshore coastal waters which was previously permitted by the authorizations/approvals on the subject property and that DOH take feasible action to protect the resources.⁹

Count II is hereby dismissed with prejudice against Defendant Oceanside.¹⁰

All other claims raised by Kelly Plaintiffs in Count II are dismissed with prejudice as to Defendant DOH, and Defendants County and County Officials, pursuant to settlement of these parties.¹¹

3. **Count III:** Count III of the Complaint, seeking declaratory and injunctive relief for alleged violations of Haw. Rev. Stat. Chapter 91, brought by Plaintiffs PKO and Kelly Plaintiffs against Defendants State of Hawaii, Department of Land and Natural Resources ("DLNR"), and State Historic Preservation Division ("SHPD") is hereby dismissed with prejudice, pursuant to settlement of parties.¹²

⁹ See *id.*

¹⁰ See "Stipulation to Dismiss Resolved Claims, Causes of Action and Allegations and Order," filed May 1, 2002.

¹¹ See "Order Granting Defendants Department of Health, Bruce Anderson, and State of Hawaii's Motion to Dismiss Plaintiffs Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham, and Michele Constans Wilkins' Claims in the Fifth Amended Complaint Against 1) Defendants Department of Health and Bruce Anderson, 2) State of Hawaii in Counts II & IV, and 3) County of Hawaii, Christopher Yuen, and Dennis Lee in Counts II & IV, and Petition on Good Faith Settlement, Filed April 1, 2002" filed April 17, 2002.

¹² See "Order Nunc Pro Tunc to December 5, 2001, Granting Plaintiffs Protect Keopuka Ohana and Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham, and Michele Constans Wilkins' Motion for Order Dismissing All Claims Against Defendants State of Hawaii, Department of Land and Natural Resources, Gilbert Coloma-Agaran, Kala'au Wahilani, and Don Hibbard in their Official Capacities Due to Defendant 1250 Oceanside Partners' Refusal to Sign Stipulation for Dismissal After Formal Presentation filed November 30, 2001," filed April 22, 2003.

4. **Count IV:** On Count IV of the Complaint, alleging violation of State Land Use Law, and seeking a declaratory judgment, judgment is hereby entered: (1) in favor of Defendant Oceanside and Defendant County of Hawaii and County Officials against Plaintiff PKO and Kelly Plaintiffs;¹³ (2) in favor of State of Hawaii, Land Use Commission and against Kelly Plaintiffs and Plaintiff PKO;¹⁴ and (4) in favor of Defendants DOH and against Plaintiff PKO.¹⁵

Further relief was granted as follows:

IT IS HEREBY ORDERED that:

- a. Ordinance No. 97-35, regarding TMK: 8-1-04: por. 3 rezoning 14.854 acres of land for the site of the member lodge at Hokulia from agriculture to urban district, Ordinance No. 97-34 amending the County's General Land Use Pattern Allocation Guide Map to redesignate approximately 25.293 acres from "Orchard" to "Resort," and Ordinance No. 97-36 amending the County's Zoning Code (Chapter 25, Hawaii County Code) to change the zoning district of approximately 14.854 acres from Agricultural (A-1a) to Resort (V-6.0), constitute "spot zoning" and are invalid;¹⁶

¹³ See "Findings Of Fact, Conclusions Of Law, and Order Granting Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Entered August 27, 2004", filed March 14, 2006;

¹⁴ See "Order Granting Defendant [LUC's] Motion for Judgment on the Pleadings Filed December 27, 2001," filed April 5, 2002.

¹⁵ See "Order Granting in Part and Denying in Part Defendants Department of Health's, Bruce Anderson's, and State of Hawaii's Motion for Partial Judgment on the Pleadings or Partial Summary Judgment Filed October 12, 2001," filed November 21, 2001.

¹⁶ See "Order Granting in Part and Denying in Part Plaintiffs Motion for Partial Summary Judgment Re: HRS Chapter 205 [Count IV in the Fifth Amended Complaint] Filed October 12, 2001," filed April 5, 2002, (as supplemented by "Order Deriving Defendant 1250 Oceanside Partners' Motion for Reconsideration of Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary judgment Re: HRS Chapter 205 [Count IV in the Fifth Amended Complaint] Filed October 12, 2001" and "Order Denying Defendant 1250 Oceanside Partners' Motion to Dismiss or in the Alternative for Partial Summary Judgment on Count IV of the Third Amended Complaint [Count IV of the Fifth Amended Complaint]," filed on October 1, 2002, as vacated in part by Findings Of Fact, Conclusions Of Law, and Order Granting Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Entered August 27, 2004", filed March 14, 2006.

The Parties have agreed that Oceanside will forego development of the 80-unit members lodge and that the zoning for this portion of the Project will revert to Agriculture (A-1a), the Hawaii County General Plan Land Use Pattern Allocation Guide Map's designation for the parcel will revert back to "Orchards," and the State Land Use Boundary Map (H-8) for the parcel's state land use district classification will revert to Agricultural (the status of the parcel prior to the passage of Ordinance Nos. 97-34, 97-35 and 97-36). Based in part on the Parties' agreement with respect to the members' lodge, the Court's rulings with respect to the members' lodge, as set forth in the orders

b. Count IV is dismissed with prejudice as to Kelly Plaintiffs's claims against Defendant DOH, and Defendants County and County Officials, pursuant to parties' settlement of these claims only by the above noted parties.¹⁷

5. **Count V:** On Count V of the Complaint, alleging violation of traditional and customary rights, judgment is hereby entered (excluding Paragraphs 138(b), 139(a), and 139(b) of Count V), in favor of Defendants Oceanside, County and County Officials, and DOH, and Bruce Anderson, and against Plaintiff PKO.¹⁸ With regards to Paragraphs 138(b), 139(a) and 139(b) of Count V, judgment is hereby entered in favor of Plaintiffs PKO and against Defendants County and County Officials.¹⁹ With regards to paragraph 139(a), related to traditional and customary practices, judgment is entered in favor of DOH and Bruce Anderson and against Plaintiff PKO. All claims pled in Count V against Defendants DLNR, Agaran, Hibbard and Wahilani are dismissed with prejudice pursuant to settlement of these parties.²⁰

mentioned above in this footnote, remain intact.

¹⁷ See "Order Granting Defendants Department of Health, Bruce Anderson, and State of Hawaii's Motion to Dismiss Plaintiffs Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham, and Michele Constans Wilkins' Claims in the Fifth Amended Complaint Against 1) Defendants Department of Health and Bruce Anderson, 2) State of Hawaii in Counts II & IV, and 3) County of Hawaii, Christopher Yuen, and Dennis Lee in Counts II & IV, and Petition on Good Faith Settlement, Filed April 1, 2002" filed April 17, 2002.

¹⁸ See "Findings of Fact; Conclusions of Law and Order with Respect to Counts II and V in the Fifth Amended Complaint," filed on October 21, 2002 (amended by "Amended Findings of Fact, Conclusions of Law and Order with Respect to Counts II and V in the Fifth Amended Complaint Pursuant to the Order Granting in Part State of Hawaii Department of Land and Natural Resources' Rule 60 Motion to Amend the October 21, 2002 Findings of Fact and Conclusions of Law and Order with Respect to Counts II and V Filed July 24, 2003, Filed August 6, 2003," filed August 8, 2003).

¹⁹ See "Findings of Fact; Conclusions of Law; and Order as to Count V Regarding Paragraphs 138(b), 139(a), and 139(b) and Count VI (Burial Sites)," filed on December 26, 2002, (amended by "Errata Sheet Regarding Findings of Fact; Conclusions of Law; and Order as to Count V Regarding Paragraphs 138(b), 139(a), and 139(b) and Count VI (Burial Sites) Filed on December 26, 2002," filed on January 27, 2003); "Amended Findings of Fact; Conclusions of Law and Order as to Count V Regarding Paragraphs 138(b), 139(a), and 139(b) and Count VI (Burial Sites)," filed March 17, 2003.

²⁰ See "Order Nunc Pro Tunc to December 5, 2001, Granting Plaintiffs Protect Keopuka Ohana and Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins' Motion for Order Dismissing All Claims Against Defendants State of Hawaii, Department of Land and Natural Resources, Gilbert Coloma-Agaran, Kala'au Wahilani, and Don Hibbard in their Official Capacities Due to Defendant 1250 Oceanside Partners' Refusal to Sign Stipulation for Dismissal After Formal Presentation filed November 30, 2001," filed April 22, 2003.

With respect to that portion of the judgment entered in favor of Plaintiff PKO against Defendants County and County Officials, upon Paragraphs 138(b), 139(a), and 139(b), IT IS FURTHER ORDERED that an injunction is granted as follows (*nunc pro tunc* to December 26, 2002):

A. All "inadvertent discoveries" discovered pursuant to "sweeps" shall immediately be treated as previously identified under Haw. Rev. Stat. Sec. 6E. Oceanside shall submit a burial treatment plan to the HIBC within 30 days from the date of this Order (January 27, 2003).

B. All ground alteration activity shall cease within 21 days from the filing date of this order (January 17, 2003) and shall not resume until the DLNR/SHPD (a) identifies any traditional Hawaiian cultural practices that may continue to exist on the development pertaining to grave sites; (b) assesses the impact of the development of those practices and. (c) provides reasonable protective measures for those practices.

C. All ground alteration activity shall. cease within 21 days from the filing date of this order (January 17, 2003) and no further permits of any kind shall be issued by the County (Planning Department and Public Works) until the requirements of Paragraphs A and B are complied with.

D. The President, 1250 Oceanside Partners, shall certify monthly:

1. All human bones discovered;
2. All bones removed from the property for further testing;
3. All inadvertent discovered iwi which has been relocated pursuant to SHPD's authorization.

This list shall be provided to all parties not later than the tenth day of each month covering the prior month. The first list shall be due not later than February 10, 2003.

E. The Plaintiffs shall be allowed access to the property to monitor the compliance of these conditions and all regulatory statutory and constitutional requirements until the County and DLNR/SHPD provide sufficient staff without conflict of interest to monitor compliance. A certification providing the names of these staff shall be provided to all parties. This certification shall be executed by the appropriate agency head.

F. The DLNR/SHPD and County (Planning Department and Public Works) shall inform their staff and agent(s) of any applicable Ethics Code and any conduct relating to conflict of interest.²¹

6. **Count VI**: On Count VI of the Complaint alleging violation of HRS Chapter 6E-43, et seq., judgment is hereby entered in favor of Plaintiff PKO and against Defendant Oceanside, with the exception of those claims subsumed within Count VI concerning the "location of the wall to be constructed around Pu'u Ohau pursuant to Oceanside's Burial Treatment Plan."²² The claims subsumed within Count VI concerning the "location of the wall to be constructed around Pu'u Ohau pursuant to Oceanside's Burial Treatment Plan," are hereby dismissed with prejudice.²³
7. **Count VII**: On Count VII of the Complaint, alleging desecration of graves, judgment is hereby entered in favor of Defendant Oceanside and against Plaintiff PKO, and Count VII is hereby dismissed with prejudice as to Defendant Oceanside.²⁴
8. **Count VIII**: On Count VIII of the Complaint, alleging violation of rights of procedural due process, judgment is hereby entered in favor of Defendant Oceanside and against Plaintiff PKO, and Count VIII is hereby dismissed with prejudice against Defendant Oceanside.²⁵

²¹ See *supra*, fn. 20.

²² See *id.*

²³ See "Findings of Fact and Conclusions of Law Regarding Defendant 1250 Oceanside Partners' Motion for Judgment on Partial Findings Made on August 14, 2002; Order," filed October 10, 2002.

²⁴ See "Order Granting Defendant 1250 Oceanside Partner's Motion to Dismiss or in the Alternative for Summary Judgment on Plaintiff Protect Keopuka Ohana's Emotional Distress Claims," filed November 30, 2001; "Order Granting in Part and Denying in Part Defendant 1250 Oceanside Partner's Motion to Dismiss Counts VI, VII, and X of Plaintiffs' Fifth Amended Complaint for Declaratory and Injunctive Relief, Filed November 8, 2001 [Filed January 16, 2002]," filed April 1, 2002; "Findings of Fact and Conclusions of Law Regarding Defendant 1250 Oceanside Partners' Motion for Judgment on Partial Findings Made on August 14, 2002; Order," filed October 10, 2002.

²⁵ See "Order Granting Defendant 1250 Oceanside Partners' Motion to Dismiss or in the Alternative for Partial Summary Judgment on Count VIII of Plaintiffs' Fifth Amended Complaint for Declaratory and Injunctive Relief, filed November 8, 2001," filed April 10, 2002.

9. **Count IX:** On Count IX of the Complaint, alleging violation of the Coastal Zone Management Act, HRS Chapter 205A, judgment is entered in favor of Defendant Oceanside and against Kelly Plaintiffs and Plaintiff PKO.²⁶
10. **Count X:** On Count X of the Complaint, alleging violation of right to access, judgment is hereby entered in favor of Kelly Plaintiffs and Plaintiff PKO and against Defendant Oceanside.²⁷ Injunctive relief is provided as follows:

IT IS HEREBY ORDERED that: [u]ntil the Board of Land and Natural Resources approves any and all permits, easements, licenses, or other instruments specifically allowing such activity after notice to and opportunity for the public to participate in any procedure allowed by law, Oceanside, its agents, employees, consultants, contractors and assigns are enjoined from:

- (1) causing the destruction, damage, desecration, alternation, removal or relocation of the Ala Loa, as determined by a competent surveyor based on the best information available from a reasonable diligent inquiry of the location of the Ala Loa, including, but not limited to, the evidence presented in this action; and
- (2) performing any data recovery or construction activity along any area within 50 feet of the outer edge of the Ala Loa or stepping stone trail.²⁸

IT IS HEREBY DECLARED AND ORDERED:

- 1) That the stepping stone trail/alaloa trail is a public highway under the Highways Act of 1892 and therefore ownership is vested in the State.

²⁶ See "Order Granting Defendant 1250 Oceanside Partner's Motion for Summary Judgment on Count IX of the Third Amended Complaint," filed November 26, 2001.

²⁷ See "Findings of Fact; Conclusions of Law; Order," filed August 1, 2001; "Order Regarding Defendant 1250 Oceanside's Oral Motion for Directed Verdict at the Trial on Count X of the Fifth Amended Complaint," filed May 15, 2002; and "Findings of Fact and Conclusions of Law; Order Regarding the Trial on Defendant 1250 Oceanside Partners' Cross-Claim Against State of Hawaii, Department of Land and Natural Resources for Declaratory Relief and Plaintiff's Count X in the Fifth Amended Complaint," filed October 9, 2002. A "Notice of Appeal" as to Count X-related Orders was filed by Defendant 1250 Oceanside Partners on November 8, 2002, under the *Foray* Doctrine. The appeal remains pending (S.C. No. 25467).

See n. 3 *supra*.

²⁸ See "Findings of Fact; Conclusions of Law; Order," filed August 1, 2001.

- 2) That the right to use the stepping stone/alaloa trail as a right of way is a constitutionally protected right under Article XII, Sect. 7, Hawaii State Constitution recognizing Native Hawaiian traditional and customary practices and that this is a traditional native Hawaiian right.
- 3) The rights to the stepping stone trail/alaloa were reserved for native tenants in the (Land Grants, Royal Patents and LCA), and therefore the ownership of the stepping stone trail/alaloa trail remains with the State.
- 4) That the stepping stone trail/alaloa trail is a historic site pursuant to Haw. Rev. Stat. Chapter 6-E.
- 5) That 1250 Oceanside Partners shall immediately restore the alaloa to the same condition and location prior to its removal.
- 6) That DLNR take whatever action is necessary to protect and preserve the alaloa on behalf of the public and that 1250 Oceanside Partners is hereby enjoined from damaging, altering, or relocating the alaloa.
- 7) The DLNR shall determine the alignment of the alaloa trail on the Hokuli'a property with the participation of Plaintiffs and Defendant 1250 Oceanside Partners within thirty days from the entry of this Order.
- 8) In the event that the alignment is not determined within thirty (30) days, then the Court will appoint a Master to be paid by DLNR.²⁹

11. **Count X Cross-Claim:** On Defendant's Oceanside's Count X Cross-Claim filed against Co-Defendant Department of Land and Natural Resources ("DLNR"), Judgment is hereby entered in favor of DLNR and against Defendant Oceanside.³⁰

12. **Attorneys' Fees:** Judgment is hereby entered in favor of Plaintiffs and against Defendants Oceanside and County and County Officials, and Plaintiff PKO is awarded the sum of \$628,518.26 from Defendant Oceanside in attorneys' fees; Plaintiff PKO is

²⁹ See "Findings of Fact and Conclusions of Law; Order Regarding the Trial on Defendant 1250 Oceanside Partners' Cross-Claim Against State of Hawaii, Department of Land and Natural Resources for Declaratory Relief and Plaintiff's Count X in the Fifth Amended Complaint," filed October 9, 2002.

³⁰ See *id.* See also "Order Regarding Defendant 1250 Oceanside's Oral Motion for Directed Verdict at the Trial on Count X of the Fifth Amended Complaint," filed May 15, 2002. A "Notice of Appeal" as to Count X-related Orders was filed by Defendant 1250 Oceanside Partners on November 8, 2002, under the *Foray* Doctrine. The appeal remains pending (S.C. No. 25467). See n. 3 *supra*.

awarded the sum of \$628,518.26 from Defendant County and County Officials in attorneys' fees; Kelly Plaintiffs are awarded the sum of \$219,210.00 for attorneys' fees from Defendant Oceanside.³¹

13. **Costs:** Judgment is hereby entered in favor of Plaintiffs and against Defendants Oceanside and County and County Officials, and Plaintiff PKO is awarded the sum of \$33,357.12 in costs from Defendant Oceanside; Plaintiff PKO is awarded the sum of \$33,357.12 in costs from Defendant County and County Officials; and Kelly Plaintiffs are awarded the sum of \$2,435.01 in costs from Defendant Oceanside.³²
14. **Interest:** All fees and costs shall be charged interest thereon at the rate of (10) per cent as provided by law.

IT IS FURTHER ORDERED that all claims filed by Plaintiff Kalawaiianui are hereby dismissed with prejudice;³³

IT IS FURTHER ORDERED that all claims failed against Defendant Wahilani, in his individual capacity, are hereby dismissed with prejudice;³⁴

IT IS FURTHER ORDERED that all claims filed against Defendant State of Hawaii Land Use Commission are hereby dismissed with prejudice;³⁵

³¹ See "Findings of Fact; Conclusions of Law; Order Regarding Attorneys' Fees and Costs," filed January 21, 2004; "Order Granting in Part Plaintiff Keopuka Ohana's Motion (1) For Reconsideration of Findings of Fact, Conclusions of Law, and Order Regarding Attorneys' Fees and Costs Filed January 21, 2004 and (2) To Alter or Amend Or Obtain Relief From the Court's January 21, 2004 Amended Final Judgment," filed February 26, 2004.

³² See *id.*

³³ See "Order Granting Defendant 1250 Oceanside Partners' Motion to Dismiss W. Kalawaiianui's Complaint Filed November 9, 2000 With Prejudice," filed September 4, 2001.

³⁴ See "Stipulation and Order Dismissing Defendant K. Wahilani in his Personal Capacity Only," filed August 13, 2001.

³⁵ See "Order Granting Defendant [LUC's] Motion for Judgment on the Pleadings filed December 27, 2001," filed April 5, 2002.

IT IS FURTHER ORDERED that all claims against Defendant Na Ala Hele are hereby dismissed with prejudice;³⁶

IT IS FURTHER ORDERED that all claims against State of Hawaii, Department of Land and Natural Resources, Former Director Gilbert Coloma-Agaran, in his official capacity, Kala'au Wahilani, in his official capacity, and Don Hibbard, in his official capacity, are hereby dismissed with prejudice.³⁷

IT IS FURTHER ORDERED that Defendant Oceanside's Counterclaim for Declaratory Relief, filed January 16, 2001, is hereby dismissed with prejudice;

IT IS FURTHER ORDERED that it is the judgment of this court that all other claims, counterclaims, or cross-claims that are not currently on appeal are hereby dismissed with prejudice;

This Final Judgment determines the ultimate disposition of the individual and separate claims and causes of action asserted by: Plaintiffs in the Fifth Amended Complaint for Declaratory and Injunctive Relief, filed November 8, 2001; Defendant 1250 Oceanside Partner's Counterclaim for Declaratory Relief filed January 16, 2001; and Defendant 1250 Oceanside Partners in the Count X Cross-Claim filed against Co-Defendant Department of Land and Natural Resources, filed December 3, 2001; in this multiple-party, multiple-claim action as it relates to the rights and liabilities of the parties, as specifically set forth in the Orders enumerated above, which Orders are incorporated herein by reference.

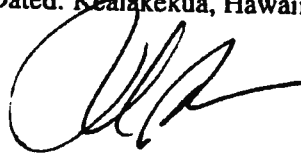
³⁶ See "Stipulation for Dismissal of Defendant Na Ala Hele With Prejudice," filed October 5, 2001.

³⁷ See "Order Nunc Pro Tunc to December 5, 2001, Granting Plaintiffs Protect Keopuka Ohana and Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins' Motion for Order Dismissing All Claims Against Defendants State of Hawaii, Department of Land and Natural Resources, Gilbert Coloma-Agaran, Kala'au Wahilani, and Don Hibbard in their Official Capacities Due to Defendant 1250 Oceanside Partners' Refusal to Sign Stipulation for Dismissal After Formal Presentation filed November 30, 2001," filed April 22, 2003; and Court's Oral Order, December 5, 2002.

This Final Judgment conforms to the Supreme Court's requirement under *Jenkins v. Cades Schutte Fleming & Wright*, 76 Haw. 115, 869 P.2d 1334 (1994), that a judgment, "on its face, [must] either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." *Id.*, at 119, 869 P.2d at 1338 (emphasis in original).

Pursuant to Rule 58 of the Haw. R. Civ. P., the foregoing shall be considered a final order and final judgment.

Dated: Kealahou, Hawaii March 14, 2006



JUDGE OF THE ABOVE-ENTITLED COURT

