

DONNA Y. L. LEONG, 3226
 Corporation Counsel
 DON S. KITAOKA, 2967
 BRAD T. SAITO, 5139
 KRISHNA F. JAYARAM, 9310
 DAWN E. TAKEUCHI-APUNA, 7855
 Deputies Corporation Counsel
 City and County of Honolulu
 Honolulu, Hawaii 96813
 Telephone: 768-5248/768-5139/
 768-5133/768-5245

FIRST CIRCUIT COURT
 STATE OF HAWAII
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Attorneys for Defendants
 City and County of Honolulu, and
 GEORGE I. ATTA, FAICP, Director,
 City and County of Honolulu, Department
 of Planning and Permitting

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEEP THE NORTH SHORE COUNTRY, a)
 Hawaii non-profit corporation, and SIERRA)
 CLUB HAWAII CHAPTER, a foreign)
 non-profit corporation,)
)
 Plaintiffs,)
)
 v.)
)
 CITY AND COUNTY OF HONOLULU, a)
 Hawaii municipal corporation; GEORGE I.)
 ATTA, FAICP, in his official capacity as the)
 Director of the City and County of Honolulu's)
 Department of Planning and Permitting;)
 TURTLE BAY RESORT, LLC., a Delaware)
 limited liability company; JOHN DOES 1-10;)
 JANE DOES 1-10; DOE CORPORATIONS)
 1-10; DOE ENTITIES 1-10; and DOE)
 GOVERNMENTAL UNITS 1-10,)
)
 Defendants.)

CIVIL NO. 13-1-3143-12 RAN
 (Declaratory Judgment)
 DEFENDANTS CITY AND COUNTY OF
 HONOLULU AND GEORGE I. ATTA,
 FAICP, DIRECTOR, CITY AND COUNTY
 OF HONOLULU, DEPARTMENT OF
 PLANNING AND PERMITTING'S
 ANSWER TO FIRST AMENDED
 COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF FILED
 DECEMBER 23, 2013; CERTIFICATE OF
 SERVICE

DEFENDANTS CITY AND COUNTY OF HONOLULU AND GEORGE I. ATTA,
FAICP, DIRECTOR, CITY AND COUNTY OF HONOLULU, DEPARTMENT OF
PLANNING AND PERMITTING'S ANSWER TO FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF FILED DECEMBER 23, 2013

COME NOW, Defendants CITY AND COUNTY OF HONOLULU ("City") and
GEORGE I. ATTA, FAICP, in his official capacity as the Director of the City and County of
Honolulu Department of Planning and Permitting ("DPP" and collectively, "City Defendants"),
by and through their attorneys, DONNA Y. L. LEONG, Corporation Counsel, and DON S.
KITAOKA, BRAD T. SAITO, KRISHNA F. JAYARAM, and DAWN E.
TAKEUCHI-APUNA, Deputies Corporation Counsel, and hereby answers Plaintiffs Keep the
North Shore Country ("KNSC") and Sierra Club Hawaii Chapter's ("Sierra Club") (collectively
"Plaintiffs") First Amended Complaint for Declaratory and Injunctive Relief ("Complaint") filed
herein on December 23, 2013, and, in so doing, alleges and asserts as follows:

FIRST DEFENSE

The First Amended Complaint ("Complaint") filed on December 23, 2013 fails to state a
claim for which relief against the City Defendants may be granted.

SECOND DEFENSE

1. The City Defendants admit the allegations contained in paragraphs 6, 7, 21, 22,
33, 47, and 57 to 59 of the Complaint.
2. The City Defendants deny the allegations contained in paragraphs 11 to 17, 53,
55, 78 to 80, and 92 of the Complaint.
3. The City Defendants affirmatively state that they are without knowledge or
information sufficient to form a reasonable belief as to the truth or falsity of the allegations
contained in paragraphs 3, 4, 19, 20, 23, 24, 28, 29, 31, and 34 of the Complaint, and, therefore,

deny the same. In addition, to the extent that the allegations contained in said paragraphs of the Complaint constitute legal arguments and/or legal conclusions, the City Defendants further state that no response is required, and, therefore, also deny the same on that basis.

4. The allegations contained in paragraphs 1 and 18 of the Complaint consist entirely of legal arguments, legal conclusions, and a prayer for relief to which no response is necessary. However, to the extent that a response may be required, the City Defendants state that they deny the same on that basis.

5. With respect to the allegations contained in paragraphs 2 and 27 of the Complaint, the City Defendants admit only that the City Department of Land Utilization accepted a Revised Final Environmental Impact Statement dated October 7, 1985 that was prepared by the Kuilima Development Company (“KDC”) in connection with the proposed expansion of the Kuilima Resort (“1985 EIS”). The City Defendants affirmatively state that the 1985 EIS speaks for itself, and, therefore, denies any allegations that are inconsistent with the 1985 EIS. The City Defendants are without knowledge or information sufficient to form a reasonable belief as to the remaining allegations in paragraph 2 and 27 of the Complaint, and, therefore, deny the same.

6. As to the allegations contained in paragraphs 5 and 30 of the Complaint, the City Defendants admit only state that the Kuilima Resort Company (“KRC”) obtained ownership of the Kuilima Resort and submitted a Site Development Division Master Application Form to the City Department of Planning and Permitting regarding approximately 744 acres of Kuilima Resort property in 2005 (“Subdivision Application”). The City Defendants are without knowledge or information sufficient to form a reasonable belief as to the remaining allegations in paragraphs 5 and 30 of the Complaint, and, therefore, deny the same.

7. As to the allegations contained in paragraphs 8 and 35 of the Complaint, the City Defendants affirmatively state that the Hawaii Supreme Court's opinion in Unite Here! Local 5 v. City and County of Honolulu, 123 Hawai'i 150 (2010) speaks for itself, and, therefore, denies any allegations inconsistent with the Court's opinion and any attempts to characterize the same.

8. As to the allegations contained in paragraph 9 and 36, of the Complaint, the City Defendants admit only that the Turtle Bay Resort, LLC ("TBR") commissioned an economic study regarding the "Full Build Out" alternative described in the Final Supplemental Environmental Impact Statement accepted by the City Department of Planning and Permitting on October 3, 2013 ("FEIS"). The City Defendants affirmatively state that the economic study and FEIS speak for themselves, and, therefore, deny any allegations that are inconsistent with the economic study and/or FEIS, and, all attempts to characterize the same. Finally, the City Defendants further state that the FEIS provides a true and accurate description of the "Proposed Action," and, therefore, denies all allegations inconsistent with the description of the description of the Proposed Action contained in the FEIS and all attempts to characterize the Proposed Action. Finally, to the extent that the allegations contained in said paragraphs of the Complaint constitute arguments and/or legal conclusions, the City asserts that no response is required, and, therefore, also denies the same on that basis.

9. As to the allegations contained in paragraph 10 of the Complaint, the City Defendants affirmatively state that the objections and comments submitted by KNSC regarding the Draft EIS speak for themselves, and, therefore, deny any allegations inconsistent with said comments, and, all attempts to characterize the same. The City Defendants admit the remaining allegations contained in paragraph 10 of the Complaint.

10. The allegations contained in paragraphs 25 and 26 of the Complaint consist entirely of legal arguments and/or legal conclusions to which no response is necessary. However, to the extent that a response may be necessary, the City Defendants state that they deny said allegations and leave Plaintiffs to their burden of proof.

11. As to the allegations contained in paragraph 32 of the Complaint, the City Defendants admit that KNSC and Sierra Club participated in proceedings relating to the 1985 EIS and the SEIS, and, were plaintiffs in Unite Here! Local 5 v. City and County of Honolulu, 123 Hawai'i 150 (2010). However, the City Defendants also affirmatively state that Plaintiffs' objections and comments submitted for the Draft SEIS and the Hawaii Supreme Court's opinion in Unite Here! Local 5 speak for themselves, and, therefore, deny any allegations that are inconsistent with the same and all attempts to characterize the same. The City Defendants are without knowledge or information sufficient to form a reasonable belief as to the truth or falsity of the remaining allegations contained in paragraph 32 of the Complaint, and, therefore, deny the same.

12. As to the allegations contained in paragraphs 37 to 46 of the Complaint, the City Defendants affirmatively state that the 1985 EIS and Final SEIS provide true and accurate descriptions of the "Full Build-Out Alternative" and the "Proposed Action." These documents speak for themselves; therefore, the City Defendants deny all allegations that are inconsistent with the 1985 EIS and/or the Final SEIS and all attempts to characterize the same.

13. As to the allegations contained in paragraph 48 of the Complaint, the City Defendants affirmatively state that the Final SEIS provides a true and accurate description of the Proposed Action and contains adequate information to allow the City Department of Planning and Permitting to give appropriate consideration to the environmental factors and potential

impacts of the “Proposed Action.” In addition, the City Defendants further state that the Unilateral Agreement (“UA”) and SEIS speak for themselves, and, therefore, deny all allegations that are inconsistent with the UA and/or SEIS and all attempts to characterize the same. Finally, to the extent that the allegations contained in paragraph 48 of the Complaint constitute arguments and/or legal conclusions, the City Defendants assert that no response is required, and, therefore, also deny the same on that basis.

14. Paragraph 49 of the Complaint consists of characterizations of the FEIS and legal arguments and legal conclusions regarding the FEIS’s compliance with HEPA and EIS requirements. As to these allegations, the City Defendants affirmatively state that the FEIS speaks for itself, and, therefore, deny all allegations that are inconsistent with the FEIS. In addition, the City Defendants further state that no response is required with respect to the legal arguments and legal conclusions contained in paragraph 49 of the Complaint; therefore, to the extent that a response may be required, the City Defendants deny all such arguments and legal conclusions on that basis.

15. As to the allegations contained in paragraph 50 of the Complaint, the City Defendants affirmatively state that the Draft EIS speaks for itself, and, therefore, deny all allegations that are inconsistent with the same.

16. Paragraphs 51, 52 and 54 of the Complaint consist of excerpts from the Draft SEIS and legal arguments and conclusions regarding the Draft SEIS and its supporting documents. As to these allegations, the City Defendants affirmatively state that the Draft EIS and supporting documents speak for themselves, and, therefore, deny all allegations that are inconsistent with the FEIS and/or its supporting documents and all attempts to characterize the same. In addition, to the extent that the allegations contained in paragraphs 51, 52, and 54 of the

Complaint constitute arguments and/or legal conclusions, the City asserts that no response is required, and, therefore, also denies the same on that basis.

17. As to the allegations contained in paragraph 56 of the Complaint, the City Defendants admit only that objections and comments to the Draft SEIS were submitted on or about January 7, 2013. The City Defendants affirmatively state that the comments submitted speak for themselves, and, therefore, deny all allegations that are inconsistent with said written objections and comments, and, all attempts to characterize the same.

18. As to the allegations contained in paragraph 60 of the Complaint, the City Defendants affirmatively state that the Draft SEIS and Final SEIS speak for themselves, and, therefore, deny any allegations that are inconsistent with the Draft SEIS and/or Final SEIS and any attempts to characterize the same. In addition, to the extent that the allegations contained in paragraph 60 of the Complaint constitute arguments and/or legal conclusions, the City Defendants state that no response is required, and, therefore, also deny the same on that basis.

19. As to the allegations contained in paragraph 61 of the Complaint, the City Defendants state that the TBR letter responding to KNNSC's objections and comments to the Draft SEIS speaks for itself, and, therefore, denies all allegations that are inconsistent with the TBR letter and all attempts to characterize the same,

20. Paragraphs 62 to 70 of the Complaint address the revisions to the SEIS made in response to public comments and contain arguments and legal conclusions regarding the FEIS's compliance with HEPA and EIS requirements. As to the allegations regarding the changes made to the SEIS, the City Defendants affirmatively state that the Final SEIS was prepared in accordance with Hawaii Administrative Rules Section 11-200-18(5) and clearly distinguishes all changes made to the Draft EIS. The Final SEIS speaks for itself; therefore, the City Defendants

deny all allegations that are inconsistent with the Final SEIS and all attempts to characterize the same. No response to the arguments and legal conclusions contained in paragraphs 62 to 70 of the Complaint is required; however, to the extent that a response may be required, the City Defendants deny said allegations.

21. As to the allegations contained in paragraph 71 of the Complaint, the City Defendants incorporate by reference and reassert all of the responses above.

22. Paragraphs 72 to 76 of the Complaint consist of arguments and legal conclusions to which no response is necessary. However, to the extent that a response may be necessary, the City Defendants affirmatively state that the Hawai'i State Constitution, Hawaii Revised Statutes, and Hawai'i Administrative Rules speak for themselves, and, therefore, deny all allegations that are inconsistent with the same and any attempts to characterize the same.

23. As to the allegations contained in paragraph 77 of the Complaint, the City Defendants affirmatively state that the Hawai'i Supreme Court's opinion in Unite Here! Local 5 v. City and County of Honolulu, 123 Hawai'i 150 (2010) speaks for itself, and, therefore, deny all allegations that are inconsistent with the same and all attempts to characterize the same.

24. The allegations contained in paragraphs 81 to 83, 85 and 89 of the Complaint consist entirely of excerpts from the Hawai'i Administrative Rules ("HAR"). As to these allegations, the City Defendants affirmatively state that the HAR speaks for itself, and, therefore, denies all allegations that are inconsistent with the HAR and any attempts to characterize the same.

25. Paragraphs 84, 86 to 88, 90 and 91 of the Complaint contain excerpts from the Final SEIS and its supporting document, and, arguments and legal conclusions regarding their

compliance with HEPA and EIS requirements. As to these allegations, the City Defendants affirmatively state that the FEIS and its supporting documents speak for themselves, and, therefore, deny all allegations that are inconsistent with the same and any attempts to characterize the same. In addition, the City Defendants further state that no response to the arguments and legal conclusions in paragraphs 84, 86 to 88, 90 and 91 of the Complaint is required; therefore, the City Defendants deny the same on that basis.

THIRD DEFENSE

Relief against the City Defendants is barred by the lack of subject matter jurisdiction.

FOURTH DEFENSE

Plaintiffs lack standing to bring this action, in whole or in part.

FIFTH DEFENSE

The action should be dismissed based upon the doctrine of ripeness.

SIXTH DEFENSE

The City may rely upon the defense of failure to exhaust administrative remedies.

SEVENTH DEFENSE

The action is barred based upon the doctrines of estoppel, waiver, consent, and/or laches.

EIGHTH DEFENSE

The City may rely upon the defense of discretionary acts.

NINTH DEFENSE

The City gives notice of its intent to rely upon the defense of absolute and/or qualified immunity insofar as said defense applies to any officer, employee, or agent of the City.

TENTH DEFENSE

The City Defendants give notice of its intent to rely on the defense that its conduct was lawful, proper, reasonable, and in accordance with law.

ELEVENTH DEFENSE

Plaintiffs claims are barred by their own misrepresentations and/or misconduct.

TWELFTH DEFENSE

The City Defendants intend to rely upon the defenses set forth in Rules 8(c), 9, 12(b) and (h) of the Hawaii Rules of Civil Procedure.

THIRTEENTH DEFENSE


The City Defendants reserve the right to assert any other affirmative defenses that becomes known through further discovery and/or investigation.

WHEREFORE, the City Defendants pray as follows:

- A. That the Complaint against the City Defendants be dismissed with prejudice;
- B. That the City Defendants be awarded their reasonable attorney's fees and costs;
- C. That this Court grant the City Defendants such other or additional relief as may be just and appropriate under the circumstances.

DATED: Honolulu, Hawaii, January 15, 2014.

DONNA Y. L. LEONG
Corporation Counsel

By 
DÓN S. KITAOKA
BRAD T. SAITO
KRISHNA F. JAYARAM
DAWN E. TAKEUCHI-APUNA
Deputies Corporation Counsel
Attorneys for Defendants
CITY AND COUNTY OF HONOLULU,
and GEORGE I. ATTA, Director, City and
County of Honolulu, Department Of Planning
and Permitting

CIVIL NO. 13-1-3143-12 RAN, KEEP THE NORTH SHORE COUNTRY, ET AL. V. CITY AND COUNTY OF HONOLULU, ET AL. - DEFENDANTS CITY AND COUNTY OF HONOLULU AND GEORGE I. ATTA, FAICP, DIRECTOR, CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING'S ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FILED DECEMBER 23, 2013; CERTIFICATE OF SERVICE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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KEEP THE NORTH SHORE COUNTRY, a)	CIVIL NO. 13-1-3143-12 RAN
Hawaii non-profit corporation, and SIERRA)	(Declaratory Judgment)
CLUB HAWAII CHAPTER, a foreign)	
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JANE DOES 1-10; DOE CORPORATIONS)	
1-10; DOE ENTITIES 1-10; and DOE)	
GOVERNMENTAL UNITS 1-10,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by mailing the same, postage prepaid, on January 15, 2014:

PHILIP R. BROWN, ESQ.
EFFIE STEIGER, ESQ.
JUSTIN M. CHUN, ESQ.
Pauahi Tower, Suite 2005
1003 Bishop Street
Honolulu, Hawaii 96813

Attorneys for Plaintiff
KEEP THE NORTH SHORE COUNTRY,

RORY R. WICKS, ESQ.
1140 South Coast Highway, #101
Encinitas, California 92024

WILLIAM C. McCORRISTON, ESQ.
LAURA S. LUCAS, ESQ.
JORDON J. KIMURA, ESQ.
McCORRISTON MILLER MUKAI MacKINNON
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

Attorneys for Defendant
TURTLE BAY RESORT, LLC

DATED: Honolulu, Hawaii, January 15, 2014.

DONNA Y. L. LEONG
Corporation Counsel

By 

DON S. KITAOKA
BRAD T. SAITO
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13-09074/318145