



CHECK AS MANY AS APPLICABLE				
JURISDICTION		LOWER COURT/AGENCY DISPOSITION		
1. LOWER COURT/ AGENCY	2. APPELLATE	1. STAGE OF PROCEEDINGS	2. TYPE OF JUDGMENT/ ORDER APPEALED	3. RELIEF
<input checked="" type="checkbox"/> Statutory <input type="checkbox"/> Other Grounds (Specify)	<input checked="" type="checkbox"/> Final Decision of Lower Court/Agency <input type="checkbox"/> Interlocutory Decision <input type="checkbox"/> Other (Specify)	<input checked="" type="checkbox"/> Pre-Trial <input type="checkbox"/> During Trial <input type="checkbox"/> After Trial	<input type="checkbox"/> Default Judgment <input type="checkbox"/> Judgment/Court Decision <input type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Dismissal/Merits <input checked="" type="checkbox"/> Summary Judgment <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Directed Verdict <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Damages: Amount Sought: \$ _____ Amount Granted: \$ ___0___ <input checked="" type="checkbox"/> Injunctions: <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Granted <input checked="" type="checkbox"/> Denied <input checked="" type="checkbox"/> Other (Specify) Plaintiffs requested an order requiring preparation of a supplemental environmental impact statement and injunction against further ground work or construction relating to the Project until a supplemental environmental impact statement is completed.

**BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:**

Plaintiffs' action requested the Circuit Court to order (1) preparation of a supplemental environmental impact statement ("SEIS") for Defendant Kuilima Resort Company's ("KRC") proposed expansion at the Turtle Bay Resort (the "Project"), and (2) an injunction against further ground work or construction by KRC relating to the Project until a SEIS is completed. KRC's approvals for the Project were granted in 1985 pursuant to a Revised Environmental Impact Statement for the Kuilima Resort Expansion dated October 7, 1985 (the "1985 EIS") that evaluated potential environmental impacts associated with the Project for which completion was expected by the late 1990s. Major portions of the Project (i.e., the

until late 2005, when KRC filed its Subdivision Application for the Project. Plaintiffs contended that the 1985 EIS is stale, relies on outdated information, and that in the past 20 years since the 1985 EIS was completed, the North Shore of Oahu has experienced substantial and significant changes in traffic, demands on infrastructure, residential development, and other environmental impacts which must be reevaluated before proceeding further with the Project.

Plaintiffs filed a motion for summary judgment asking the Court to grant summary judgment to compel the City and County of Honolulu and the Department of Planning and Permitting (collectively, the "City"), to require KRC to prepare a SEIS for the Project. Plaintiffs motion was based on evidence showing that as a matter of law, (1) the City failed in its duty to perform the required analysis of whether an SEIS is required, and (2) new and significant environmental impacts are likely to occur if the Project is allowed to proceed at this time.

KRC filed its own motion for summary judgment re burden of proof, arguing that Plaintiffs could not put forth evidence that new and significant impacts are likely to occur if the Project is allowed to proceed at this time.

The Circuit Court granted KRC's motion for summary judgment re burden of proof and denied Plaintiffs' motion for summary judgment, concluding that the City's decision not to require an SEIS met the rule of reason standard and was not arbitrary or capricious. The Circuit Court also concluded that no substantive changes were likely to result which would require an SEIS.

Other pending motions and joinders were considered moot by the Circuit Court, and judgment was entered in favor of Defendants and against Plaintiffs.

**ANTICIPATED ISSUES PROPOSED TO BE RAISED ON APPEAL:**

Did the trial court err in granting KRC's Motion for Summary Judgment (re Burden of Proof)?

Did the trial court err in denying Plaintiffs' Motion for Summary Judgment?

**MAY THE MEDIATOR CONTACT THE TRIAL JUDGE TO DISCUSS THE CASE?**

Yes  No

**BASED ON YOUR PRESENT KNOWLEDGE:**

1. Does this appeal involve a question of first impression or present a novel legal question?

Yes  No

2. Does this appeal involve a question of state or federal constitutional interpretation?

Yes  No

3. Does this case raise a question of law regarding the validity of a state statute, county ordinance, or agency regulation?

Yes  No

4. Does this case involve issues upon which there is an inconsistency in the decisions of the Intermediate Court of Appeals or the Supreme Court?

Yes  No

If yes, explain briefly: \_\_\_\_\_

5. Will the determination of this appeal turn on the interpretation or application of particular case or statute?

Yes  No If yes, provide:

Case name/statute: Hawai'i Environmental Protection Act and its enabling regulations

Citation: Hawai'i Revised Statutes, Chapter 343 and Hawai'i Administrative Rules, Chapter 11-200

Docket Number, if unreported: \_\_\_\_\_

6. Is there any case now pending or about to be filed in this court or any other court or administrative agency which:

(a) Arises from substantially the same case or controversy as this appeal? \_\_\_ Yes X No

(b) Involves an issue that is substantially the same, similar or related to an issue in this appeal?

\_\_\_\_\_ Yes X No

Case name/statute: \_\_\_\_\_

Citation: \_\_\_\_\_

Court or Agency: \_\_\_\_\_

Docket Number, if unreported: \_\_\_\_\_

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

X Likelihood of a motion to expedite the appeal.

X Multiple parties on either side for whom joint briefing is possible.

\_\_\_\_\_ Likelihood of motions to intervene on appeal.

X Likelihood of motions to file *amicus* briefs.

\_\_\_\_\_ Likelihood of motions to stay appeal pending resolution of a related case.

\_\_\_\_\_ Identify case name, docket number, and court or agency: \_\_\_\_\_

\_\_\_\_\_ Other procedural complexities. If so, please identify them: \_\_\_\_\_

COUNSEL FOR APPELLANT(S):

TRIAL COUNSEL FOR APPELLANT(S)

(If different than Appeal Counsel)

NAME: William S. Hunt  
Laura P. Couch  
Blake K. Oshiro

NAME: \_\_\_\_\_

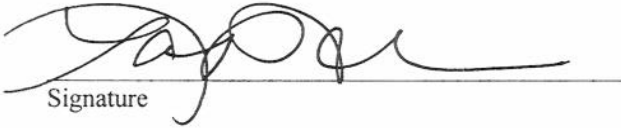
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I CERTIFY THAT A COPY OF THIS CIVIL APPEAL DOCKETING STATEMENT WAS SUBMITTED TO THE CLERK OF THE LOWER COURT/AGENCY AND THAT IT WAS SERVED ON EACH PARTY/ COUNSEL SHOWN ON THE ATTACHED SERVICE LIST.

  
Signature

1/8/07  
Date

REMEMBER TO ATTACH COPIES OF (1) THE ORDER/JUDGMENT APPEALED FROM, (2) ANY WRITTEN OPINION OR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE ORDER/JUDGMENT, AND (3) PROOF OF SERVICE ON ALL OTHER PARTIES TO THE PROCEEDINGS BELOW (WITH TELEPHONE NUMBERS)

STARN • O'TOOLE • MARCUS & FISHER  
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KUILIMA RESORT COMPANY

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEEP THE NORTH SHORE COUNTRY, a  
Hawai'i non-profit corporation, SIERRA  
CLUB, HAWAII CHAPTER, a foreign non-  
profit corporation,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU;  
HENRY ENG, Director of Department of  
Planning and Permitting in his official  
capacity; KUILIMA RESORT COMPANY, a  
Hawaii general partnership; JOHN DOES 1-  
10; JANE DOES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; DOE ENTITIES 1-  
10; and DOE GOVERNMENTAL UNITS 1-  
10,

Defendants.

U.S. DISTRICT COURT  
HONOLULU, HAWAII  
FILED

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J. KUBO  
CLERK

CIVIL NO. 06-1-0867-05 (SSM)  
(Declaratory Judgment)

**FINAL JUDGMENT**

## FINAL JUDGMENT

Pursuant to the ORDER (1) GRANTING DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 11, 2006; (2) GRANTING THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING'S JOINDER IN DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 25, 2006; (3) DENYING PLAINTIFFS KEEP THE NORTH SHORE COUNTRY AND SIERRA CLUB, HAWAII CHAPTER'S MOTION FOR SUMMARY JUDGMENT FILED OCTOBER 26, 2006; AND (4) RE DEFENDANT KUILIMA RESORT COMPANY'S FIRST MOTION FOR SUMMARY JUDGMENT (RE: STATUTE OF LIMITATIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT COMPANY'S SECOND MOTION FOR SUMMARY JUDGMENT (RE: NON-DISCRETIONARY ACTIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT COMPANY'S MOTION FOR JUDGMENT ON THE PLEADINGS FILED OCTOBER 11, 2006, AND DEFENDANT KUILIMA RESORT COMPANY'S MOTION FOR PROTECTIVE ORDER FILED OCTOBER 24, 2006, entered on December 5, 2006, Judgment is hereby entered in favor of Defendants CITY AND COUNTY OF HONOLULU; HENRY ENG, Director of Department of Planning and Permitting in his official capacity, and KUILIMA RESORT COMPANY ("Defendants").

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that final judgment is entered in favor of Defendants and against Plaintiffs KEEP THE NORTH SHORE COUNTRY and SIERRA CLUB, HAWAII CHAPTER, as to all claims set forth in the First Amended Complaint filed in Civil No. 06-1-0867-05 (SSM) on June 7, 2006.

All issues have been resolved herein, and there are no remaining issues or parties in this case. This Court expressly directs that said Judgment be entered as a final judgment.

IT IS SO ORDERED AND ADJUDGED this 15<sup>th</sup> day of December, 2006.


SARRINA S. MCKENNA  
JUDGE OF THE ABOVE-ENTITLED COURT



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*Keep the North Shore Country, et al. v. City and County of Honolulu, et al.*, Civil No. 06-1-0867-05 (SSM), Circuit Court of the First Circuit, State of Hawaii: FINAL JUDGMENT

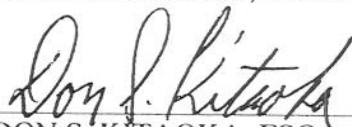
APPROVED AS TO FORM:

  
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CITY AND COUNTY OF HONOLULU and HENRY ENG

---

*Keep The North Shore Country, et al. v. City and County of Honolulu*, Civil No. 06-1-0867-05 (SSM);  
Circuit Court of the First Circuit, State of Hawaii: FINAL JUDGMENT



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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2006 DEC -5 PM 3:48

B. TERAOKA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEEP THE NORTH SHORE COUNTRY, a  
Hawaii non-profit corporation, SIERRA  
CLUB, HAWAII CHAPTER, a foreign non-  
profit corporation,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU;  
HENRY ENG, Director of Department of  
Planning and Permitting in his official  
capacity; KUILIMA RESORT COMPANY, a  
Hawaii general partnership; JOHN DOES 1-  
10; JANE DOES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; DOE ENTITIES 1-  
10; and DOE GOVERNMENTAL UNITS 1-  
10,

Defendants.

CIVIL NO. 06-1-0867-05 (SSM)  
(Declaratory Judgment)

**ORDER** (1) GRANTING DEFENDANT  
KUILIMA RESORT COMPANY'S  
THIRD MOTION FOR SUMMARY  
JUDGMENT (RE: BURDEN OF PROOF)  
FILED OCTOBER 11, 2006; (2)  
GRANTING THE CITY AND COUNTY  
OF HONOLULU, DEPARTMENT OF  
PLANNING AND PERMITTING'S  
JOINER IN DEFENDANT KUILIMA  
RESORT COMPANY'S THIRD MOTION  
FOR SUMMARY JUDGMENT (RE:  
BURDEN OF PROOF) FILED OCTOBER  
25, 2006; (3) DENYING PLAINTIFFS  
KEEP THE NORTH SHORE COUNTRY  
AND SIERRA CLUB, HAWAII  
CHAPTER'S MOTION FOR SUMMARY  
JUDGMENT FILED OCTOBER 26, 2006;  
AND (4) RE DEFENDANT KUILIMA  
RESORT COMPANY'S FIRST MOTION  
FOR SUMMARY JUDGMENT (RE:  
STATUTE OF LIMITATIONS) FILED  
OCTOBER 11, 2006, DEFENDANT

KUILIMA RESORT COMPANY'S  
SECOND MOTION FOR SUMMARY  
JUDGMENT (RE: NON-  
DISCRETIONARY ACTIONS) FILED  
OCTOBER 11, 2006, DEFENDANT  
KUILIMA RESORT COMPANY'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS FILED OCTOBER 11,  
2006, AND DEFENDANT KUILIMA  
RESORT COMPANY'S MOTION FOR  
PROTECTIVE ORDER FILED  
OCTOBER 24, 2006

Hearing Date: November 13, 2006  
Time: 9:45 a.m.  
Judge: Hon. Sabrina McKenna

No Trial Date Set

**ORDER (1) GRANTING DEFENDANT KUILIMA RESORT COMPANY'S  
THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF)  
FILED OCTOBER 11, 2006; (2) GRANTING THE CITY AND COUNTY OF  
HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING'S JOINDER  
IN DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR  
SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 25, 2006;  
(3) DENYING PLAINTIFFS KEEP THE NORTH SHORE COUNTRY AND  
SIERRA CLUB, HAWAII CHAPTER'S MOTION FOR SUMMARY JUDGMENT  
FILED OCTOBER 26, 2006; AND (4) RE DEFENDANT KUILIMA RESORT  
COMPANY'S FIRST MOTION FOR SUMMARY JUDGMENT (RE: STATUTE OF  
LIMITATIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT  
COMPANY'S SECOND MOTION FOR SUMMARY JUDGMENT (RE: NON-  
DISCRETIONARY ACTIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA  
RESORT COMPANY'S MOTION FOR JUDGMENT ON THE PLEADINGS FILED  
OCTOBER 11, 2006, AND DEFENDANT KUILIMA RESORT COMPANY'S MOTION  
FOR PROTECTIVE ORDER FILED OCTOBER 24, 2006**

On October 11, 2006, Defendant KUILIMA RESORT COMPANY filed, the following  
motions:

1. Defendant Kuilima Resort Company's First Motion for Summary Judgment (Re: Statute of Limitations);

2. Defendant Kuilima Resort Company's Second Motion for Summary Judgment (Re: Non-Discretionary Actions);
3. Defendant Kuilima Resort Company's Third Motion for Summary Judgment (Re: Burden of Proof); and
4. Defendant Kuilima Resort Company's Motion for Judgment on the Pleadings.

Furthermore, on October 24, 2006, Defendant KUILIMA RESORT COMPANY filed, the following motion:

5. Defendant Kuilima Resort Company's Motion for Protective Order.

On October 25, 2006, Defendants CITY AND COUNTY OF HONOLULU and HENRY ENG filed the following joinders:

1. The City and County of Honolulu, Department of Planning and Permitting's Joinder in Defendant Kuilima Resort Company's First Motion for Summary Judgment (Re: Statute of Limitations);
2. The City and County of Honolulu, Department of Planning and Permitting's Joinder in Defendant Kuilima Resort Company's Third Motion for Summary Judgment (Re: Burden of Proof);
3. The City and County of Honolulu, Department of Planning and Permitting's Joinder in Defendant Kuilima Resort Company's Motion for Judgment on the Pleadings; and
4. The City and County of Honolulu, Department of Planning and Permitting's Joinder in Defendant Kuilima Resort Company's Motion for Protective Order.

On October 26, 2006, Plaintiffs KEEP THE NORTH SHORE COUNTRY and SIERRA CLUB, HAWAII CHAPTER, filed the following motion:

1. Plaintiffs Keep The North Shore Country and Sierra Club, Hawaii Chapter's Motion for Summary Judgment.

The motions and joinders referenced above came on for hearing on November 13, 2006 at 9:45 a.m. before the Honorable Sabrina S. McKenna. William S. Hunt, Esq. and Laura P. Couch, Esq. appeared on behalf of Plaintiffs KEEP THE NORTH SHORE COUNTRY and

SIERRA CLUB, HAWAII CHAPTER (collectively "Plaintiffs"). Terence J. O'Toole, Esq., Sharon V. Lovejoy, Esq., Wil K. Yamamoto, Esq. and Dennis E. Phillips, Esq. appeared on behalf of Defendant KUILIMA RESORT COMPANY ("Kuilima"). Don S. Kitaoka, Esq. and Lori K.K. Sunakoda, Esq. appeared on behalf of Defendants CITY AND COUNTY OF HONOLULU and HENRY ENG (collectively "City").

Having reviewed each of the motions and joinders referenced above, and having considered the memoranda, affidavits, declarations, exhibits, arguments of counsel and the records and files herein,

THE COURT HEREBY FINDS AS FOLLOWS:

1. Hawaii Revised Statutes ("HRS") § 343-5(g) provides that an environmental impact statement ("EIS") that is accepted with respect to a particular action shall satisfy the requirements of the chapter and no other statement for that proposed action shall be required.

2. The Hawaii Environmental Protection Act, HRS § 343 ("HEPA"), allows the Environmental Council to draft rules and regulations to implement HEPA. Pursuant to that authority, rules regarding supplemental EIS's were promulgated under Hawaii Administrative Rules ("HAR") §§ 11-200-26 and 11-200-27, which provide:

HAR §11-200-26

A statement that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics 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. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the statement associated with that action shall be deemed to comply with this chapter.

HAR § 11-200-27

The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

3. An EIS is supposed to be prepared, and environmental consequences of an action are supposed to be reviewed, at the earliest possible time. *See* HRS § 343-5(b). The Court finds that this was done with respect to the Kuilima Expansion Project (the “Project”) in 1985. The EIS for the Project was accepted in October 1985, and is a matter of public record.

4. Although there has been some delay in the Project from the community's perspective, there have been ongoing activities and actions with respect to the Project throughout the past 20 years. In addition, the Project was adopted as part of the Ko'olauloa Sustainable Communities Plan in May of 1999; the public had an opportunity to participate with respect to the adoption of that Plan.

5. The Department of Planning and Permitting of the City and County of Honolulu (the “DPP”), as the accepting authority, is responsible for determining whether a supplemental EIS is required for the Project. *See* HAR §§ 11-200-27.

6. At the end of 2005 and beginning of 2006, certain North Shore neighborhood boards, Ms. Dee Dee Letts on her own behalf, and other individuals asked the DPP whether the timing of the Project would require a supplemental EIS. The Plaintiffs did not write any of those letters. The DPP responded, indicating that it had determined that a supplemental EIS was not

required for the Project. Although it does not appear that specific reasons were given, the DPP determined that the timing of the action has not changed so as to require a supplemental EIS.

7. The October 1985 EIS contained only general statements in terms of phasing of the Project, but those statements did not impose a time limit on the Project based on that proposed phasing time frame. The October 1985 EIS does not obligate Kuilima to follow that phasing time frame.

8. The law provides that when you have a project that is to be constructed in phases, the original EIS covers everything, and the project is the action under consideration. In this case, the Project is the "action." There has been no change to the action that would essentially make it a new action under consideration.

9. Any findings of fact constituting conclusions of law shall be so construed.

THE COURT HEREBY CONCLUDES AS FOLLOWS:

1. The law provides that courts are supposed to give deference to the expertise of agencies that deal with administrative issues. The Court is not to substitute its judgment for the judgment of an agency. If the decision of the agency meets the "rule of reason" and the decision is not "arbitrary or capricious," the Court shall not substitute its judgment for that of the agency.

2. The DPP's decision that a supplemental EIS is not required for the Project meets the rule of reason standard, and was not arbitrary or capricious. The timing of the Project has not substantively, or essentially, changed. In the alternative, even if the timing had substantively changed, which the Court finds that it has not, such change is not likely to have a significant effect.

3. Plaintiffs' concerns that form the basis of their claims in this litigation were basically expressed for the first time in the filings before this Court. However, even if the Court

were to review those concerns, the Court would not find that there is a substantive change likely to result in a significant effect not originally considered or previously dealt with that would require a supplemental EIS.

4. Some of the concerns raised by Plaintiffs, particularly with respect to traffic, concern the sufficiency of the October 1985 EIS. Too much time has passed to assert those claims; the Court is not able to review those claims now.

5. Courts have held that claims like those asserted by Plaintiffs in this action may be decided pursuant to a summary judgment motion rather than a full-blown trial. The Court is not to conduct a trial *de novo* on these issues; rather, the Court is to review the agency's decision.

6. Any conclusions of law constituting findings of fact shall be so construed.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant Kuilima's Third Motion for Summary Judgment (Re: Burden of Proof) is granted;
2. Defendant City's Joinder in Defendant Kuilima Resort Company's Third Motion for Summary Judgment (Re: Burden of Proof) is granted;
3. Plaintiffs' Motion for Summary Judgment is denied;
4. All other pending motions and joinders are considered moot; and
5. Judgment will be entered in favor of Defendants and against Plaintiffs.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii DEC 01 2006, 2006

**SABRINA S. MCKENNA**

JUDGE OF THE ABOVE-ENTITLED COURT




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*Keep The North Shore Country, et al. v. City and County of Honolulu*, Civil No. 06-1-0867-05 (SSM); **ORDER** (1) GRANTING DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 11, 2006; (2) GRANTING THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING'S JOINDER IN DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 25, 2006; (3) DENYING PLAINTIFFS KEEP THE NORTH SHORE COUNTRY AND SIERRA CLUB, HAWAII CHAPTER'S MOTION FOR SUMMARY JUDGMENT FILED OCTOBER 26, 2006; AND (4) RE DEFENDANT KUILIMA RESORT COMPANY'S FIRST MOTION FOR SUMMARY JUDGMENT (RE: STATUTE OF LIMITATIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT COMPANY'S SECOND MOTION FOR SUMMARY JUDGMENT (RE: NON-DISCRETIONARY ACTIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT COMPANY'S MOTION FOR JUDGMENT ON THE PLEADINGS FILED OCTOBER 11, 2006, AND DEFENDANT KUILIMA RESORT COMPANY'S MOTION FOR PROTECTIVE ORDER FILED OCTOBER 24, 2006



APPROVED AS TO FORM:

  
\_\_\_\_\_  
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LANE HORNFECK, ESQ.  
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\_\_\_\_\_  
*Keep The North Shore Country, et al. v. City and County of Honolulu, Civil No. 06-1-0867-05 (SSM);*  
**ORDER** (1) GRANTING DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 11, 2006; (2) GRANTING THE CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING'S JOINDER IN DEFENDANT KUILIMA RESORT COMPANY'S THIRD MOTION FOR SUMMARY JUDGMENT (RE: BURDEN OF PROOF) FILED OCTOBER 25, 2006; (3) DENYING PLAINTIFFS KEEP THE NORTH SHORE COUNTRY AND SIERRA CLUB, HAWAII CHAPTER'S MOTION FOR SUMMARY JUDGMENT FILED OCTOBER 26, 2006; AND (4) RE DEFENDANT KUILIMA RESORT COMPANY'S FIRST MOTION FOR SUMMARY JUDGMENT (RE: STATUTE OF LIMITATIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT COMPANY'S SECOND MOTION FOR SUMMARY JUDGMENT (RE: NON-DISCRETIONARY ACTIONS) FILED OCTOBER 11, 2006, DEFENDANT KUILIMA RESORT COMPANY'S MOTION FOR JUDGMENT ON THE PLEADINGS FILED OCTOBER 11, 2006, AND DEFENDANT KUILIMA RESORT COMPANY'S MOTION FOR PROTECTIVE ORDER FILED OCTOBER 24, 2006

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing to be served on the following persons by facsimile, hand-delivery or U.S. mail, postage prepaid (as indicated below) to their respective addresses:

	<b>HAND- DELIVERED</b>	<b>FAXED</b>	<b>MAILED</b>
CARRIE OKINAGA Corporation Counsel DON S. KITAOKA LORI K.K. SUNAKODA Deputies Corporation Counsel Office of the Corporation Counsel 530 S. King Street, Room 110 Honolulu, HI 96813 Attorneys for Defendants CITY AND COUNTY OF HONOLULU	(   )	(   )	( <b>X</b> )
KENNETH R. KUPCHAK, ESQ. GREGORY W. KUGLE, ESQ. MARK M. MURAKAMI, ESQ. Damon Key Leong Kupchak Hastert 1600 Pauahi Tower 1001 Bishop Street Honolulu, HI 96813 Attorneys for Plaintiff/Counterclaim Defendants UNITE HERE! LOCAL 5 and ERIC W. GILL and Plaintiff TODD A.K. MARTIN	(   )	(   )	( <b>X</b> )

**HAND-  
DELIVERED**      **FAXED**      **MAILED**

TERENCE J. O'TOOLE, ESQ.  
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