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E OLA KAKOU HAWAII, also
known as SAVE KOLOA and
FRIENDS OF MĀHĀ'ULEPŪ

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

<p>E OLA KAKOU HAWAII, also known as SAVE KOLOA, a Hawai'i non-profit corporation; FRIENDS OF MĀHĀ'ULEPŪ, a Hawai'i non-profit corporation,</p> <p style="text-align: center;">Plaintiffs, vs.</p> <p>COUNTY OF KAUA'I; 5425 PAU A LAKA LLC, a Hawai'i limited liability company; MP ELKO II, LLC; a Nevada limited liability company; KAUAI HALE, INC., a Delaware corporation; KAUANOE O KOLOA (PHASE 1), a Hawai'i condominium project; KAUANOE O KOLOA (PHASE 2), a Hawai'i condominium project KAUANOE O KOLOA (PHASE 3), a Hawai'i condominium project KAUANOE O KOLOA (PHASE 4), a Hawai'i condominium project; MP FINANCIAL GROUP, LTD., dba Meridian Pacific, a Nevada corporation; EARTHWORKS PACIFIC, INC., a Hawai'i corporation; and DOE DEFENDANTS 1-100,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No.</p> <p>COMPLAINT FOR DECLARATORY RULING AND INJUNCTIVE RELIEF; SUMMONS</p>
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COMPLAINT FOR DECLARATORY RULING AND INJUNCTIVE RELIEF

Plaintiffs above-named, by and through their undersigned counsel, and for Complaint
against Defendants above-named, allege and aver as follows:

I THE PARTIES.

1. Plaintiff E OLA KAKOU HAWAII, also known as SAVE KOLOA (“Save Koloa”) is a non-profit corporation based on Kaua‘i and composed of Kaua‘i residents who value and have interests in the preservation of endangered and threatened species some of which are endemic to the South Shore of Kauai. Said species also have traditional and customary significance for its members. Save Koloa is concerned that the habitat for the endangered species have been and will continue to be damaged or destroyed due to Defendants’ failure to comply with County and LUC conditions which are prerequisite to any ground breaking activity or development.

2. Plaintiff FRIENDS OF MĀHĀ‘ULEPŪ, a nonprofit corporation (FOM) comprised of Kauai citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kauai.

3. Defendant COUNTY OF KAUA‘I (“County”) is a political subdivision of the State of Hawai‘i and is charged with enforcing Chapter 205 of the HRS. Defendant County issued the grading and grubbing permit to Defendant Earthworks in violation of Chapter 205 and Chapter 6E of the HRS.

4. Defendant 5425 Pau A Laka LLC (“PAL”), is a Hawai‘i limited liability company that owns an interest in the property located at 5425A Pau A Laka Street, Koloa, Hawaii.

5. Defendant MP Elko II, LLC (“MPE”), is a Nevada limited liability company that owns an interest in the Property.

6. Defendant Kauai Hale, Inc. (“KHI”), is a Delaware corporation and developer of the 280 multi-family residential units condominium on the Property (“the Condo Project”).

7. Defendant Kauanoē O Koloa (Phase 1), is a Hawai‘i condominium project created when Defendant KHI, as developer and Defendants PAL and MPE, as owners submitted the Property to a condominium property regime (“CPR”).

8. Defendant Kauanoē O Koloa (Phase 2), is a Hawai‘i condominium project created when Defendant KHI, as developer and Defendants PAL and MPE, as owners submitted the Property to a CPR.

9. Defendant Kauanoē O Koloa (Phase 3), is a Hawai‘i condominium project created when Defendant KHI, as developer and Defendants PAL and MPE, as owners submitted the Property to a CPR.

10. Defendant Kauanoē O Koloa (Phase 4), is a Hawai‘i condominium project created when Defendant KHI, as developer and Defendants PAL and MPE, as owners submitted the Property to a CPR.

11. Defendant MP Financial Group, Ltd., dba Meridian Pacific (“MPF”), a Nevada corporation, is the general contractor for the construction of multi-family residential units that are improvements for the Condo Project.

12. Defendant EARTHWORKS PACIFIC, INC., (“Earthworks”) is a Hawaii corporation doing business on the island of Kauai, State of Hawaii.

13. DOE DEFENDANTS 1-100 are sued herein under fictitious names for the reason that, despite diligent and good faith efforts to obtain information, their true names and identities are presently unknown to Plaintiff, except that they are or were engaged in the activities alleged and/or were in some manner responsible or liable for the injuries and/or damages to Plaintiff and/or in some manner are jointly liable with one or more of the other parties to this action. Counsel for Plaintiff has attempted to discover the identities of these defendants by reviewing

documents from Plaintiff and communicating with Plaintiff. The identities may be disclosed by discovery and Plaintiff reserves the right to identify Doe Defendants at that time.

14. This lawsuit is based on violations of Chapters 195D and 205 of the HRS and Article XI, Section 9 of the Hawai‘i Constitution. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-21.5 and article XII §7 of the Hawai i State Constitution.

15. Venue properly lies in the Circuit Court of the Fifth Circuit pursuant to HRS § 603-36(5), and 632-1 because claims for relief arose in this circuit and Defendants’ acts and omissions take place in this circuit.

II. STANDING.

16. Article XI of the Hawai‘i Constitution, entitled, Conservation, Control And Development of Resources, contains the following:

ENVIRONMENTAL RIGHTS

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

17. Plaintiffs are residents of Kaua‘i and seek conservation and protection the the pe‘e pe‘e maka‘ole or Kaua‘i cave wolf spider (*Adelocosa anops*), ‘uku noho ana or Kaua‘i cave amphipod (*Spelaeorchestia koloana*), endangered ‘ōpe‘ape‘a or Hawaiian hoary bat (*Lasiurus cinereus semotus*), the endangered ua‘u or Hawaiian petrel (*Pterodroma sandwichensis*), endangered ‘akē‘akē or Hawaii distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened ‘a‘o or Newell’s shearwater (*Puffinus auricularis newelli*) (Hawaiian seabirds).

18. The acts and omissions of Defendants above-named have caused and threaten to further cause imminent harm to endangered species and violate Plaintiffs' right to a clean and healthful environment under Article XI, Section 9. The construction of 280 multi-family units for Condo Project threaten other species known to inhabit the Property, including but not limited to, the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*), the endangered 'ōpe'ape'a or Hawaiian hoary bat (*Lasiurus cinereus semotus*), the endangered ua'u or Hawaiian petrel (*Pterodroma sandwichensis*), endangered 'akē'akē or Hawaii distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened 'a'o or Newell's shearwater (*Puffinus auricularis newelli*) (Hawaiian seabirds).

III. BACKGROUND FACTS

19. In 1977, the Moana Corporation petitioned the Land Use Commission ("LUC") to amend the district boundaries and reclassify 457.4 acres in Koloa, Kaua'i Hawai'i from the Agriculture to the Urban District.

20. Moana proposed building houses and apartments that would be affordable to 40 percent of Kaua'i residents.

21. The LUC received testimony regarding the Blind Spider and Amphipod, summarized in Finding of Fact No. 33:

Concern was raised, however, about the adequacy of the biological section of the Environmental Impact Statement submitted by the Petitioner and the possible existence of several rare species of cave animals on the subject property. The testimony established that two very rare cave animals, the blind, eyeless, big-eyed hunting spider and the blind, terrestrial sandhopper have been found in caves just outside of the subject property, and that these animals are among the most remarkable specialized cave animals in the world. In that the archeological reconnaissance survey done by the Bernice P. Bishop Museum revealed that there are caves on the subject

property, there is a possibility that these rare cave animals inhabit areas in which the Petitioner proposes to develop. The Petitioner has represented that a survey of the caves on the subject property will be performed, and that if any are found to be significant and worthy of preservation they will be preserved as part of a landscape plan. The Environmental Quality Commission and the Environmental Center have recommended that a more thorough biological survey of the subject property be conducted.

22. The LUC granted the petition on April 26, 1977 and issued a Decision and Order that included a Condition No. 7. At the time Condition No. 7 read as follows:

That prior to application for rezoning and before any grading of the subject property begins, Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites which the Bernice P. Bishop Museum believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers which the Bernice P. Bishop Museum believes to be worthy of preservation.

23. In 1978, the Moana Corporation, petitioned the LUC to amend Condition No. 7. The LUC granted the petition and Condition No. 7 now reads as follows:

That Petitioner commission and complete a comprehensive archaeological and ***biological study*** with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserves any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and ***protect and preserve the present habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation.*** The Petitioner may commission such archaeological and biological study to any archaeologist and ***biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition.*** The Petitioner may apply to the County of Kaua'i for rezoning of the subject property before the completion of the archaeological and biological study; ***provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by Petitioner upon certification by the archaeologist and biologist that the area for***

which work is to commenced does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.

Emphasis added.

24. On March 23, 1979, Defendant County passed Ordinance No. PM-031-79 and rezoned the Property from the County Agriculture zone to the Resort and Residential Zones.

Condition No. 5 of the ordinance reads as follows:

5. The Applicant shall preserve:
 - a) the five (5) archaeological sites identified in the archeological and biological report and shall cause no construction or alteration or other land disturbances on said sites except for preservation and restoration of the sites.
 - b) the two lava tubes containing the habitat of the eyeless big-eyed hunting spider and protect these from man-made encroachments. Permission to re-survey three (3) other caves that are potential habitats, shall be granted for scientific purposes, before these caves are destroyed.

25. On January 14, 2000, the U.S. Fish and Wildlife Service designated the the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*) as endangered species in 2000 (65 Fed. Reg. 2348, Jan. 14, 2000).

. In the summary to the designation, the USFWS stated that:

These animals and their habitats have been variously affected or are currently threatened by the following—**habitat degradation and loss through the removal of perennial vegetation, soil fill, grading, paving, quarrying, and other activities associated with development** and agriculture; predation and competition for space, water, and nutrients by introduced, alien animals; **biological and chemical pesticide control activities**; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining populations and their limited distribution.

26. Pursuant to HRS §195D-4, any species of wildlife that has been determined to be an endangered species pursuant to the Endangered Species Act is deemed an endangered species under HRS Chapter 195D.

27. On or about August 22, 2006, Defendant County approved a project development use permit for the Property that allowed for the construction of a “maximum of 280 multi-family residential dwelling units”, subject to conditions. Condition No. 2 of the approval states that:

Prior to building permit approval:

(a) The Applicant shall provide clearance from SHPD that data recovery is complete for any non-significant sites on the parcel prior to any grading or grubbing on the site.

(b) Prior to building permit approval, the Applicant shall provide to the Planning Department evidence that the subject parcel is clear of habitats for the Kaua'i cave amphipod or cave spiders worthy of preservation.

28. Condition No. 2 of the use permit approved by Defendant County, contrary to LUC Condition No. 7, failed to require that the applicant (a) provide a comprehensive biological study conducted by a qualified biologist with actual inventories of the Blind Spider and Amphipod on the Property; (b) protect and preserve the present habitats of the Blind Spider and Amphipod worthy of preservation, and (c) require completion of the study and (4) certification that the Property habitat deemed worthy of preservation.

29. On January 13, 2014, Defendant's predecessor in interest moved the LUC to delete Condition No. 7.

30. On March 24, 2014, Aaron Nadig, then United States Fish and Wildlife Service (“USFWS”) Acting Assistant Field Supervisor for O‘ahu, Kaua‘i, Northwestern Hawaiian Islands and American Samoa, sent a letter to the State Office of Planning regarding the motion to delete. The letter read in part as follows:

The Service's position has not changed from our last correspondence with KMP on October 26, 2006, reiterating that the absence of the cave spider or amphipods from the accessible Kiahuna Makai Cave does not indicate that they do not exist within the mesocaverns of the surrounding areas. Therefore, we are unable to concur with KMP's request to delete Condition No. 7 of Decision and Orders dated July 7 1977 and August 5, 1997.

* * *

The Service has conducted nine surveys in the Kiahuna Makai Cave between the years of 1998 and 2003. The Service has not been able access to conduct further surveys of Kiahuna Makai Cave since 2003. The last survey of the site on September 17, 2003, no cave spiders or amphipods were observed. However, this cave is important for both animals because historic occurrences in the 1990s (sic). The Service designated critical habitat for both species in Kiahuna Makai Cave due to its importance in the overall recovery of these species. ***It is probable that the endangered Kaua'i cave wolf spider and the Kaua'i cave amphipod are still present on the property in voids and passages inaccessible by humans.***

* * *

Previous discussions between the Service and KMP identified KMP's intent to develop the property surrounding the Kiahuna Makai Cave. ***We recommend that KMP applies for an incidental take permit, because development of the area could result in the take of listed species.*** As part of the incidental take permit process, KMP will need to develop habitat conservation plan (HCP). Through this process, private landowners are able to carry out otherwise lawful activities (i.e., home building) while protecting and conserving listed species in compliance with the ESA.

Emphasis added.

31. On April 4, 2014, the State Office of Planning ("OP") objected to the deletion.

Regarding Condition No. 7, it noted that:

In a letter dated March 24, 2014, the USFWS states ***that it is very concerned that building in the area surrounding the cave***

that contains the endangered cave spiders or amphipods could result in a taking. See OP Exhibit C. The USFWS is concerned because the "Kauai'cave (sic) spider and Kauai cave amphipod could be present in the voids or passage ways on the property that are inaccessible to humans. These species are only known to occur in the Koloa basin on the island of Kauai and [are] further restricted to areas where above and below ground alterations to lava tubes and other cave bearing rock substrates have not occurred."

KMP did submit a one page Critical Habitat Plan for Kiahuna Makai Cave. It is unclear whether the USFWS or the biological consultant specifically approved the plan. *Nevertheless, the USFWS notes that the Kauai cave wolf spider and the Kauai cave amphipod are probably still present within the Petition Area in underground voids and passages inaccessible by humans. Future construction, therefore, could impact these endangered species.*

In addition to the guidelines created in 2003, the *USFWS also recommends additional protections, including an incidental take permit which would include a habitat conservation plan.* Because future development appears probable and such development could impact these endangered species, Condition No. 7 is still needed.

Emphasis added.

32. Based on the State OP's objection, Kiahuna Mauka Partners withdrew the motion on April 8, 2014.

33. On or about May 12, 2021, Yellow Hale, LLC, predecessor in interest to Defendants PAL and MPE, applied with Defendant County to subdivide the Property in Subdivision Application S-2021-7. The subdivision, if approved, would result in two lots zoned for the construction of the 280 unit "multi-family residential project used primarily for transient vacation rentals" (the Condo Project), a road way lot and an open zoned lot.

34. On or about May 27, 2021, Yellow Hale LLC sold the Property to Defendant PAL.

35. On or about August 6, 2021, Defendant PAL notified Defendant County of the sale of the Property.

36. On August 9, 2021, Defendant County gave written tentative approval to Subdivision Application S-2021-7. In section V.1.k., the tentative approval states that:

The subject property was previously reviewed through Project Development Use Permit PDU-2006-25, Use Permit U-2006-26 and Class IV Zoning Permit Z-1V-2006-27 that involves construction of a 280-unit multi-family residential project. Prior to final subdivision approval, the Applicant shall be subject to the applicable requirements of the forgoing permits. More particularly, the Applicant shall comply with Condition 2. that reads as follows: “(a) The Applicant shall provide clearance from SHPD that data recovery is complete for any non-significant sites on the parcel prior to any grading or grubbing on the site. (b) Prior to building permit approval, the Applicant shall provide to the Planning Department evidence that the subject parcel is clear of habitats for the Kaua’i cave amphipod or cave spiders worthy of preservation.”

37. Section V.1.k of the tentative approval, contrary to Condition No. 7, failed to require that the applicant (a) provide a comprehensive biological study conducted by a qualified biologist with actual inventories of the Blind Spider and Amphipod on the Property; (b) protect and preserve the present habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation. The Permit did not the biological study and certification ot contain any habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.

38. During the County’s public hearing on the subdivision application, Plaintiffs and other Kauai citizens submitted written testimony expressing concern for the archaeological and historic sites, and the Blind Spider and Amphipod, specifically citing Condition No. 7.

39. Defendant County subsequently requested technical assistance from the USFWS on the Blind Spider and Amphipod.

40. On October 27, 2021, Aaron Nadig, the USFWS Island Team Manager for O‘ahu, Kaua‘i, Northwestern Hawaiian Islands and American Samoa, responded to Defendant County:

Our data indicate the following federally listed species may be present on or in the vicinity of the proposed project locations: the pe‘e pe‘e maka‘ole or Kaua‘i cave wolf spider (*Adelocosa anops*) and ‘uku noho ana or Kaua‘i cave amphipod (*Spelaeorchestia koloana*), the endangered ‘ōpe‘ape‘a or Hawaiian hoary bat (*Lasiurus cinereus semotus*), the endangered ua‘u or Hawaiian petrel (*Pterodroma sandwichensis*), endangered ‘akē‘akē or Hawaii distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened ‘a‘o or Newell’s shearwater (*Puffinus auricularis newelli*) (hereafter collectively referred to as Hawaiian seabirds). The project area does not contain critical habitat for the pe‘e pe‘e maka‘ole, ‘uku noho ana.

* * *

Pe‘e pe‘e maka‘ole and ‘uku noho ana may be in the vicinity of the proposed project area is in Po‘ipū, an area within the Koloa basin and adjacent to two critical habitat units (one to the north and one the west) (see Map of TMK and Critical Habitat). Both critical habitat units are designated for both species. The critical habitat unit to the west of the proposed project is surveyed periodically for the presence of both species. Although both species could be absent during cave surveys conducted in the critical habitat unit to the west, **this does not indicate that these species does not exist within the mesocaverns of the surrounding areas.**

To avoid and minimize impacts to pe‘e pe‘e maka‘ole and ‘uku noho ana, we recommend you consider incorporating the following into the project description:

- **Survey the project area for depth of soil deposits and exposed rock for the presence of caves.** Any areas with soil deposits greater than 12 inches (in) are not likely to provide appropriate habitat or have the species present. Contact the Service and do not disturb the vegetation or soil in areas with soil deposits less than 12 in or if a cave is found.

- If a cave is found during construction, work will stop around the newly found cave immediately (sic) and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

Enhance cave invertebrate habitat if possible:

- Outplant native plants like maiapilo (*Capparis sandwichiana*) so roots eventually provide a food source and irrigate the surface. Control established ecosystem-altering non-native invasive plant species throughout the development especially around in areas with soils less than 12 in or exposed rocks.
- **Minimize the use of herbicide, pesticide, and other liquid chemicals in the Project Area.**

Emphasis added.

41. The October 27, 2021 technical assistance letter from Aaron Nadig also noted that another endangered species, the ‘ōpe‘ape‘a or Hawaiian hoary bat, “may be present on or in the vicinity of the proposed project locations”. The letter also stated that:

The ‘ōpe‘ape‘a or Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet (ft) or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you consider incorporating the following applicable measure into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 ft tall during the bat birthing and pup rearing season (June 1 through September 15).

42. On February 3, 2022, Defendant MPF submitted a “Draft Biological Resources Survey Report” for the Condo Project (“Draft Biological Survey Report”) to Defendant County to satisfy Condition No. 7. The Draft Biological Survey Report does not identify the biologist(s),

state the biologist's qualifications or relevant mesocavern survey experience, or certify that the Property does not contain any habitats of the Blind Spider or Amphipod. Instead, the Draft Biological Survey Report recommends that, "Prior to ground disturbance, contract a qualified biologist to survey the Project Area for depth of soil deposits and the presence of caves," consistent with the October 27, 2021 USFWS technical assistance letter.

43. The Subdivision Application S-2021-7 has not received final approval from Defendant County.

44. Defendant County failed to incorporate the protective measures recommended by USFWS and the Draft Biological Survey Report into the project description, or otherwise condition issuance of project approvals, including, but not limited to the mass grading permit issued to Defendant Earthworks.

45. On or about March 11, 2022, Defendant County, without the relevant certification, issued the grading and grubbing permit to Defendant Earthworks for the "Mass Grading of a 23.76 acre site for 279 condo project (sic).".

. Defendant Earthworks' subcontractor Estrella Enterprises began grading and grubbing on the Property on April 6, 2022 in violation of Condition No. 7. Estrella knocked down rock features and greatly damaged and disturbed the Property.

46. Plaintiffs have been diligently monitoring activity on the Property and knew that Defendants did not comply with Condition No. 7 and were not entitled to begin construction. Plaintiffs were shocked to see construction equipment beginning work on the Condo Project and contacted Defendant County.

47. Beginning in the month of December, 2020 and continuing into January, 2021, Defendant MPF's contractor, Cushnie Construction Company, Inc., used heavy equipment to

remove brush and knocked over rock features on the Property. On information and belief, this activity was undertaken without a grading permit.

48. On or about April 19, 2021, Defendant MPF's contractor, Geolabs, Inc., cleared brush and drove a big drill on a flatbed truck onto the Property. Geolabs drilled approximately seven holes of varying depth on the Property, hitting groundwater at several points.

49. Defendant County repeatedly assured Plaintiffs that Defendant met the conditions necessary to obtain the construction permits. Plaintiffs asked for the biological report referenced in Condition 7. In response, the County produced the Draft Biological Survey Report that recommends Defendants MPF and/or Defendant Earthworks "contract a qualified biologist to survey the Project Area for depth of soil deposits and the presence of caves".

COUNT I
DEFENDANT COUNTY'S VIOLATION OF LUC CONDITION NO. 7

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

51. Defendant County granted approvals for development of the Property, all of which failed to require compliance with Condition No. 7.

52. Defendant County repeatedly failed to take any action to protect the endangered Blind Spider and Amphipod, or comply with Condition No. 7, contrary to technical assistance from USFWS and Defendant MPF's "Draft Biological Survey Report."

53. To date, Defendant County has not received a survey from a qualified biologist in compliance with Condition No. 7 or technical assistance from USFW that protect endangered Blind Spider and Amphipod habitat.

54. Defendant County, by its acts and omissions, permitted and continues to permit the other Defendants' grading and grubbing on the Property.

COUNT II
DEFENDANTS PAL, MPE, MPF, KHI, PHASE 1, PHASE 2, PHASE 3 AND PHASE 4'S
VIOLATION OF LUC CONDITION NO. 7

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

56. Defendants have violated, and unless enjoined by this Court, will continue to violate Condition No. 7 by allowing or actually causing the Property to be graded, grubbed and drilled, among other actions that destroy the natural and cultural resources on the Property.

COUNT III
VIOLATION OF THE HAWAI'I STATE CONSTITUTION
COUNTY OF KAUAI

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

58. Defendant County has a constitutional duty to protect and preserve the public trust pursuant to article XI, § 1 of the Hawai'i State Constitution.

59. Defendant County failed to consider the public trust, including the right to the conservation, protection and enhancement of natural resources, namely the endangered Hawaiian hoary bat, Blind Spider and Amphipod.

60. Defendant County violated Plaintiffs' rights under Article XI, § 9 and Article XII, §7 of the Hawai'i State Constitution to the conservation, protection and enhancement of natural resources by failing to enforce HRS Chapters 195D and 205, and the federal Endangered Species Act.

61. The Blind Spider, Amphipod and Hawaiian hoary bat are all endangered species under the Federal Endangered Species Act and/or HRS Chapter 195D.

62. The acts and omissions of Defendants as set forth herein have resulted in the harassment, harm and killing of the Blind Spider, Amphipod and/or Hawaiian hoary bat.

63. Defendant County, by failing to take any measure to protect endangered species habitat and archaeological sites and issuing the grading and grubbing permit for the Property, is violating Plaintiffs' right to the conservation, protection and enhancement of natural resources.

64. Defendants are violating Plaintiffs' right to the conservation, protection, and enhancement of natural resources by allowing or causing the drilling, grading and grubbing on the Property, and threatening or actually destroying the habitat for the endangered Blind Spider and Amphipod. Plaintiffs have no adequate remedy at law for such violations.

65. The Hawaiian hoary bat, Blind Spider and Amphipod are unique to Kauai and are therefore cultural resources for Kanaka Maoli. Defendant County, by failing to determine (1) the identity and scope of "valued cultural, historical, or natural resources" on the Property, including the extent to which traditional and customary native Hawaiian rights are exercised in or around the Property; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the County to reasonably protect native Hawaiian rights if they are found to exist, violated Plaintiffs' rights under Article XI, § 9 and Article XII, §7 of the Hawai'i State Constitution.

66. Plaintiffs have no adequate remedy at law for the violation of their constitutional rights.

WHEREFORE, plaintiffs respectfully request that the Court:

a. Enter a declaratory judgment that:

(1) The 'ōpe'ape'a (Hawaiian hoary bat), pe'e pe'e maka'ole (Kaua'i cave wolf spider) and 'uku noho ana (amphipod) are endangered species pursuant to Chapter 195D and/or the federal Endangered Species Act.

(2) Development of the 280 multi-family units on the Property is subject to Condition No. 7 and that no actual work can begin until the biological study has been completed and a qualified biologist certifies that habitats of the the 'ōpe'ape'a (Hawaiian hoary bat), pe'e pe'e maka'ole (Kaua'i cave wolf spider) and 'uku noho ana (amphipod) are not present on the Property.

(3) Defendant County is responsible for the enforcement of conditions imposed by the LUC, including Condition No. 7.

(4) Defendant County violated Condition No. 7 of LUC by issuing the grading and grubbing permit to Defendant Earthworks for the Property without obtaining said certifications.

(5) The grading permit issued by Defendant County on March 23, 2022 is null and void.

(6) Defendant County violated its duties as public trustee and under HRS Chapters 195D and 205 by failing to enforce Condition No. 7.

(7) Defendants 5425 Pau A Laka; MP Elko II, LLC; MP Financial Group, Ltd.; dba Meridian Pacific and Earth Works LLC violated Condition No. 7 when they began or caused or allowed actual work to begin on the Property without first providing said certification to Defendant County and obtaining the necessary permits.

b. For a temporary restraining order, preliminary and permanent injunction enjoining Defendant County, its agents, employees, assigns, and all persons acting in concert or participating with them from issuing a grading and grubbing permit until a qualified biologist

surveys the Property for depth of soil deposits twelve (12) inches or less and exposed rock for the presence of mesocavern features, completes a biological study and certifies that Property does not contain any habitats of the the ‘ōpe‘ape‘a (Hawaiian hoary bat), pe‘e pe‘e maka‘ole (Kaua‘i cave wolf spider) and ‘uku noho ana (amphipod).

c. For a temporary restraining order, preliminary and permanent injunction enjoining Defendants, their agents, employees, assigns, and all persons acting in concert or participating with them from grading, grubbing, drilling, excavating, or disturbing the ground in any way, except to comply with Condition No. 7, until a qualified biologist surveys the Property for depth of soil deposits twelve (12) inches or less and exposed rock for the presence of mesocavern features, completes the biological study and certifies that Property does not contain any habitats of the the ‘ōpe‘ape‘a (Hawaiian hoary bat), pe‘e pe‘e maka‘ole (Kaua‘i cave wolf spider) and ‘uku noho ana (amphipod).

d. For a temporary restraining order, preliminary and permanent injunction enjoining all Defendants, their agents, employees, assigns, and all persons acting in concert or participating with them from grading, grubbing, drilling, excavating, or disturbing the ground in any way, until Defendant County imposes conditions or takes measures to ensure that Defendants do not disturb, remove, or trim woody plants greater than 15 feet tall during the bat birthing and pup rearing season (June 1 through September 15), as recommended by the USFWS.

e. For a temporary restraining order, preliminary and permanent injunction enjoining Defendant County, its agents, employees, assigns, and all persons acting in concert or participating with them from issuing a grading and grubbing permit until Defendant County determines (1) the identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary native Hawaiian rights are

exercised in or around the Property; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the County to reasonably protect native Hawaiian rights if they are found to exist.

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

g. For reasonable attorney’s fees and costs of suit pursuant to HRS §607-25; and

h. For such other and further relief as the court deems just and proper.

DATED: Kapaa, Hawaii May 11, 2022.

/s/ Peter Morimoto
PETER MORIMOTO
Attorney for Plaintiffs

STATE OF HAWAI'I CIRCUIT COURT FIFTH CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CIVIL CASE NUMBER - -
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PLAINTIFF, E OLA KAKOU HAWAII, also known as SAVE KOLOA, a Hawai i non-profit corporation; FRIENDS OF MH ULEP, a Hawai i non-profit corporation	VS.	DEFENDANT. COUNTY OF KAUAI; 5425 PAU A LAKA LLC; MP ELKO II, LLC; KAUAI HALE, INC., KAUANOE O KOLOA (PHASES 1-4) MP FINANCIAL GROUP, LTD., dba Meridian Pacific; EARTHWORKS PACIFIC, INC.
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PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) PETER MORIMOTO 3589 PO Box 408 Lihue, Hawaii 96766 Telephone No. (808) 482-1451 () -	
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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	