

FIRST CIRCUIT COURT
STATE OF HAWAII
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Attorneys for Defendant
HANAPOHAKU LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

SAVE SHARKS COVE ALLIANCE,
MĀLAMA PŪPŪKEA-WAIMEA,
HAWAII'S THOUSAND FRIENDS,
LARRY McELHENY, JOHN THIELST,
AND CORA SANCHEZ,

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU;
CITY COUNCIL OF THE CITY AND
COUNTY OF HONOLULU;
DEPARTMENT OF PLANNING AND
PERMITTING OF THE CITY AND
COUNTY OF HONOLULU;
HANAPOHAKU LLC; DOES 1-10,

Defendants.

Civil No. 19-1-0057-01 (JHA)
(Declaratory and Injunctive Relief)

DEFENDANT HANAPOHAKU LLC'S
ANSWER TO FIRST AMENDED
COMPLAINT, FILED FEBRUARY 27,
2019; CERTIFICATE OF SERVICE

Trial Date: Not set

DEFENDANT HANAPOHAKU LLC'S ANSWER
TO FIRST AMENDED COMPLAINT, FILED FEBRUARY 27, 2019

Defendant HANAPOHAKU LLC ("Hanapohaku"), by and through its attorneys, Sullivan Meheula Lee, LLLP, hereby answers and responds to the First Amended Complaint filed by

Plaintiffs SAVE SHARKS COVE ALLIANCE, MĀLAMA PŪPŪKEA-WAIMEA, HAWAI'I'S THOUSAND FRIENDS, LARRY McELHENY, JOHN THIELST, and CORA SANCHEZ (hereinafter collectively referred to as "Plaintiffs") on February 27, 2019, alleges and avers as follows:

FIRST DEFENSE

1. The First Amended Complaint fails to state a claim against Hanapohaku upon which relief can be granted.

SECOND DEFENSE

2. In response to Paragraph 1, Hanapohaku admits that on November 14, 2018, the Honolulu City Council ("City Council"), based on the recommendation of the Honolulu Department of Planning and Permitting ("DPP"), approved Hanapohaku's Special Management Area ("SMA") Permit for its \$18m, 34,500-square-foot development project on a 2.7 acre parcel across Kamehameha Highway from Sharks Cove on the North Shore of Oahu. The remaining allegations in Paragraph 1 are denied.

3. In response to Paragraph 2, Hanapohaku admits that Sharks Cove is a heavily-visited part of the Pupukea Marine Life Conservation District ("MLCD") and that Pupukea Beach Park provides beach, ocean, and tide pool access for residents and visitors alike. The remaining allegations in Paragraph 2 are denied.

4. In response to Paragraph 3, Hanapohaku denies that the Proposed Development will bring an 11% increase in visitors and congestion to the Sharks Cove area. With respect to the remaining allegations, Hanapohaku is without knowledge or information sufficient to form a belief as to their truth or falsity.

5. In response to Paragraph 4, Hanapohaku admits that it purchased three adjacent parcels along Kamehameha Highway in 2014. The remaining allegations in Paragraph 4 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

6. In response to Paragraph 5, Hanapohaku admits that the parcels are zoned as B-1. With respect to the remaining allegations, Hanapohaku states that the Revised Ordinances of Honolulu (“ROH”) speak for themselves.

7. In response to Paragraph 6, Hanapohaku admits that the parcels are located within an SMA. With respect to the remaining allegations, Hanapohaku states that the cited statutory provisions speak for themselves.

8. Paragraph 7 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

9. In response to Paragraph 8, Hanapohaku admits that it was granted an SMA Minor Permit by DPP on August 2, 2017. With respect to the remaining allegations, Hanapohaku states that the cited statutory provisions speak for themselves.

10. In response to Paragraph 9, Hanapohaku states that the SMA Minor Permit speaks for itself.

11. In response to Paragraph 10, Hanapohaku admits that Malama Pupukeya-Waimea (“MPW”) filed an administrative appeal on September 27, 2017 to contest the SMA Minor Permit. The remaining allegations in Paragraph 10 are denied.

12. Paragraph 11 is denied.

13. Paragraph 12 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

14. In response to Paragraph 13, Hanapohaku admits that in October 2018 DPP recommended that the City Council approve its SMA Major Permit. The remaining allegations in Paragraph 13 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

15. In response to Paragraph 14, Hanapohaku admits that the City Council provided an allowable public notice period in approving the SMA Major Permit. Any remaining allegations in this paragraph are denied.

16. In response to Paragraphs 15 and 16, Hanapohaku states that the allegations are vague and ambiguous as to who, specifically, has purportedly made such campaign contributions and in what amounts. On that basis, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein. To the extent any further response is required, the allegations are denied.

17. Paragraph 17 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

18. Paragraph 18 is denied.

19. Paragraph 19 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

20. Paragraph 20 is an overly vague and confusing narrative from which Hanapohaku cannot discern what is alleged, if anything. To the extent a response is required, the allegations are denied.

21. In response to Paragraphs 21 through 26, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

22. Paragraph 27 is admitted.

23. Paragraph 28 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

24. Paragraph 29 is admitted.

25. In response to Paragraph 30, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding ownership of the Foodland Property. Any remaining allegations are denied.

26. In response to Paragraph 31, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

27. Paragraphs 32 and 33 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

28. Paragraphs 34 and 35 contain vague narrative descriptions which do not appear to contain any actual allegations which require a response. To the extent a response is required, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein, if any.

29. Paragraphs 36 through 38 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

30. In response to Paragraph 39, Hanapohaku denies that the Proposed Development will bring 876,000 new visitors to the Sharks Cove are each year. With respect to the remaining allegations, Hanapohaku is without knowledge or information sufficient to form a belief as to their truth or falsity.

31. In response to Paragraphs 40 through 41, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

32. Paragraphs 42 and 43 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

33. Paragraph 44 is admitted.

34. In response to Paragraph 45, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

35. In response to Paragraphs 46 and 47, Hanapohaku states that the August 20, 2016 letter speaks for itself.

36. In response to Paragraph 48, Hanapohaku denies that the placement of orange cones and a homemade sign constitute “extraordinary measures.” With respect to the remaining allegations, Hanapohaku is without knowledge or information sufficient to form a belief as to their truth or falsity.

37. Paragraphs 49 through 52 are denied.

38. In response to Paragraph 53, Hanapohaku states that the Final Environmental Impact Statement (“FEIS”) speaks for itself. Any remaining allegations are denied.

39. In response to Paragraphs 54 through 57, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

40. Paragraph 58 is denied.

41. In response to Paragraph 59, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

42. In response to Paragraph 60, Hanapohaku states that designation of a “highway” as “narrow” is contradictory and vague. The remainder of the allegations in this paragraph are admitted.

43. Paragraph 61 consists of an anecdotal narrative and unattributed quotations to which no response should be required. To the extent a response is required, the allegations are denied.

44. In response to Paragraph 62, Hanapohaku states that the referenced report speaks for itself. Any remaining allegations are denied.

45. Paragraph 63 is denied.

46. In response to Paragraph 64, Hanapohaku states that the FEIS speaks for itself. The remaining allegations are denied.

47. In response to Paragraph 65, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

48. Paragraph 66 is admitted.

49. In response to Paragraph 67, Hanapohaku admits that additional food trucks were added, decks were built, plumbing and electrical work was done, and fences, tents, signs, and lights were added. Any remaining allegations are denied.

50. Paragraphs 68 and 69 are denied.

51. In response to Paragraph 70, Hanapohaku admits that it filed for three SMA Minor Permits in 2015. Any remaining allegations are denied.

52. In response to Paragraph 71, Hanapohaku admits that the three SMA Minor Permits were for \$498,000, \$445,000, and \$484,000 respectively. Any remaining allegations are denied.

53. In response to Paragraph 72, Hanapohaku admits that the three SMA Minor Permits were approved between March 2015 and January 2016. Any remaining allegations are denied.

54. Paragraph 73 is admitted.

55. In response to Paragraph 74, Hanapohaku admits that at a North Shore Neighborhood Board Meeting held at Waimea Valley on April 6, 2016, Andrew Yani apologized and voluntarily offered to withdraw the three applications and pursue a single joint SMA Permit. Any remaining allegations are denied.

56. In response to Paragraph 75, Hanapohaku admits that by way of a letter dated May 2, 2016, the City revoked the three SMA Minor Permits at Hanapohaku's request. That May 2, 2016 letter speaks for itself. Any remaining allegations are denied.

57. Paragraph 76 is admitted.

58. In response to Paragraph 77, Hanapohaku states that the Stipulation speaks for itself.

59. In response to Paragraph 78, Hanapohaku states that the Stipulation speaks for itself but objects to its incorporation by reference and on that basis denies the allegations in this Paragraph.

60. Paragraph 79 is denied.

61. In response to Paragraph 80, Hanapohaku admits that it applied for an SMA Minor Permit on May 23, 2017. Any remaining allegations are denied.

62. In response to Paragraph 81, Hanapohaku admits that the SMA Minor Permit was for \$368,641. Any remaining allegations are denied.

63. Paragraph 82 is admitted.

64. Paragraph 83 states a legal conclusion to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

65. In response to Paragraph 84, Hanapohaku states that MPW's September 22, 2017 petition for appeal speaks for itself. Hanapohaku denies that the appeal was timely. Any remaining allegations are denied.

66. In response to Paragraph 85, Hanapohaku states that the Appeal speaks for itself but objects to its incorporation by reference and on that basis denies the allegations in this Paragraph.

67. In response to Paragraph 86, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

68. Paragraph 87 is denied.

69. Paragraph 88 is admitted.

70. Paragraphs 89 through 91 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

71. Paragraph 92 is denied.

72. Paragraph 93 is denied.

73. Paragraph 94 is denied.

74. In response to Paragraph 95, Hanapohaku states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of what Plaintiffs have been able to determine. Any remaining allegations are denied.

75. Paragraphs 96 and 97 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

76. In response to Paragraph 98, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

77. Paragraph 99 is denied.

78. In response to Paragraph 100, Hanapohaku admits that it has paid less than \$20,000 in fines to date. All remaining allegations are denied.

79. Paragraphs 101 and 102 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

80. Paragraph 103 is denied.

81. In response to Paragraph 104, Hanapohaku admits that operations on the property have been continuous since 2014. Any remaining allegations are denied.

82. Paragraph 105 is denied.

83. In response to Paragraph 106, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

84. Paragraphs 107 through 114 are denied.

85. Paragraph 115 is denied.

86. In response to Paragraphs 116 and 117, Hanapohaku states that the FEIS speaks for itself. Any remaining allegations are denied.

87. Paragraph 118 is denied.

88. In response to Paragraphs 119 through 123, Hanapohaku states that the FEIS speaks for itself. Any remaining allegations are denied.

89. Paragraph 124 is denied.

90. In response to Paragraph 125, Hanapohaku states that the FEIS speaks for itself. Any remaining allegations are denied.

91. Paragraph 126 is denied.

92. In response to Paragraph 127, Hanapohaku states that the FEIS speaks for itself. Any remaining allegations are denied.

93. In response to Paragraph 128, Hanapohaku states that the FEIS speaks for itself. With respect to the remaining allegations, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

94. In response to Paragraph 129, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

95. Paragraph 130 is denied.

96. In response to Paragraph 131, Hanapohaku is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations asserted therein.

97. Paragraph 132 is admitted.

98. In response to Paragraph 133, Hanapohaku states that the referenced statutes speak for themselves. Any remaining allegations are denied.

99. Paragraph 134 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

100. In response to Paragraphs 135 and 136, Hanapohaku states that the Draft EIS and FEIS speak for themselves. Any remaining allegations are denied.

101. In response to Paragraph 137, Hanapohaku states that the FEIS speaks for itself. Any remaining allegations are denied.

102. Paragraphs 138 and 139 are denied.

103. Paragraph 140 is admitted.

104. In response to Paragraphs 141 and 142, Hanapohaku states that the referenced statutes speak for themselves. Any remaining allegations are denied.

105. In response to Paragraph 143, Hanapohaku states that the SMA Major Permit application materials and submissions speak for themselves. Paragraph 143 also states legal

conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

106. Paragraph 144 is denied.

107. Paragraph 145 is admitted.

108. In response to Paragraph 146, Hanapohaku states that the referenced statute speaks for itself. Any remaining allegations are denied.

109. Paragraph 147 is admitted.

110. Paragraph 148 states legal conclusions to which no response is appropriate or required. Hanapohaku also states that the referenced statute speaks for itself. Any remaining allegations are denied.

111. Paragraphs 149 and 150 are denied.

112. In response to Paragraph 151, Hanapohaku states that the referenced statute speaks for itself. Any remaining allegations are denied.

113. Paragraphs 152 through 156 state legal conclusions to which no response is appropriate or required. Hanapohaku also states that the Oahu General Plan and the North Shore Sustainable Communities Plan (“NSSCP”) speak for themselves. Any remaining allegations are denied.

114. In response to Paragraph 157, Hanapohaku states that the NSSCP speaks for itself. Any remaining allegations are denied.

115. Paragraphs 158 through 163 are denied.

116. In response to Paragraph 164, Hanapohaku states that the referenced statute speaks for itself. Any remaining allegations are denied.

117. In response to Paragraph 165, Hanapohaku admits that the Council received DPP's recommendations and proposed Resolution 18-245 on October 23, 2018. Hanapohaku also admits that the Council Chair introduced Resolution 18-245 to approve the SMA Major Permit on October 29, 2018. Any remaining allegations are denied.

118. In response to Paragraph 166, Hanapohaku admits that the resolution with CD1 was heard by the Zoning and Planning Committee on November 7, 2018. Any remaining allegations are denied.

119. In response to Paragraphs 167 and 168, Hanapohaku states that the recordings of the referenced meetings speak for themselves. Any remaining allegations are denied.

120. Paragraph 169 is admitted.

121. Paragraph 170 is denied.

122. Paragraphs 171 through 174 are denied.

COUNT I

123. In response to Paragraph 175, Hanapohaku incorporates by reference all prior responses.

124. In response to Paragraphs 176 and 177, Hanapohaku states that the Hawaii State Constitution speaks for itself. Any remaining allegations are denied.

125. Paragraphs 178 through 185 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT II

126. In response to Paragraph 186, Hanapohaku incorporates by reference all prior responses.

127. In response to Paragraph 187, Hanapohaku states that the Hawai'i State Constitution speaks for itself. Any remaining allegations are denied.

128. Paragraphs 188 through 190 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT III

129. In response to Paragraph 191, Hanapohaku incorporates by reference all prior responses.

130. In response to Paragraph 192, Hanapohaku states that the referenced statute speaks for itself. Any remaining allegations are denied.

131. Paragraph 193 is admitted.

132. Paragraph 194 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

133. Paragraph 195 is admitted.

134. Paragraphs 196 through 201 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT IV

135. In response to Paragraph 202, Hanapohaku incorporates by reference all prior responses.

136. Paragraphs 203 through 212 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT V

137. In response to Paragraph 213, Hanapohaku incorporates by reference all prior responses.

138. In response to Paragraph 214, Hanapohaku states that the Hawaii State Constitution speaks for itself. Any remaining allegations are denied.

139. Paragraphs 215 through 219 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT VI

140. In response to Paragraph 220, Hanapohaku incorporates by reference all prior responses.

141. Paragraphs 221 and 222 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

142. Paragraphs 223 through 226 are denied.

143. Paragraph 227 states legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT VII

144. In response to Paragraph 228, Hanapohaku incorporates by reference all prior responses.

145. In response to Paragraph 229, Hanapohaku states that the EISPN speaks for itself but objects to its incorporation by reference and on that basis denies the allegations in this Paragraph.

146. Paragraphs 230 through 235 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT VIII

147. In response to Paragraph 236, Hanapohaku incorporates by reference all prior responses.

148. Paragraphs 237 through 241 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT IX

149. In response to Paragraph 242, Hanapohaku incorporates by reference all prior responses.

150. Paragraphs 243 through 248 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT X

151. In response to Paragraph 249, Hanapohaku incorporates by reference all prior responses.

152. Paragraphs 250 through 266 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

COUNT XI

153. In response to Paragraph 267, Hanapohaku incorporates by reference all prior responses.

154. Paragraphs 268 through 270 state legal conclusions to which no response is appropriate or required. To the extent a response is required, the allegations are denied.

155. In response to Plaintiffs' Prayer for Relief, Hanapohaku denies that Plaintiffs are entitled to such relief.

156. Hanapohaku expressly denies each and every allegation in the First Amended Complaint that is not specifically admitted above.

THIRD DEFENSE

157. Some or all of Plaintiffs lack standing to bring this First Amended Complaint, either in whole or in part.

FOURTH DEFENSE

158. Plaintiffs do not have a private right of action with respect to one or more of the claims raised in the First Amended Complaint.

FIFTH DEFENSE

159. Plaintiffs have failed to exhaust all administrative remedies with respect to one or more of the claims raised in the First Amended Complaint.

SIXTH DEFENSE

160. One or more of Plaintiffs' claims are not yet ripe for adjudication.

SEVENTH DEFENSE

161. The Court lacks subject matter jurisdiction over Plaintiffs' claims, either in whole or in part.

EIGHTH DEFENSE

162. One or more of Plaintiffs' claims are barred by applicable statutes of limitation.

NINTH DEFENSE

163. Plaintiffs' claims are barred, either in whole or in part, by the doctrines of waiver, estoppel, consent, and/or laches.

TENTH DEFENSE

164. Hanapohaku intends to rely on the defense of unclean hands.

ELEVENTH DEFENSE

165. Hanapohaku gives notice that it may assert other defenses as Hanapohaku may become aware during the course of further investigation, discovery, or trial in this matter.

WHEREFORE, Hanapohaku prays as follows:

- A. That the First Amended Complaint be dismissed and judgment be entered in its favor;
- B. That it be awarded its reasonable attorneys' fees and costs; and
- C. That it be awarded such other and further relief as the Court deems just and appropriate under the circumstances.

DATED: Honolulu, Hawai'i, May 6, 2019.



TERRENCE M. LEE
BRETT R. TOBIN

Attorneys for Defendant
HANAPOHAKU LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SAVE SHARKS COVE ALLIANCE,
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Defendants.

Civil No. 19-1-0057-01 (JHA)
(Declaratory and Injunctive Relief)

CERTIFICATE OF SERVICE

Trial Date: Not set

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following on the date indicated below and by the method indicated:

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VIA HAND DELIVERY

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DATED: Honolulu, Hawai'i, May 6, 2019.



TERRENCE M. LEE
BRETT R. TOBIN

Attorneys for Defendant
HANAPOHAKU LLC

Save Sharks Cove Alliance, et al. v. City and County of Honolulu, et al.; Civil No. 19-1-0057-01
(JHA); CERTIFICATE OF SERVICE