

deposited human skeletal remains within the Maui Lani landholdings. Maui Lani Partners' State Historic Division accepted Archaeological Monitoring Plan specifically provides "all grading activities will be monitored full time[,]" "[n]o sand will be excavated directly out of the ground and loaded into trucks[,]" and the protocol requires "[o]ne archaeological monitor per piece of ground disturbing equipment." (See Apana Decl. ¶29; Exh. 10, AMP at 7)

On multiple occasions, most recently in 2017, Plaintiffs have observed the agents and employees of Maui Lani Partners engaged in digging, grading, mining, excavating, or ground-disturbing activities at the Phase IX project site and no archaeological or other monitor was present including in areas where burials are believed to be present. Since 2014, Plaintiffs estimate from its own observations that the amount sand removed from Phase IX has far exceeded the amount permitted under the 2014 Grading Permit. Plaintiffs are also very concerned that burials have been disturbed and desecrated and that all additional ground-disturbing activities threaten to further disturb and desecrate burials.

A failure to comply with the Archaeological Monitoring Plan is a violation of the administrative rules implementing Chapter 6E, HRS and adopted by the State Historic Preservation Division of the Department of Land and Natural Resources. Non-compliance with the provisions and procedures for archaeological monitoring plans are required to result in a directive to the person not to proceed with construction in "the project area," a denial or revocation of SHPD's written concurrence or agreement, and the non-compliance shall also be penalized as provided in section 6E-11, HRS, and applicable laws. HAR §13-279-7.

Count I of Plaintiffs' complaint sought injunctive relief pursuant to HRS §6E-13 and against Maui Lani Partners' ongoing violations of its archaeological monitoring plan (AMP). Maui Lani Partners' sand mining, grading, and resource extraction operations are in violation of HRS chapter 6E, grading permits issued by Maui County, and Hawai'i's public trust. HRS §6E-13(b) provides: (b) Any person may maintain an action in the [environmental court] having jurisdiction where the alleged violation occurred or is likely to occur for restraining orders or injunctive relief against the State, its political subdivisions, or any person upon a showing of irreparable injury, for the protection of an historic property or a burial site and the public trust therein from unauthorized or improper demolition, alteration, or transfer of the property or burial site.

Counts II and III also seeks declaratory relief that the actions of Maui Lani Partners violates the express terms of the 2014 Grading Permit and that the use of the land for sandmining persons is not permitted by the zoning of the land and that Maui Lani Partners' use of the land would not be

entitled to seek a special use or conditional use permit for the present zoning. In other words, in addition to violating the states historic and burial preservation laws, Maui Lani Partners' actions are independently illegal under current law.

While the Office of Hawaiian Affairs has expressed its intention to seek redress against Maui Lani Partners and the Maui County Council is beginning the process of legislating a moratorium on all sand mining across the County, Plaintiffs are concerned that burials may be disturbed and/or desecrated and destroyed in the weeks and/or months before any government action occurs. The County has issued a notice of warning and threatened fines, Maui Lani Partners has engaged in a cat and mouse game. One day having dozens of trucks haul away material from the site, Plaintiff watched from the road and were unable to do anything. The County did not stop the hauling of material away from the site. Later Maui Lani Partners justified its activity along the lines that it was rock and not sand that had been removed. Plaintiffs have no other remedy than the one contemplated by HRS §6E-13(b) to protect burial sites from desecration.

Immediate, irreparable threatened harm to historical and burial sites is threatened against Plaintiffs and other lineal descendants of those buried within the Maui Lani Project District if the only penalty for continuing to flout the law are \$1,000 daily fine as stated by the Planning Director on April 28, 2017. For each burial disturbed or desecrated before the protection of the Court is invoked, Plaintiffs will be deprived of their ability to protect their interests since no amount of money or no fine will be able to undesecrate a burial. Further, without a stay of the status quo until the Court can hold a hearing on this matter, the Court itself may be deprived of the ability to consider the protection of these important burial sites.

Staying Maui Lani Partners from any further earth disturbing activity pending a hearing on Plaintiffs' injunction motion would prevent an immediate and irreparable injury, loss, or damage that would be incurred by Plaintiffs. *See Warm Springs Dam Task Force v. Gribble*, 417 U.S. 1301, 1303 (1974) (granting stay pending resolution of two serious challenges to agency action); *James River Flood Control Ass'n v. Watt*, 680 F.2d 543, 544-45 (8th Cir. 1982) (per curiam) (granting a stay for a preliminary injunction halting progress on a project, pending proceedings).

Plaintiffs now move for a temporary stay in order to preserve the status quo such that this Court will be able to render a meaningful decision in this case. *Life of the Land v. Ariyoshi*, 59 Haw. 156, 158, 577 P.2d 1116, 1118 (1978) (motion for an ex parte state determines whether action is appropriate to create or preserve a state of affairs such that the court will be able to render a meaningful decision.)

The requested ten day stay would preserve the status quo pending a hearing on Plaintiffs' Motion for Preliminary Injunction on the ground that immediate and irreparable injury, loss and damage will result to Plaintiffs and others if Defendants are permitted to proceed.

This motion is based upon Rule 65(b) of the Hawai'i Rules of Civil Procedure and is supported by the attached declaration and incorporates by reference, pursuant to Rule 10(c) of the Hawai'i Rules of Civil Procedure, the arguments, declaration and exhibits made in Plaintiffs' Motion for Preliminary Injunction, filed July 27, 2017

DATED: Waiuku, Maui, Hawai'i

July 27, 2017



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MĀLAMA KAKANILUA, an unincorporated) Civil No. _____
association, et. al) (Environmental Court)
Plaintiffs)
vs.) DECLARATION OF COUNSEL
MAUI LANI PARTNERS, a domestic)
partnership, et al.)
Defendants.)

DECLARATION OF COUNSEL

I, Lance D. Collins, do declare under penalty of law that the following is true and correct.

1. I am counsel for the Plaintiffs in the above-entitled case and make this declaration based upon my personal knowledge, information and belief.

2. I call the Court's attention to the facts and exhibits testified to in the Declaration of Clare H. Apana attached to the Motion for Preliminary Injunction.

3. There is tremendous concern in the community regarding the use of the subject land for sand mining and resource extraction as well as the disturbance and desecration of historical and burial sites. The County of Maui's executive branch issued a notice of warning to Maui Lani Partners threatening \$1,000 a day fines.

4. However, subsequently, Maui Lani Partners did continue to remove sand and more recently spent a day having trucks remove material that was later claimed by Defendant as "rock". Plaintiffs have a major concern that to believe that Defendants will voluntarily stop their proposed actions.

5. The Maui County Council is currently considering an ordinance that will impose a moratorium on all sand mining activities within the County and the Office of Hawaiian Affairs is currently preparing its own course of action regarding this matter. However, given the procedural requirements to take lawful action, these government bodies will be unable to act quick enough to protect historical and burial site snow.

6. Plaintiffs are deeply concerned that further burials will be disturbed or desecrated before the County, the Office of Hawaiian Affairs and/or the State are able to conduct and complete their processes to stop Defendant's harmful and illegal activity.

7. Contemporaneously with this submission to the Court, I will be hand delivering a copy of this motion and the Motion for Preliminary Injunction to the County of Maui. I will also attempt to e-mail William Wynhoff, a deputy attorney general that I know advises and represents the Chairperson of the Board of Land and Natural Resources in various other matters. I will also attempt to e-mail Darren Suzuki, who was the name listed on the 2014 Grading Permit as well as the general e-mail on Bill Mills Development Co's website – as well as sending them hard copies.

8. A ten day stay will preserve the status quo until this Court may have the opportunity to hold a hearing on the matter and prevent the possibility to immediate, irreparable damage that could occur before the Court has been fully briefed on the matter and the parties have all had an opportunity to be heard.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Waiuku, Maui, Hawai'i

July 27, 2017



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

MĀLAMA KAKANILUA, an unincorporated) Civil No. _____
association, CLARE H. APANA, and) (Environmental Court)
KANILOA LANI KAMAUNU)
) TEN DAY STAY
Plaintiffs)
)
vs.)
)
MAUI LANI PARTNERS, a domestic)
partnership, COUNTY OF MAUI, and the)
DEPARTMENT OF LAND AND NATURAL)
RESOURCES, STATE OF HAWAII,)
)
Defendants.)
_____)

TEN DAY STAY

The Court, having reviewed the EX PARTE MOTION FOR A TEMPORARY TEN DAY STAY, DECLARATION OF COUNSEL and the records and files in this case and pursuant to Rule 65(B) of the Hawai'i Rules of Civil Procedure, grants Plaintiffs' EX PARTE MOTION FOR A TEMPORARY TEN DAY STAY, and

IT IS HEREBY ORDERED that for a period of ten days, beginning with the day and time upon which this order is entered, Defendants MAUI LANI PARTNERS, a domestic partnership, and its agents, employees, and all persons acting under, in concert with, or for them to refrain from any further sand mining, grading or excavation at lands located in the Maui Lani Project District in the ahupua'a of Wailuku, Central Maui, until compliance with HRS chapter 6E has been achieved upon hearing or further order of the Court.

The reasons for the issuance of this Temporary Ten Day Stay are as follows:

1. There is a likelihood that Plaintiffs will prevail on one or more of their claims.
2. Plaintiffs will suffer irreparable injury if a stay is not granted and that the status quo

will allow the Court some time to consider Plaintiffs' motions for preliminary injunctive relief.

3. Because Defendant Maui Lani Partners is already subject to a County warning regarding taking further action it appears there is no irreparable harm to staying all earth moving activities of Defendant within the Maui Lani Project District for a period of ten days.

4. The public interest will be served by the entry of this stay order.

This matter shall be set for hearing on AUG 1 | 2017 at 8:00 am or as soon as the parties may be heard.

DATED: Wailuku, Maui, Hawai'i AUG - 2 2017

/S/ JOSEPH E. CARDOZA (SEAL)
JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MĀLAMA KAKANILUA, an unincorporated)	Civil No. _____
association, et. al)	(Environmental Court)
Plaintiffs)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
MAUI LANI PARTNERS, a domestic)	
partnership, et al.)	
Defendants.)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing will be duly served upon the following parties by electronic mail and by hand delivery or U.S. Mail, postage pre-paid, on this date as follows:

To: Bill Mills Development Co., Inc
1100 Alakea St, Ste 2200
Honolulu HI 96813

Agent, Defendant Maui Lani Partners

PATRICK K. WONG, ESQ.
Corporation Counsel
200 South High Street
Wailuku HI 96793

Attorney for County Defendants

DOUGLAS CHIN, ESQ.
Attorney General of Hawai'i
425 Queen Street
HONOLULU, Hawaii 96813

Attorney for the State of Hawai'i

Darren Suzuki, by e-mail
William Wynhoff, Deputy Attorney General, by e-mail

DATED: Waiuku, Maui, Hawai'i July 27, 2017



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs