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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

EDWARD HALEALOHA AYAU,)	CIVIL NO. _____
)	(ENVIRONMENTAL COURT)
Plaintiff,)	
)	COMPLAINT; SUMMONS
vs.)	
)	
STATE OF HAWAI‘I; KE‘EAUMOKU)	
DEVELOPMENT LLC; CITY AND)	
COUNTY OF HONOLULU; JOHN DOES)	
1-10, JANE DOES 1-10, and DOE)	
PARTNERSHIPS, CORPORATIONS,)	
TRUSTS, GOVERNMENTAL UNITS OR)	
OTHER ENTITIES 1-20 (“DOE)	
DEFENDANTS”),)	
)	
Defendants.)	
)	

COMPLAINT

The State of Hawai‘i, through its State Historic Preservation Division of the Department of Land and Natural Resources, and Ke‘eaumoku Development LLC have violated statutory and administrative regulations intended to establish a process that prioritizes the protection of culturally sacred and significant Native Hawaiian burial sites. As a result, Native Hawaiian burial sites are threatened with unnecessary disturbance. Plaintiff Edward Halealoha Ayau files this lawsuit to enforce Hawai‘i’s historic preservation laws and to ensure that the proper process is followed.

JURISDICTION

1. This Court has jurisdiction over the claims for relief in this action pursuant to Hawai‘i Revised Statutes (“HRS”) §§ 6E-13(b), 604A-2, 603-21.5, 603-21.9, 607-25, 632-1, and Article XII § 7 of the Constitution of the State of Hawai‘i.

2. Venue in this circuit is appropriate pursuant to HRS § 603-36(5).

PARTIES

3. Ayau is a Native Hawaiian resident of the island of Hawai‘i and the State of Hawai‘i. He is a recognized descendant of Native Hawaiian ancestors who are buried in the same ahupua‘a or district as those encountered at the project site. He engages in native Hawaiian traditional and customary practices including, but not limited to, mālama iwi (caring for ancestral burials).

4. Defendant State of Hawai‘i (the “State”), through the State Historic Preservation Division (the “SHPD”) of the Department of Land and Natural Resources (the “DLNR”), is charged with the implementation and enforcement of HRS chapter 6E. SHPD’s main office is located in Honolulu, Hawai‘i at 1151 Punchbowl Street, Honolulu, Hawai‘i 96813.

5. Defendant Ke‘eumoku Development LLC (individually and together with any predecessors in interest, “Defendant KDL”) is a domestic limited liability company organized and existing under the laws of the State of Hawai‘i and located in Honolulu, Hawai‘i.

6. Defendant City and County of Honolulu (“City”), through its Department of Planning and Permitting (“DPP”), is responsible for “[m]aintain[ing] and continuously updat[ing] a repository of all laws, rules, procedures, permit requirements and review criteria of all federal, State, and city and county agencies having control or regulatory powers over land development projects within the city” and is charged with the administration and enforcement of the building code and all laws relating to the work of DPP, including approval of grading, trenching, and building permits. *See* Revised Ordinances of Honolulu (“ROH”) 2-24.11 & ROH 2-23.16. As the permitting agency for the subject project, DPP, through the City and County, is a necessary and indispensable party.

7. Additional Defendants John Does 1-10, Jane Does 1-10, and Doe Partnerships, Corporations, Trusts, Governmental Units or Other Entities 1-20 (“Doe Defendants”) are persons or entities who may be liable to Ayau or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Ayau. Ayau has been unable to

ascertain whether or not all parties liable to Ayau are named therein. Ayau will identify such Doe Defendants when their names and capacities are ascertained, Ayau is informed and believes and thereon alleges that some of these Doe Defendants are, and at all times relevant herein, were, in some manner presently unknown to Ayau, engaged in and/or responsible for the acts and/or omissions alleged herein.

ALLEGATIONS

THE PARK ON KE‘EAUMOKU

8. The Park on Ke‘eaumoku is located at 825 Ke‘eaumoku Street, Honolulu and may be identified by tax map key numbers (1) 2-3-018:052-060, 074, 075, and 077 (the “project site”).

9. The project site is approximately 3.5 acres.

10. The Park on Ke‘eaumoku is a condominium residential project consisting of two towers with nearly 1,000 residential units, a commercial component that includes retail, food and beverage establishments, offices, and other commercial uses that is slated to be the second-biggest residential condo tower project ever developed in Hawai‘i.

11. The project site is owned by Defendant KDL.

12. Defendant KDL applied for building permits, which are currently pending with the City.

13. The City, through the DPP, has issued Defendant KDL a grading permit (October 2022), trenching permits for utilities (October and November 2022), as well as building permits for foundation (July 2022) and superstructure (December 2022) among other things.

14. Construction, including earth moving, excavation, grubbing and grading, soil compaction, concrete and/or asphalt pouring, and/or utility installation, is ongoing or otherwise pending at the project site.

THE PROJECT SITE IS KNOWN TO CONTAIN NATIVE HAWAIIAN BURIAL SITES

15. Prior to the submission of a grading permit application, Defendant KDL was required to submit to the DPP an archaeological inventory survey that had been approved by SHPD.

16. Archaeological field work was conducted in late 2018.

17. On November 24, 2021, SHPD approved an archaeological inventory survey

(“AIS”) for the project site.

18. The AIS determined that the Park “will potentially affect five significant historic properties . . . identified within the project area.”

19. The AIS acknowledges that there is “a high probability there will be subsurface finds such as . . . pre-Contact burials.”

20. The AIS notes that “the central and southern portions of the project area . . . are more likely to contain cultural material associated with former wetlands and/or post-Contact activity spanning the nineteenth century through the early twentieth century including human burials.”

21. The AIS recognizes that over 64 sets of pre-Contact and historic human burials were discovered at the Makaloa-Sheridan Sam’s Club/Walmart project 150 meters southwest of the project area across from Ke’eumoku Street and that previously disturbed remains were also documented at other nearby locations.

22. The AIS further recognized that, because the project area was part of a historic compound containing a hospital possibly established during a historic smallpox epidemic, there is a “possible elevated potential for human skeletal remains in the vicinity.”

23. During field test trenching, one *in situ* (intact) human burial site designated as site SIHP # -8804 and four other sites, including a former ‘auwai (ditch) and a buried road, were discovered.

24. The AIS implemented a testing methodology whereby only a limited subsurface test sampling of the project site was performed. Subsurface testing involved 19 test excavations using linear trenches measuring approximately 20 ft long and 2 ft wide and was limited by then-existing structures.

25. No further archaeological inventory survey testing occurred after the existing structures were demolished.

26. Because of the likelihood of encountering additional subsurface historic properties during construction, the AIS recommended archaeological monitoring of all ground-disturbing activities for the entire project area as well as a burial treatment plan for SIHP # -8804 that would incorporate input from SHPD, recognized lineal/cultural descendants, and the O‘ahu Island Burial Council (“OIBC”).

27. The AIS admits that its proposed archaeological monitoring is a form of “data

recovery.”

28. SIHP # -8804 was disinterred on May 11, 2022, in accordance with the burial treatment plan, which was accepted by SHPD on April 14, 2022.

APPROXIMATELY 14 BURIALS, POSSIBLE BURIAL SITES AND BURIAL FEATURES ARE ENCOUNTERED AT THE PROJECT SITE AFTER THE AIS

29. Defendant KDL has engaged in intermittent grading of the subject project site, proceeding under an archaeological monitoring plan approved by SHPD.

30. From September 13, 2022, until present, Defendant KDL encountered 14 more burials, possible burial sites, and burial features during ground disturbance and construction activities at the project site.

31. Specifically, Defendant KDL encountered burials, burial sites, and features on: September 13 and 15, 2022; October 28, 2022; November 22 and 23, 2022; December 6 and 28, 2022; January 19 and 23, 2023; and February 1 and 3, 2023.

32. Many of these additional burials are located in clusters and constitute a concentration of skeletal remains and are located in close proximity to the burial identified in the AIS, SIHP # -8804.

33. SHPD determined that these burials were more than 50-years old, and presumed to be Native Hawaiian burials based on their “find locations (in an area that has other native Hawaiian burials) and method of placement (flex).”

34. Of the 14 burials encountered, at least five remain *in situ*.

35. Based on the AIS’s disclosure that encountering burials during construction was likely, these additional burials are not “unanticipated” burials.

36. Defendant KDL has not prepared a new or supplemental archaeological inventory survey covering the human remains encountered during construction.

37. The State has not required a new or supplemental archaeological inventory survey covering the human remains encountered during construction.

38. Defendants did not reopen the historic preservation review process pursuant to Hawai‘i Administrative Rules (“HAR”) § 13-284-12 when Defendants KDL encountered burial sites after the AIS was accepted and approved.

39. Therefore, Defendants failed to identify and assess the significance of all burial

sites located at the project site prior to continuing with construction.

**DEFENDANTS TREAT BURIALS FOUND AFTER THE AIS WAS ACCEPTED
AS INADVERTENT DISCOVERIES**

40. Defendants have improperly treated the burial sites encountered and located at the project site as “inadvertent discoveries.”

41. Some recognized descendants objected to the relocation of the burials.

42. On February 20, 2023, SHPD notified Defendant KDL of its decision to authorize the immediate relocation all of the 14 discovered burial sites into the onsite curation unit. SHPD’s decisions to relocate all discovered burials was based, in part, on impacts to Defendant KPL’s project plan if the burials were preserved-in-place. The disinterment of four burial sites was already decided and completed before SHPD sent its determination letter. Another burial, previously identified by SHPD for disinterment, remains *in situ* while awaiting findings in the surrounding foundation excavations. Several other discoveries, some linked to prior disturbances, were placed within the onsite curation unit while awaiting SHPD determination. In total, SHPD and Defendant KDL recognize at least five burials remain *in situ* and note the possibility of a sixth *in situ* burial present within an excavation site.

43. Upon information and belief, all discovered burials are located near planned “critical” elements of the Park project, including the intended location of the building foundation, sewer lines, and above ground activities.

44. Defendants did not refer the decision to preserve in place or relocate the burial sites encountered at the project site to the OIBC as required by HAR § 13-300-33.

45. The decision to treat the burial sites at the project site as “inadvertent discoveries” has resulted in a lack of consultation with interested cultural organizations, descendants, the OIBC, and the Native Hawaiian community.

46. In issuing its February 20, 2023 determination to relocate the burials, including the first five burials found in September, SHPD failed to follow the criteria for determining whether to relocate burials, as required by HAR § 13-300, or otherwise make specific findings supporting its determination.

47. The February 20, 2023 determination letter did not indicate whether SHPD favored preservation-in-place given that the burials together constitute a concentration of remains; important individuals and events are associated with the area; and the burials are

located within a context of known historic properties.

48. On information and belief, SHPD has not followed HAR § 13-300 in regards to the iwi kūpuna encountered at the project site.

49. On information and belief, given the level of ground disturbing activities occurring at the project site and the ongoing construction of the project foundation, the disinterment of iwi kūpuna is imminent.

PLAINTIFF AYAU

50. Ayau is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawai'i.

51. Ayau is a recognized descendant of Native Hawaiian ancestors who are buried in the same ahupua'a or district as those encountered at the project site.

52. Ayau has religious and spiritual beliefs and engages in traditional and cultural practices that originate in, and are interpreted from, the traditional Native Hawaiian culture and community.

53. One of the critical tenets of Native Hawaiian traditional and customary practices is the obligation to ensure that iwi kūpuna (Native Hawaiian burial sites and human remains) receive proper care and respect.

54. Protection of iwi kūpuna is a traditional and customary practice of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

55. As a result of his deeply held spiritual and cultural beliefs, Ayau feels an obligation to ensure that iwi kūpuna are not unnecessarily disturbed or moved.

56. Ayau is deeply offended emotionally, morally, and spiritually by the disturbance of iwi kūpuna and believes it disrespects other Native Hawaiians in the community who share his values.

57. Ayau personally experiences great physical and emotional pain and suffers irreparable injury from the removal, disturbance, destruction, or possible removal, disturbance, or destruction of iwi kūpuna.

58. Ayau has been irreparably injured by the removal, disturbance, destruction, and possible removal, disturbance, or destruction of the burial sites located in the project site.

59. Ayau is also irreparably injured by the failure of Defendants to engage in consultation as required by HAR §§ 13-284 and 13-300.

COUNT 1

FAILURE TO PREPARE/REQUIRE THE PREPARATION OF AN ADEQUATE AIS

60. Ayau hereby realleges and incorporates by reference the above allegations.

61. The legislature recognized that the public interest supports the protection of burials:

All human skeletal remains and burial sites within the State are entitled to equal protection under the law regardless of race, religion, or cultural origin. **The public has a vital interest in the proper disposition of the bodies of its deceased persons, which in the nature of a sacred trust for the benefit of all,** and therefore the legislature reaffirms the common law rule that a land owner knowingly in possession of human skeletal remains cannot own the remains but merely holds the same in trust for cultural descendants, who have the right to possession for purposes of proper cultural preservation or reinterment.

1990 Session Laws of Hawai‘i Act 22 (emphases added) (commenting on enacting amendments to HRS chapter 6E); *cf.* 1990 Session Laws of Hawai‘i Act 306.

62. In pursuit of the legislature’s intent to preserve and protect cultural and historic resources, Hawai‘i’s historic preservation laws mandate a review and comment process for projects that may affect historic properties including Native Hawaiian burial sites:

[B]efore any agency . . . approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency shall advise the [SHPD] and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties . . . or burial sites consistent with section 6E-43[.]

HRS § 6E-42; *see Hall v. Dep’t of Land and Res.*, 128 Hawai‘i 455, 468, 290 P.3d 525, 538 (App. 2012) (“A State agency responsible for approving a project must identify and inventory historic properties that are present in the project area.”); *see also* HAR §§ 13-284-3(a), 13-284-5(a).

63. To meet this obligation, the agency “shall first consult with the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present.” HAR § 13-284-5(b). The SHPD, in turn, is required to respond in writing. *Id.*

64. HRS § 6E-2 defines “project” as “any activity . . . involving any lease, **permit**, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.” *See* HAR § 13-284-2 (emphasis added).

65. Political subdivisions include the counties of the State. *See* Haw. Const. Art. VIII § 1.

66. The historic preservation review process for non-governmental projects is laid out in HAR chapter 13-284, which implements HRS § 6E-42. *See Hall*, 128 Hawai‘i at 468, 290 P.3d at 538 (citing *Kaleikini v. Yoshioka*, 128 Hawai‘i 53, 73, 283 P.3d 60, 80 (2012)).

67. HAR § 13-284-3 sets forth a sequential process, the goal of which is to “identify significant historic properties in project areas, assess any effects, **and then** to develop and execute plans to avoid, minimize, or mitigate adverse effects to the significant historic properties in the public interest.” *Hall*, 128 Hawai‘i at 469, 290 P.3d at 539 (emphasis in original).

68. The rules identify “six sequential steps”:

- (1) Identification and inventory, to determine if historic properties are present in the project’s area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments which commit to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

Id. (citing HAR § 13-284-3(b)).

69. One of the “central purposes” of this process is that the “effects on historic properties be reviewed **prior** to the approval of a project.” *Kaleikini*, 128 Hawai‘i at 70, 283 P.3d at 77.

70. Iwi kūpuna are considered historic property under the Historic Preservation Review Process. *See* HAR § 13-300-2 (“Burial site means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.”); *see also* HAR § 13-283-1 (“Burial sites with human skeletal remains

have cultural significance and are sensitive historic properties, significant to the descendants and to the relevant cultural group.”).

71. When a “project” is subject to the comment and review requirements of HRS chapter 6E and HAR §13-284, SHPD must initially determine whether the applicant must first prepare an archaeological inventory survey by making one of the only three available determinations:

[SHPD may respond] (1) by determining that no historic properties are present; (2) **by determining that “an adequate survey exists** and that historic properties are present,” which allows the agency to proceed to “the next step in the review process, [i.e.,] evaluation of the significance of the historic properties”; or (3) **by concluding that an inventory survey needs to be done**, which must “**identify all historic properties** and gather enough information to evaluate the properties’ significance.”

Kaleikini, 128 Hawai‘i at 74, 283 P.3d at 81 (emphases added) (citing HAR §§ 13-275-5(b)(1)-(5)).

72. An archaeological inventory survey must identify and inventory all historic properties located at the project site. *See* HAR § 13-284-5(e)(1) (An archaeological inventory survey must be considered to be “inadequate” where “historic properties are incompletely described[.]”); HAR § 13-276-3(1) (An archaeological inventory survey **shall . . . [d]etermine** if archaeological historic properties are present in the project area and, **if so, identify all such historic properties.**) (emphases added); HAR § 13-276-3(1) (“An archaeological inventory survey shall . . . [d]etermine if archaeological historic properties are present in the project area and, if so, **identify all such historic properties.**”) (emphasis added); *see also Kaleikini*, 128 Hawai‘i at 74, 283 P.3d at 81 (“[A]n inventory survey . . . must identify **all** historic properties and gather enough information to evaluate the properties’ significance.”) (emphasis added) (internal quotations omitted).

73. “If a previously unknown historic property is found after the acceptance of an inventory report or during the implementation of a project, then the historic preservation review process shall be reopened.” HAR § 13-284-12.

74. Ultimately, the AIS is inadequate for purposes of comment and review regarding the Permits because it cannot accomplish one of the “central purposes” of the Historic Preservation Review Process, which is “to require that the effects on historic properties be reviewed **prior** to the approval of a project[.]” *Kaleikini*, 128 Hawai‘i at 70, 283 P.3d at 77

(emphasis added).

75. The AIS for the project is inadequate as it fails to identify all historic properties, including burials, located at the project site.

76. Defendants therefore violated HAR § 13-284-5 for failing to prepare or require the preparation of an adequate archaeological inventory survey.

77. Defendants did not reopen the historic preservation review process and supplement the AIS when it found additional burial sites after the acceptance of the AIS.

78. Defendants therefore violated HAR § 13-284-12.

79. Because the AIS was inadequate, the Defendants could not accomplish the “central purpose” of chapter 6E and its implementing rules and determine the project’s effects on historic properties prior to the approval of a project.

80. Because the AIS was inadequate, additional burial sites have been disturbed and/or are threatened with disturbance.

81. Defendants have otherwise violated HRS chapter 6E and HAR chapter 13-284.

82. Defendants have improperly altered, will improperly alter, or authorized the improper alteration, of Native Hawaiian burial sites in violation of HRS chapter 6E.

83. Defendant KDL has failed to obtain all required permits and/or approvals *prior to* engaging in ground disturbance in violation of HRS § 6E-43.6(g).

84. Defendant KDL has failed to obtain required permits and/or approvals prior to engaging in ground disturbance in violation of HRS § 607-25.

85. Ayau is entitled to injunctive relief pursuant to HRS § 6E-13(b) to protect burials and historic burial sites from any alteration based on a flawed historic preservation review process that concluded without preparation of an adequate archaeological inventory survey.

COUNT II

FAILURE TO TREAT BURIAL SITES AS “PREVIOUSLY IDENTIFIED”

86. Ayau hereby realleges and incorporates by reference the above allegations.

87. If burials are considered “previously identified,” the relevant island burial council determines their treatment, preservation, and care. *See* HAR § 13-300-33.

88. Burials are “previously identified” in five separate instances: (1) where they are identified during an archaeological inventory survey; (2) where they are identified during data recovery of possible burial sites; (3) where they are known through oral testimony; (4) where

they are known through written testimony; and (5) by operation of law. *See* HAR § 13-300-2; *see also* HRS § 6E-43.6; HAR § 13-284-12.

89. If burials are “inadvertent discoveries,” however, the SHPD has jurisdiction over determining their treatment, preservation, and care. *See* HAR § 13-300-40; *see also* HRS § 6E-43.6.

90. HAR § 13-300-2 defines an “inadvertent discovery” as “**the unanticipated finding** of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity” (emphasis added).

91. The burial sites encountered and located at the project site were previously identified, known, and/or anticipated during the AIS and subsequent data recovery of possible burial sites.

92. The burial sites at the project site are known through oral and/or written testimony.

93. The burial sites at the project site were encountered during the course of land alteration without first obtaining an adequate archaeological inventory survey and therefore they must be treated as previously identified. *See* HRS § 6E-43.6

94. The burial sites at the project site were encountered after the acceptance of an archaeological inventory survey and, therefore, the historic preservation review process, including the identification phase, was required to be reopened pursuant to HAR § 13-284-12.

95. The burial sites at the project site are “previously identified” burial sites as defined by HAR § 13-300-2.

96. Defendants violated HRS chapter 6E, HAR §§ 13-300-2, 13-300-31, and 13-300-33 by treating the burial sites and burial features found at the subject project site as “inadvertent discoveries.”

97. Defendants violated HAR §§ 13-300-2, 13-300-31, and 13-300-33 by failing to refer determinations of whether to preserve in place or relocate native Hawaiian burials found at the subject project site to the OIBC.

98. Defendants have improperly altered, will improperly alter, and/or have authorized the improper alteration of Native Hawaiian burial sites in violation of HRS chapter 6E.

99. Defendant KDL has failed to obtain all required permits and/or approvals *prior to* engaging in ground disturbance in violation of HRS § 6E-43.6(g).

100. Ayau is entitled to injunctive relief pursuant to HRS § 6E-13(b) to protect burials and historic burial sites from any alteration based on a flawed historic preservation review process that concluded without preparation of an adequate archaeological inventory survey.

COUNT III

FAILURE TO FOLLOW ADMINISTRATIVE RULES AND PROCEDURES RELATED TO INADVERTENT DISCOVERIES

101. Ayau hereby realleges and incorporates by reference the above allegations.

102. In the event there is an “inadvertent discovery” of Native Hawaiian human remains over 50-years old, the treatment of such remains must occur pursuant to HAR § 13-300-40.

103. Where human skeletal remains are reasonably believed to be Native Hawaiian, SHPD shall determine whether to preserve in place or relocate the burials, following consideration and application of the criteria stated in HAR § 13-300-36 and in consultation with appropriate council members, the landowner, and any known lineal or cultural descendants.

104. To comply with its public trust obligations, “[a]t minimum, [a state agency] must make findings ‘sufficient to enable an appellate court to track the steps that the agency took in reaching its decision.’” *Carmichael v. Bd. of Land & Nat. Res.*, 150 Hawai‘i 547, 567, 506 P.3d 211, 231 (2022) (citing *Kauai Springs v. Planning Comm’n of Kaua‘i*, 133 Hawai‘i 141, 173, 324 P.3d 951, 983 (2014)).

105. In the alternative, the State violated HAR § 13-300-36 by failing to follow the established criteria in determining to relocate inadvertent discoveries of burial sites, including in its February 20, 2023 determination letter, and has otherwise failed to make sufficient findings supporting its decision.

106. In the alternative, Defendants have otherwise violated HAR § 13-300-40 in relation to the burials encountered at the project site.

107. There are no adequate remedies at law that would give Plaintiff relief.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief as follows:

- A. Assume jurisdiction over this case;
- B. Enjoin Defendant KDL from engaging in construction, earthmoving, grubbing and/or grading, excavation, earth or soil compacting, concrete pouring, waterline and/or other

- utility installation, and all other construction activities currently authorized;
- C. Enjoin Defendant KDL from engaging in future construction, earthmoving, grubbing and/or grading, excavation, earth or soil compacting, concrete pouring, waterline and/or other utility installation, and all other construction activities until the historic preservation review process as outlined by HRS chapter 6E and its implementing rules is complied with;
 - D. Enjoin the State from approving, concurring, or accepting any application for a permit or approval for any construction activity for the project site unless and until the historic preservation review process as outlined by HRS chapter 6E and its implementing rules is complied with;
 - E. Enjoin the State from treating the burials at the project site as inadvertent discoveries;
 - F. Enjoin Defendants from disinterring or relocating burials, or authorizing the disinterment or relocation of burials, until the historic preservation review process as outlined by HRS 6E and its implementing rules is complied with;
 - G. Enjoin Defendants from disinterring or relocating burials, or authorizing the disinterment or relocation of burials, until the O‘ahu Island Burial Council makes such a determination;
 - H. Require that the City invalidate all permits authorizing Defendant KDL to engage in any ground moving or construction at the project site;
 - I. Provide declaratory relief;
 - J. Award Plaintiff his attorney’s fees and costs;
 - K. Grant Plaintiff his attorney’s fees and costs, pursuant to the private attorney general and/or HRS § 607-25; and
 - L. Provide for such other and further relief as the Court shall deem just and proper.

DATED: Honolulu, Hawaii, February 27, 2023.

/s/ David Kauila Kopper
DAVID KAUILA KOPPER
ASHLEY OBREY
DAYLIN ROSE HEATHER
Attorneys for Plaintiff
EDWARD HALEALOHA AYAU

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

EDWARD HALEALOHA AYAU,

Plaintiff,

vs.

STATE OF HAWAII; KE'EAUMOKU
DEVELOPMENT LLC; CITY AND
COUNTY OF HONOLULU; JOHN
DOES 1-10, JANE DOES 1-10, and DOE
PARTNERSHIPS, CORPORATIONS,
TRUSTS, GOVERNMENTAL UNITS
OR OTHER ENTITIES 1-20 ("DOE
DEFENDANTS"),

Defendants.

) CIVIL NO.

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) (ENVIRONMENTAL COURT)

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) SUMMONS

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SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to file with the court and serve upon the Native Hawaiian Legal Corporation, Plaintiff's attorney, whose address is 1164 Bishop Street, Suite 1205, Honolulu, Hawaii 96813, an answer to the COMPLAINT, which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer to the COMPLAINT within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the COMPLAINT.

There shall be no personal delivery of the COMPLAINT between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai'i, _____.

CLERK OF THE ABOVE-ENTITLED COURT

In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, OR TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.