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a Hawai'i non-profit corporation

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEEP THE NORTH SHORE COUNTRY, a)
Hawai'i non-profit corporation,)

Plaintiff,)

vs.)

CITY AND COUNTY OF HONOLULU, a)
Hawai'i municipal corporation; GEORGE I.)
ATTA, FAICP in his official capacity as the)
Director of the City and County of)
Honolulu's Department of Planning and)
Permitting; TURTLE BAY RESORT, LLC,)
a Delaware limited liability company; JOHN)
DOES 1-10; JANE DOES 1-10; DOE)
CORPORATIONS 1-10; DOE ENTITIES)
1-10; and DOE GOVERNMENTAL UNITS)
1-10,)

Defendants.)

CIVIL NO. 13-1-3143-12 RAN
(Declaratory Judgment)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF;
SUMMONS**

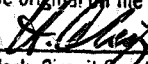
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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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H. CHING
CLERK

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Pursuant to Rule 7 (a) of the Hawai‘i Rules of Civil Procedure, Plaintiff KEEP THE NORTH SHORE COUNTRY alleges as follows:

I. INTRODUCTION.

1. The Court should set aside the acceptance of defendant TURTLE BAY RESORT, LLC’s (“Turtle Bay Resort, LLC”)’s Final Supplemental Environmental Impact Statement (“Final SEIS”) by defendant CITY AND COUNTY OF HONOLULU (“City”)’s Department of Planning and Permitting (“DPP”) because the Final SEIS fails to comply with the Hawai‘i Environmental Policy Act, HRS Chapter 343, §§ 343-1, *et seq.* (“HEPA”), and the Hawai‘i Administrative Rules, HAR Chapter 200, §§ 11-200-1, *et seq.* (“EIS Rules”).

2. In 1985, the Kuilima Development Company, a currently dissolved corporation, proposed to expand what was then known as the Kuilima Resort, increasing the resort from 487 hotel rooms to 4,000 hotel rooms and condominium units (the “Full Build Out” alternative). The Kuilima Development Company completed, and the City’s Department of Land Utilization accepted, a Revised Final Environmental Impact Statement dated October 7, 1985 (“1985 EIS”) that evaluated environmental impacts likely to be caused by the “Full Build Out” alternative.

3. Over the next 20 years, the Kuilima Development Company and its successors added only 9 new condominium units. None of the 3504 other units have been constructed.

4. Over that same 20 years, the environmental setting surrounding what became known as the Turtle Bay Resort drastically changed. Unexpected increases in traffic on the North Shore and the windward coastline’s sole access road to the Turtle Bay Resort, Kamehameha Road, resulted in gridlock traffic conditions, especially on Saturday afternoons, holidays, periods of high surf and special events. Threatened and endangered species, green sea

turtles and Hawaiian monk seals, began to reside and give birth on beaches within the Turtle Bay Resort.

5. During 2005, a new owner of the resort, the Kuilima Resort Company, reactivated the “Full Build Out” alternative of 4,000 hotel rooms and condos.

6. Plaintiff KEEP THE NORTH SHORE COUNTRY (“Keep The North Shore Country”) and Sierra Club, Hawai‘i Chapter filed a Declaratory Relief action entitled *Unite Here! Local 5 v. City and County of Honolulu* against the City, Henry Eng, then Director of DPP, and the Kuilima Resort Company, to declare the 1985 EIS no longer valid and require preparation of a Supplemental EIS (“SEIS”).

7. Thereafter, Turtle Bay Resort, LLC acquired ownership of the Turtle Bay Resort.

8. On April 8, 2010, the Supreme Court issued its opinion in *Unite Here! Local 5 v. City and County of Honolulu*, State of Hawai‘i, Supreme Court No. 28602, 123 Hawai‘i 150, 231 P.3d 423 (2010), holding the 1985 EIS “no longer . . . valid” and requiring Turtle Bay Resort, LLC to prepare a SEIS.

9. Turtle Bay Resort, LLC commissioned an economic study which concluded the “Full Build Out” alternative of 4,000 hotel rooms and condos was no longer financially viable “due to changes in market conditions.” Turtle Bay Resort, LLC then revised the resort expansion project to include what the Final SEIS appears to describe as including the following components: *First*, the development of two new hotel buildings comprising 625 hotel units; however, 375 of the 625 hotel units may have a “lock-off” feature, meaning a separate hotel room which could be “locked off” from the other part of the hotel unit, which may result in up to 1,000 new hotel units; these units will be operated as either traditional full-service hotel units, condominiums or timeshare units. *Second*, the development of 590 “resort residential units”

which may be developed as single-family residences, duplexes or low density multi-family structures. *Third*, the addition of a 40,000 square foot commercial shopping and entertainment area. *Fourth*, the development of 160 “community housing” units. *Fifth*, other private and public improvements. This resort expansion project is hereinafter referred to as the “Proposed Action” alternative.

10. On November 23, 2012, notice of Turtle Bay Resort, LLC’s Draft SEIS was published in the State of Hawai‘i, Office of Environmental Quality Control (“OEQC”)’s publication, “The Environmental Notice.” On January 7, 2013, Keep The North Shore Country provided timely written objections and comments on the Draft SEIS, and identified and discussed all contestable issues raised in this Complaint, pursuant to HEPA, HRS § 343-7(c). On October 23, 2013, OEQC’s “The Environmental Notice” published that DPP accepted the Final SEIS.

11. DPP’s acceptance of Turtle Bay Resort, LLC’s Final SEIS should now be set aside because the Final SEIS is not adequate under the “rule of reason” standard of review. It was not compiled in good faith. It fails to set forth sufficient information to enable DPP to fully consider the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed project, as well as to make a reasoned choice between alternatives. DPP has therefore been unable to take a “hard look” at the environmental factors of the proposed expansion project; and the action of DPP in accepting the Final SEIS was arbitrary and capricious given the known environmental consequences.

12. The Final SEIS also does not provide the public with the information necessary to evaluate the potential environmental effects of the proposed expansion project and therefore

precludes informed public participation in the HEPA process. The Final SEIS should be set aside for five specific reasons:

13. *One*, Turtle Bay Resort, LLC's failure to accurately and consistently describe the project violates HEPA and the EIS Rules. Turtle Bay Resort, LLC does not disclose in the Final SEIS whether the "Proposed Action" alternative will include 625 or 1,000 new hotel units; whether 51 percent of resort units will be full-service hotel units as required by the Unilateral Agreement, particularly if these units are operated as timeshare or condominium hotel units; whether the proposed hotel units will be traditional full-service hotel rooms, condominiums, or timeshare units; and whether the 590 new resort residential units will be single family, duplex, or low-density multi-family units.

14. *Two*, the Final SEIS uses the "Full Build Out" alternative of 4,000 hotel rooms and condominium units as the benchmark or baseline to evaluate environmental impacts. However, the "Full Build Out" alternative is a project that has never been and never will be built. Turtle Bay Resort, LLC wrongfully used this as the baseline or benchmark in order to argue that in adopting the "Proposed Action" alternative – a project that is at least three times larger than the existing Turtle Bay Resort – Turtle Bay Resort, LLC reduced the size of the project by 60% and is thereby causing "less" environmental impacts. This turns HEPA's fundamental purpose of full environmental disclosure on its head. Turtle Bay Resort, LLC's failure to use the "No Action" alternative as the baseline to evaluate environmental impacts violates HEPA and the EIS Rules.

15. *Three*, the Final SEIS violates HEPA and the EIS Rules by not adequately and rigorously evaluating the "No Action" alternative. Turtle Bay Resort, LLC's Draft SEIS rejected the "No Action" alternative. After Keep The North Shore Country and others objected that

HEPA and the EIS rules require evaluation of the “No Action” alternative, Turtle Bay Resort, LLC put a short section in the Final SEIS which in essence concludes the “No Action” alternative causes “less” impacts than the other alternatives to traffic, threatened green sea turtles, endangered Hawaiian Monk Seals, avifauna, archaeological sites and cultural resource. This is not the “rigorous exploration and objective evaluation” of the “No Action” alternative that is “sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative” required by HEPA.

16. *Four*, the Final SEIS violates HEPA and the EIS Rules by not adequately evaluating cumulative traffic impacts. The Final SEIS and its supporting Traffic Impact Analysis Report (“Traffic Study”) relied on Oah‘u Metropolitan Planning Organization’s “Oah‘u Regional Transportation Plan (2035)” (“ORTP”) as taking into account all future regional developments. However, ORTP examined only weekday A.M. peak traffic conditions, and did not examine weekday P.M. peak traffic conditions, weekend peak traffic conditions, and special or single event congestion conditions. ORTP further relied on a forecast report which forecast a 20% reduction in visitor units on the Oah‘u North Shore from 2007 through 2035 – that is highly implausible due to continuing proliferation of illegal transient vacation units. And the Final SEIS does not list numerous planned projects on the North Shore and the windward coastline as being considered in the cumulative traffic impacts analysis. This violates HEPA and the EIS Rules.

17. *Five*, the Final SEIS violates HEPA and the EIS Rules by not properly evaluating the “No Action” alternative impacts for wetlands, marine water quality, and threatened and endangered species. The clearest example is that Turtle Bay Resort failed to survey the wetlands, Punaho‘olapa Marsh. Unless the current conditions are known, by properly evaluating

the “No Action” alternative, the Final SEIS cannot adequately evaluate impacts on wetlands such as Punaho‘olapa Marsh, water quality and marine life.

18. Given these facts, Keep The North Shore Country seeks a judicial declaration that the Final SEIS is not valid and that sets aside DPP’s acceptance of the Final SEIS. Keep The North Shore Country respectfully requests that the Court order the City and the DPP Director to set aside DPP’s acceptance of the Final SEIS and order Turtle Bay Resort, LLC to prepare a revised SEIS.

II. PARTIES.

19. Keep The North Shore Country is and was, at all relevant times herein, a Hawai‘i non-profit corporation organized under the laws of the State of Hawai‘i, with its principal place of business in Hale‘iwa, Hawai‘i.

20. City is and was, at all relevant times herein, a municipality incorporated under the laws of the State of Hawai‘i, with its principal place of business in Honolulu, Hawai‘i.

21. The DPP Director is and was, at all relevant times herein, the Director of the City’s Department of Planning and Permitting (“DPP”). As Director of the DPP, the DPP Director has the authority and is responsible for, directing and managing DPP’s processing of permits, evaluating EISs and Supplemental EISs, and deciding whether DPP will accept EISs and Supplemental EISs. The DPP Director is being sued herein in his official capacity as the Director of DPP. The City and the DPP Director are hereinafter collectively referred to as the “County.”

22. Turtle Bay Resort, LLC, is and was, at all relevant times herein, a Delaware limited liability company, formed under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware.

23. Defendants JOHN DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10 (collectively the “Doe Defendants”) 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 Keep The North Shore Country, except that they are or were connected in some manner with the above-named Defendants and/or agents, principal partners, officers, directors, servants, employees, employers, representatives, co-venturers, associates, consultants, vendors, suppliers, manufacturers, contractors, subcontractors, sureties, insurers, owners, lessees, sublessees, lessors, sublessors, guarantors, assignees, assignors, licensees, and/or licensors of the above-named Defendants, or in some manner presently unknown to Keep The North Shore Country are or were engaged in the activities alleged and/or were in some manner responsible for the injuries and/or damage to Keep The North Shore Country and/or in some manner are or may be related to and jointly liable with one or more of the above-named Defendants.

III. JURISDICTION AND VENUE

24. This Court has jurisdiction pursuant to HRS §§ 343-7(c) (HEPA), 603-21.5 (general jurisdiction), 632-1 (declaratory judgment) and HRS Chapter 91 (administrative procedure).

25. Venue is appropriate pursuant to HRS § 603-36(5) because two of the Defendants are domiciled in the City and County of Honolulu, State of Hawai‘i, and the claim for relief arose in the City and County of Honolulu, State of Hawai‘i.

IV. FACTS.

A. Introduction.

26. In 1985, the Kuilima Development Company, a currently dissolved corporation, proposed the “Full Build Out” alternative, to expand what was then known as the Kuilima Resort from 487 hotel rooms to 4,000 hotel rooms and condominium units. The Kuilima Development Company completed, and the City through its Department of Land Utilization accepted, a Revised Final Environmental Impact Statement dated October 7, 1985 (“1985 EIS”) that evaluated potential environmental impacts likely to be caused by the “Full Build Out” alternative.

27. Thereafter, over the next 20 years, the Kuilima Development Company and its successors added only 9 new units out of the 3,513 proposed units. None of the other 3504 units have been constructed.

28. Over that same 20 years, the environmental setting surrounding what became known as the Turtle Bay Resort drastically changed. Unexpected increases in traffic on the North Shore and the windward coastline's sole access road to the Turtle Bay Resort, Kamehameha Road, resulted in gridlock traffic conditions, especially on Saturday afternoons, holidays, periods of high surf and special events. Threatened and endangered species, green sea turtles and Hawaiian monk seals, began to reside and give birth on beaches within the resort.

29. During 2005, a new owner of the resort, the Kuilima Resort Company, a Hawai‘i general partnership, and a subsidiary of Oaktree Capital Management, LLC, a California limited liability company, reactivated the “Full Build Out” alternative.

30. Keep The North Shore Country, its directors, its members and most of its supporters, and their families, are homeowners and residents that live and work on the O‘ahu

North Shore area, in and around Mokule‘ia, Waialua, Hale‘iwa, Waimea Bay and Sunset Beach, and along the windward coastline, in and around Kawela Bay, the Turtle Bay Resort, Kahuku Point, Kahuku, Lai‘e, Hau‘ula, Punalu‘u, Ka‘a‘awa, Punalu‘u, Kahalu‘u and Kaneohe. Keep The North Shore Country’s directors and many of its members, supporters and their families have in the past, and continue today, to enjoy, use and appreciate the areas along the North Shore and windward coastlines adjacent to the Turtle Bay Resort, from Kawela Bay through Kahuku Point, and the areas proposed for development by defendant Turtle Bay Resort, LLC, for aesthetic, environmental and recreational purposes, including but not limited to walking, hiking, surfing, swimming, kayaking, fishing, picnicking, sun-bathing, family beach excursions, and appreciating the natural beauty of threatened and endangered species and the environment. Further, the only access through the North Shore and the windward coastline to and from the Turtle Bay Resort is Kamehameha Highway, a two lane, undivided state highway that varies between 20 and 24 feet in width. There exist numerous bottlenecks along Kamehameha Highway from Hale‘iwa to Kahalu‘u that frequently cause significant traffic delays, and traffic gridlock, severely impacting the quality of life of Keep The North Shore Country’s directors, members, supporters and their families.

31. Keep The North Shore Country’s directors and supporters participated in and commented on proceedings relating to the Kuilima Development Company’s 1985 EIS, including the Land Use Commission proceedings and the Honolulu City Council proceedings regarding certain permits that relied upon the 1985 EIS. Keep The North Shore Country successfully prosecuted the Supreme Court Action wherein the Supreme Court held the 1985 EIS “no longer . . . valid” and required Turtle Bay Resort, LLC to prepare the SEIS that is at issue in this action. Keep The North Shore Country participated in the scoping proceedings for the Turtle

Bay Resort, LLC's SEIS. And Keep The North Shore Country provided timely written comments on the Draft SEIS, objected to the Draft SEIS, and identified and discussed all contestable issues raised in this Complaint pursuant to HEPA, HRS § 343-7(c). Keep The North Shore Country has standing and is an aggrieved party under HEPA, HRS § 343-7(c).

32. Keep The North Shore Country and Sierra Club, Hawai'i Chapter filed a Declaratory Relief action entitled *Unite Here! Local 5 v. City and County of Honolulu* against the City, Henry Eng (the predecessor of the DPP Director), in his official capacity as Director of the DPP, and the Kuilima Resort Company, to declare the 1985 EIS no longer valid and require preparation of a SEIS.

33. The Kuilima Resort Company and/or Oaktree Capital Management, LLC defaulted on the loans obtained to purchase the Turtle Bay Resort; the consortium of lenders including Credit Suisse and Wells Fargo Bank filed a foreclosure action against the Kuilima Resort Company and/or Oaktree Capital Management, LLC; the consortium of lenders accepted a deed in lieu of foreclosure and took over ownership of the Turtle Bay Resort in December 2010; the consortium of lenders then formed Turtle Bay Resort, LLC for the short-term purpose of owning, operating and selling the Turtle Bay Resort; and Turtle Bay Resort, LLC acquired all interests of the Kuilima Resort Company in the Turtle Bay Resort.

34. On April 18, 2010, the Supreme Court issued its opinion in *Unite Here! Local 5 v. City and County of Honolulu*, State of Hawai'i, Supreme Court No. 28602, 123 Haw. 150, 231 P.3d 423 (2010), holding the 1985 EIS "no longer . . . valid" and requiring Turtle Bay Resort, LLC to prepare a SEIS.

35. Turtle Bay Resort, LLC commissioned an economic study which concluded the “Full Build-Out Alternative of the Resort envisioned in 1985 is currently NOT a financially viable scenario due to changes in market conditions.”

B. The “Proposed Action” Alternative.

36. Turtle Bay Resort, LLC revised the project to expand the Turtle Bay Resort to what appears from the Final SEIS to include the following nine components:

37. *First*, two new hotel sites are planned for 625 new units . . .” One site is planned to contemplated to have 250 Condo Hotel units. The second site is contemplated as a Timeshare project with a maximum of 375 units. However, as many as 375 of these units may have “lock-off” suites, which would allow each Timeshare unit to be occupied as one unit, or rented as two units with a separate keyed entries. In no case will the number of keyed hotel rooms exceed 1,000.

38. *Second*, 590 new resort residential units. The resort residential units “will likely consist of some combination of structures with single family, duplex, or low-density multi-family units.”

39. *Third*, a 40,000 square foot commercial shopping center and entertainment venue;

40. *Fourth*, the reconfiguration of the existing 18-hole Fazio Golf Course to a nine-hole arrangement;

41. *Fifth*, a new golf clubhouse;

42. *Sixth*, relocation of and a new equestrian center;

43. *Seventh*, the construction of a new internal roadway tentatively called Kaihalulu Drive;

44. *Eighth*, the construction of 160 “community housing units” consisting of apartment style multi-family units or stacked town houses, most of which “will likely be rentals;” and

45. *Ninth*, the construction of public improvements including 5 public parks, 12 public shoreline access ways, shoreline paths, public parking and the preservation of the 100-acre Punaho‘olapa Marsh.

C. The Draft SEIS.

46. On November 23, 2012, notice of Turtle Bay Resort, LLC’s Draft SEIS was published in OEQC’s publication, “The Environmental Notice.”

47. Turtle Bay Resort, LLC’s description of the “Proposed Action” alternative in the Draft SEIS is neither accurate nor consistent. Turtle Bay Resort, LLC indicates that the total number of hotel units will be 625, but proposes to allow up to 1000 separately rented rooms. The “Proposed Action” contemplates condo hotels and timeshare units, but adds that the properties may be developed as traditional full-service hotel units. Each of these three types of property has different labor requirements and environmental impacts. Condo hotels and timeshares are not full-service hotels and they would not satisfy Turtle Bay Resort, LLC’s obligations under the terms of the Unilateral Agreement. Turtle Bay Resort, LLC does not disclose in the Draft SEIS whether the 590 new resort residential units will be single family, duplex, or low-density multi-family units. Finally, Turtle Bay Resort, LLC does not clearly disclose the maximum resort population in Table 4-10 of the Draft SEIS because there is no explanation whether the projection is based on 625 or 1,000 new hotel units; whether the project is based on the amount of new hotel rooms or whether the project is based on the 590 new resort residential units that will be single family, duplex or low density multi-family units.

48. Turtle Bay Resort, LLC's Draft SEIS uses the "Full Build Out" alternative to claim that many impacts are mitigated, simply because the Proposed Action involves less development than the Full Build Out. This turns logic on its head; HEPA and EIS Rules require the potential impacts to be measured up against the benchmark of the No Action Alternative, not down from a development option that will never be built. Turtle Bay Resort, LLC acknowledges the "Full Build Out" alternative is not financially viable, yet it argues the "Proposed Action" alternative – a project that is three times larger than the existing Turtle Bay Resort – actually reduces the size of the project by 60 percent, which causes "less" environmental impacts.

49. Despite the legal requirement of an "inclusion of a no action alternative . . . to assist decision makers in evaluating to extent of a . . . Proposed Action," Turtle Bay Resort, LLC's Draft EIS "rejected" the "No Action" alternative as unreasonable and excluded it from

"A.3.c. No Action Alternative

Under Hawai'i's environmental assessment law, an environmental assessment for a Proposed Action must be prepared at the "earliest practicable time", pursuant to Chapter 343-5b, Hawai'i Revised Statutes. In most cases, compliance with Chapter 343 is triggered by a proposed activity that requires some form of development approval. In these instances, the evaluation of alternatives to the Proposed Action typically includes assessing the impacts of no action (a No Action alternative); meaning what would the impacts upon the environment be if no action were taken. **Inclusion of a No Action alternative in an alternatives analysis assists decision-makers in evaluating the extent of a Proposed Action's impacts by providing a baseline against which impacts can be measured."**

Draft SEIS pp. 4-4 (emphasis added).

50. Turtle Bay Resort, LLC admits that the No Action alternative provides "a baseline against which impacts can be measured."

"However, the Resort expansion project is a unique case that may very well be unprecedented. An environmental impact statement was prepared and approved in 1985 for the proposed expansion of the resort to include

3,500 new resort units. The State Land Use Commission, the Honolulu City Council, and the Mayor of Honolulu subsequently granted all land use approvals for the resort expansion and thereby establishing private property values on this basis. These approvals significantly affected the valuation of the property proposed for resort expansion. Land that was previously zoned for agricultural use was subsequently designated for resort development.

As discussed earlier in this document, due mostly to macro-economic conditions involving economic upheaval in domestic and foreign markets, implementation of the approved resort expansion pursuant to the entitlements previously granted was delayed by approximately two decades. But when circumstances eventually changed and the Resort's owners prepared to move forward with the Resort expansion, the Hawai'i Supreme Court determined that **the 1985 EIS was no longer valid and needed to be supplemented** with new information and analyses."

Draft SEIS pp. 4-4 (emphasis added).

51. The 1985 EIS was no longer valid and needed to be supplemented. Claims that this project is unique and unprecedented do not give the developer the right to violate HEPA and EIS rules by changing the basis upon which the SEIS should be structured:

"In view of these existing approvals, doing nothing with the entitled land is determined to be unreasonable and infeasible. Doing nothing with the property fails to achieve not only the resort's objectives, but also fails to fulfill the policies of the State of Hawai'i and the City and County of Honolulu as expressed in the land use permits and approvals already granted for the expansion of the Resort. The long awaited new employment opportunities for the region would not be provided and both the State and the City would be deprived of a source of significant new tax revenue. The community would be deprived of new public parks. New affordable housing opportunities would not be provided in a district where they are needed.

The property owners are focused on responsibly achieving a reasonable return on their investment and are not land speculators. Zoning was in place when they invested. The major land use approvals have already been granted for the proposed resort expansion. It is unreasonable for the property owners to forego the sizeable investment they made when they purchased the resort in 2010. The preparation of the SEIS is evidence of their intention. Once the SEIS process has been completed, TURTLE BAY RESORT intends to move forward with the Resort expansion, albeit

with a modified plan intended to reduce adverse impacts. **For this reason, a No Action alternative is rejected as unreasonable and is excluded from further consideration.**

Draft SEIS pp. 4-4 (emphasis added).

52. The Draft SEIS was fatally flawed from the beginning when Turtle Bay Resort, LLC refused to study the No Action alternative in the Draft SEIS. Comments added to the Final SEIS, such as “The No Action alternative will have less impact,” cannot salvage this structural flaw. Turtle Bay Resort, LLC does not provide a clear and consistent baseline from which to compare environmental impacts because they did not accurately study and report on the No Action alternative.

53. Turtle Bay Resort, LLC’s Draft SEIS does not adequately evaluate cumulative traffic impacts from the “Proposed Action” and other reasonably foreseeable planned development projects. Instead, Turtle Bay Resort, LLC’s Draft SEIS and its supporting “Traffic Impact Analysis Report” (“Traffic Study”) relied on the ORTP and its supporting “Baseline Auto and Transit Travel Demand Forecasts Report, Oahu Regional Transportation Plan 2035 Project” report (“ORTP Forecast Report”) as taking into account all future regional developments. However, the ORTP and the ORTP Forecast Report only examined weekday A.M. peak traffic but did not examine weekday P.M. peak traffic, weekend peak traffic or special or single event congestion conditions. The ORTP Forecast Report further forecast a twenty percent (20%) reduction in visitor units on Oah‘u’s North Shore from 2007 through 2035 – a forecast that is highly implausible due to continuing proliferation of illegal transient vacation units. The Draft SEIS and the supporting Traffic Study did not specifically refer to related projects, public and private, existent or planned in the region, for the purpose of examining the possible overall cumulative traffic impacts, including the 41,000 square foot multi-use facility/dormitory

currently being constructed in Lai'e by BYU – Hawai'i ; the 220 room Courtyard by Marriott Hotel planned to be constructed in Lai'e by Hawai'i Reserves, Inc.; the 95,000 square feet of commercial development, 150 townhomes, 125 apartment units and 75 single family homes to be constructed in Hale'iwa by Kamehameha Schools; and the 110 to 130 homes to be constructed along Kamehameha Highway, at Papailoa Road and Kapaeloa, by Kamehameha Schools.

54. The Draft SEIS did not adequately evaluate the “No Action” alternative baseline for wetlands, marine water quality, and terrestrial and marine species. The clearest example is that Turtle Bay Resort failed to survey the wetlands, Punaho‘olapa Marsh. Unless the current condition are known - the “No Action” alternative - the Draft SEIS cannot adequately evaluate impacts on wetlands such as Punaho‘olapa Marsh, marine water quality and terrestrial and marine species.

55. On January 7, 2013, Keep The North Shore Country provided written objections and comments on the Draft SEIS, and identified and discussed all contestable issues raised in this Complaint pursuant to HEPA, HRS § 343-7(c).

D. The Final SEIS.

56. On September 8, 2013, notice of Turtle Bay Resort, LLC’s Final SEIS was published in OEQC’s publication, “The Environmental Notice.”

57. By letter dated October 3, 2013, DPP accepted the Final SEIS.

58. On October 23, 2013, OEQC’s publication, “The Environmental Notice,” disclosed that DPP accepted the Final SEIS.

59. Turtle Bay Resort, LLC made no substantive changes from the Draft SEIS to the Final SEIS in its inadequate and inconsistent description of the “Proposed Action” alternative. Turtle Bay Resort, LLC does not disclose in the Final SEIS whether the “Proposed Action”

alternative will include 625 or 1,000 new hotel units; whether 51 percent of resort units will be full-service hotel units as required by the Unilateral Agreement, particularly if these units are operated as timeshare or condominium hotel units; or whether the proposed hotel units will be traditional full-service hotel rooms, condominiums, or timeshare units. Turtle Bay Resort, LLC does not disclose in the Draft SEIS whether the 590 new resort residential units will be single family, duplex, or low-density multi-family units. Finally, Turtle Bay Resort, LLC does not clearly disclose the maximum resort population in Table 4-10 because there is no explanation whether the projection is based on 625 or 1,000 new hotel units; whether the project is based on the amount of new hotel rooms or whether the project is based on the 590 new resort residential units that will be single family, duplex or low density multi-family units.

60. Turtle Bay Resort, LLC responded to Keep The North Shore Country's comment letter objecting that the Draft SEIS failed to evaluate the "No Action" alternative with the following initial response: "The draft SEIS did include a discussion of the No Action Alternative in Chapter Four, Section A.3.c. Nonetheless, in response to your comments, the Final SEIS will be expanded to include further discussion of the "No Action Alternative."

61. Turtle Bay Resort, LLC then added a new section, entitled "B.4. No Action Alternative" to the Final SEIS at pp. 4-4 and 4-15 - 4-23. In this new section, Turtle Bay Resort did the following:

62. *First*, Turtle Bay Resort, LLC deleted the language: "For this reason, a No Action alternative is rejected as unreasonable and is excluded from further consideration" (Final SEIS at p 4-4);

63. *Second*, Turtle Bay Resort, LLC added the sentence that: “Nonetheless, for the purposes of this SEIS, a No Action Alternative is evaluated in the following alternatives analysis” (Final SEIS at p. 4-4);

64. *Third*, Turtle Bay Resort, LLC set forth a new Table 4-4 to purportedly comparatively evaluate Turtle Bay Resort’s “key objectives” of a resort expansion project. (Final SEIS at pp. 4-16.) Table 4-4 concluded the “Proposed Action” alternative was given +8 while the “No Action” alternative was given -4 for “actively supports” Turtle Bay Resort, LLC’s key objectives;

65. *Fourth*, Turtle Bay Resort, LLC set forth a new Table 4-5 to purportedly comparatively evaluate environmental effects among alternatives. (Final SEIS at p. 4-18.) Table 4-5 concluded the “Proposed Action” alternative caused significant adverse impacts to avifauna, traffic, archaeological sites and cultural resource. Table 4-5 further concluded the “Proposed Action” alternative caused “identifiable impacts” to soils, vegetation, groundwater, marine biota, green sea turtles, Hawaiian Monk Seals, views, noise, population growth and solid waste.” Finally, Table 4-5 concluded the “No Action” alternative caused “less” impacts to soils, vegetation, groundwater, drainage, marine water quality, marine biota, green sea turtles, Hawaiian Monk Seals, views, traffic, noise, archaeological sites, cultural resources, population growth and solid waste;” and

66. *Fifth*, Turtle Bay Resort, LLC set forth a discussion of the reasoning why the “No Action” alternative would cause “less” environmental impacts than the other alternatives, stating the following: “The No Action Alternative would have the least impact (on topography, soils, vegetation, fauna, avifauna, groundwater, views, traffic, noise, archaeological sites and cultural resources) because no new development would occur;” “The No Action Alternative would have

no impact upon (population growth and solid waste);” “The No Action Alternative would have the least impact upon sea turtles because it would result in no significant increase in coastal recreational uses;” “**Hawaiian Monk Seals:** . . . The No Action Alternative would have the least impact upon *sea turtles* (sic) because it would result in no significant increase in coastal recreational uses” (bold in original); “The No Action Alternative would have less beneficial impacts on marine water quality than the Proposed Action because no further improvements would be made to the existing drainage system;” and “Marine biota impacts of the No Action Alternative would be less than the Proposed Action because no additional shoreline parks or shoreline pedestrian access ways would be provided and human activities along the coastline would be less than those generated by the Proposed Action.” (Bold in original.)

67. Turtle Bay Resort, LLC’s Final SEIS continued to use the “Full Build Out” alternative as the baseline or benchmark to evaluate environmental impacts, rather than not the “No Action” alternative that is required by HEPA and the EIS Rules. Turtle Bay Resort, LLC knows that the “Full Build Out” alternative is “currently NOT a financially viable scenario due to changes in market conditions” and it will never be built; however, it used the “Full Build Out” alternative to wrongfully argue that the “Proposed Action” alternative – a project that is three times larger than the existing Turtle Bay Resort – actually reduces the size of the project by 60 percent and causes less environmental impacts. Finally, Turtle Bay Resort, LLC’s failure to rigorously evaluate the “No Action” alternative in the Final SEIS caused the Final SEIS to not adequately disclose the baseline or benchmark against which environmental impacts from the “Proposed Action” alternative can correctly be evaluated.

68. Turtle Bay Resort, LLC made no substantial changes from the Draft SEIS to the Final SEIS in its evaluation of cumulative traffic impacts from the “Proposed Action” and other

reasonably foreseeable planned development project . Instead, Turtle Bay Resort, LLC's Final SEIS and its supporting Traffic Study continued to rely on the ORTP and the ORTP Forecast Report as taking into account all future regional developments. Once again, the ORTP and the ORTP Forecast Report only examined weekday A.M. peak traffic but did not examine weekday P.M. peak traffic, weekend peak traffic or special or single event congestion conditions. The ORTP Forecast Report further forecast a twenty percent (20%) reduction in visitor units on Oahu's North Shore from 2007 through 2035 – a forecast that is highly implausible due to continuing proliferation of illegal transient vacation units. And the Final SEIS and the supporting Traffic Study did not specifically refer to related projects, public and private, existent or planned in the region, for the purpose of examining the possible overall cumulative traffic impacts, including the 41,000 square foot multi-use facility/dormitory currently being constructed in Lai'e by BYU – Hawaii; the 220 room Courtyard by Marriott Hotel planned to be constructed in Lai'e by Hawaii'i Reserves, Inc.; the 95,000 square feet of commercial development, 150 townhomes, 125 apartment units and 75 single family homes to be constructed in Hale'iwa by Kamehameha Schools; and the 110 to 130 homes to be constructed along Kamehameha Highway, at Papailoa Road and Kapaeloa, by Kamehameha Schools.

69. Turtle Bay Resort, LLC made no substantial changes from the Draft SEIS to the Final SEIS in its evaluation of the impacts on wetlands, marine water quality, and terrestrial and marine species. The Final SEIS did not adequately evaluate the “No Action” alternative baseline for wetlands, marine water quality, and terrestrial and marine species. Once again, the clearest example is that Turtle Bay Resort, LLC failed to survey the wetlands, Punaho'olapa Marsh. Unless the current condition are known - the “No Action” alternative - the Final SEIS cannot

adequately evaluate impacts on wetlands such as Punaho‘olapa Marsh, marine water quality and terrestrial and marine species.

V. CLAIMS FOR RELIEF

COUNT 1

**(Failure To Prepare An Adequate SEIS
In Violation of HEPA and EIS Rules §§ 11-200-17, 11-200-18 and 11-200-28)**

70. Keep The North Shore Country incorporates by reference and realleges as if fully set forth herein the allegations contained in paragraphs 1 through 69 above.

71. Article XI, Section 1 of the Hawai‘i State Constitution requires that the City “conserve and protect Hawai‘i’s natural resources . . . promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of self-sufficiency” and mandates that these resources are held “in trust . . . for the benefit of the people.”

72. To facilitate this constitutional mandate, HEPA was enacted to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. HRS § 343-1.

73. Under HEPA, the Environmental Council is empowered to “[p]rescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an [EIS].” HRS § 343-6(a)(4).

74. The EIS Rules set forth the:

“ . . . (S)ystem of environmental review at the state and county levels which . . . provide agencies and persons with procedures, specifications, of contents and environmental assessments and environmental impact statements, and criteria and definitions of statewide application.

HAR § 11-200-1.

75. Pursuant to this authority, the Environmental Council promulgated regulations on the standards for “acceptance” of an EIS and SEIS. HRS §§ 11-200-17, 11-200-18 and 11-200-28.

76. The Supreme Court’s opinion in *Unite Here! Local 5 v. City and County of Honolulu*, State of Hawai‘i, Supreme Court No. 28602, 123 Hawai‘i 150, 231 P.3d 423 (2010), required Turtle Bay Resort, LLC to prepare a SEIS.

77. Turtle Bay Resort, LLC’s Final SEIS is not adequate under the “rule of reason” standard of review. The Final SEIS was not compiled in good faith. It fails to set forth sufficient information to enable DPP to fully consider the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed expansion project, as well as to make a reasoned choice between alternatives. DPP has therefore been unable to take a “hard look” at the environmental factors of the proposed expansion project. The action of DPP in accepting the Final SEIS was therefore arbitrary and capricious given the known environmental consequences.

78. Moreover, the Final SEIS also does not provide the public with the information necessary to evaluate the potential environmental effects of the proposed expansion project and therefore precludes informed public participation in the HEPA process

79. Moreover, the Final EIS is not adequate under the “rule of reason” standard as more fully alleged herein.

A. Inaccurate and Inconsistent Project Description

80. The EIS Rules provide:

“Draft Environmental Impact Statement

The draft EIS, at a minimum, shall contain the information required in this section.

... The draft EIS shall contain a project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

... General description of the action's technical, economic, social, and environmental characteristics;

... Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public . . .”

HAR § 11-200-17 (emphasis in original).

81. The EIS Rules further provide:

“Content Requirements; Final Environmental Impact Statement

The final EIS shall consist of:

The draft EIS revised to incorporate substantive comments received during the consultation and review processes . . .

HAR § 11-200-18.

82. The EIS Rules further provide:

“Contents

The contents of the supplemental statement shall be the same as required by this chapter for the EIS . . .”

HAR § 11-200-28.

83. Turtle Bay Resort, LLC’s description of the “Proposed Action” alternative in the Final SEIS is neither accurate nor consistent. Turtle Bay Resort does not disclose in the Final SEIS whether the “Proposed Action” alternative will include 625 or 1,000 new hotel units; whether 51 percent of resort units will be full-service hotel units as required by the Unilateral Agreement, particularly if these units are operated as timeshare or condominium hotel units; or whether the proposed hotel units will be traditional full-service hotel rooms, condominiums, or timeshare units. Turtle Bay Resort, LLC does not disclose in the Final SEIS whether the 590 new resort residential units will be single family, duplex, or low-density multi-family units. Finally,

Turtle Bay Resort, LLC does not clearly disclose in the Final SEIS what the “new on-site population” of the resort will be when the “Proposed Action” is completed. Table 4-10 of the Final SEIS purports to set forth the “new on-site population” from the “Proposed Action” but provides no explanation whether the projection is based on 625 or 1,000 new hotel units; whether the project is based on the amount of new hotel units that will be full-service hotel units, condominium units or timeshare units; and whether the project is based on the amount of the 590 new resort residential units will be single family, duplex, or low-density multi-family units. Finally, Turtle Bay Resort, LLC does not clearly disclose the maximum resort population in Table 4-10 because there is no explanation whether the projection is based on 625 or 1,000 new hotel units; whether the project is based on the amount of new hotel rooms or whether the project is based on the 590 new resort residential units that will be single family, duplex or low density multi-family units. The Final SEIS’s failure to accurately and consistently describe the “Proposed Action” alternative project violates HEPA and the EIS Rules which require a project proponent to describe the project in a SEIS in sufficient detail to evaluate and review the environmental impacts. HAR §§ 11-200-17, 11-200-17, 11-200-28.

B. Improper Use of The “Full Build Out” Alternative as The Baseline

84. The EIS Rules provide:

“Content Requirements; Draft Environmental Impact Statement

The draft EIS, at a minimum, shall contain the information required in this section.

. . . The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include *a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions*. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:

The alternative of no action . . .”

. . . In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. . . .”

HAR § 11-200-17 (emphasis added).

85. Turtle Bay Resort, LLC’s Final SEIS continues to use the “Full Build Out” alternative as the benchmark or baseline to evaluate environmental impacts not the “No Action” alternative that is required by HEPA and the EIS Rules. Turtle Bay Resort, LLC knows that the “Full Build Out” alternative is “currently NOT a financially viable scenario due to changes in market conditions” and it will never be built; however, they used the “Full Build Out” alternative to wrongfully argue that the “Proposed Action” alternative, a project that is three times larger than the existing Turtle Bay Resort, actually reduces the size of the project by 60 percent and causes “less” environmental impacts. Finally, Turtle Bay Resort’s failure to use the “No Action” alternative in the Draft SEIS caused the Draft SEIS to not disclose the baseline or benchmark against which environmental impacts from the “Proposed Action” alternative can correctly be evaluated. Turtle Bay Resort, LLC’s use of the “Full Build Out” alternative as the baseline or benchmark violates HEPA and the EIS Rules, HAR §§ 11-200-17, 11-200-18, 11-200-28.

C. Inadequate Evaluation of the “No Action” Alternative

86. Assessing the impacts of “no action” means “what would the impacts upon the environment be if no actions were taken. Inclusion of a No Action alternative in an alternatives analysis assists decision-makers in evaluating the extent of a Proposed Action’s impacts by providing a baseline against which impacts can be measured.” (Final SEIS at Volume 2B, p. 324 of 638.).

87. Turtle Bay Resort, LLC's evaluation of the "No Action" alternative in the Final SEIS as more fully alleged in paragraph 31 does not meet the standards of the EIS Rules that a project proponent must set forth "a rigorous exploration and objective evaluation of the environmental impacts of" the "No Action" alternative and "the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and" the "No Action" alternative in violation of HAR §§ 11-200-17, 11-200-18 and 11-200-28.

D. Inadequate Evaluation of Cumulative Traffic Impacts.

88. The EIS Rules provide:

"Content Requirements; Draft Environmental Impact Statement
The draft EIS, at a minimum, shall contain the information required in this section.

. . . (S)pecific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. . . ."

HAR § 11-200-17 (emphasis added).

89. Turtle Bay Resort's Final SEIS does not adequately evaluate cumulative traffic impacts from the "Proposed Action" and other reasonably foreseeable planned development projects. Instead, Turtle Bay Resort's Final SEIS and its supporting Traffic Study rely on the ORTP and the ORTP Forecast Report as taking into account all future regional developments. However, the ORTP and the ORTP Forecast Report only examined weekday A.M. peak traffic but did not examine weekday P.M. peak traffic, weekend peak traffic or special or single event congestion conditions. The ORTP Forecast Report further forecast a twenty percent (20%) reduction in visitor units on Oahu's North Shore from 2007 through 2035 – a forecast that is highly implausible due to continuing proliferation of illegal transient vacation units. The Final

SEIS and the supporting Traffic Study did not specifically refer to related projects, public and private, existent or planned in the region, for the purpose of examining the possible overall cumulative traffic impacts, including the 41,000 square foot multi-use facility/dormitory currently being constructed in Lai'e by BYU – Hawai'i ; the 220 room Courtyard by Marriott Hotel planned to be constructed in Lai'e by Hawai'i Reserves, Inc.; the 95,000 square feet of commercial development, 150 townhomes, 125 apartment units and 75 single family homes to be constructed in Hale'iwa by Kamehameha Schools; and the 110 to 130 homes to be constructed along Kamehameha Highway, at Papailoa Road and Kapaeloa, by Kamehameha Schools.

E. Inadequate Evaluation of the “No Action” for Wetlands, Marine Water Quality and Terrestrial and Marine Species.

90. The Final SEIS did not adequately evaluate the “No Action” alternative baseline for wetlands, marine water quality, and terrestrial and marine species. Once again, the clearest example is that Turtle Bay Resort failed to survey the wetlands, Punaho‘olapa Marsh. Unless the current condition are known - the “No Action” alternative - the Final SEIS cannot adequately evaluate impacts on wetlands such as Punaho‘olapa Marsh, marine water quality and terrestrial and marine species.

91. Therefore, to comply with HEPA and the EIS Rules, the Court must require Turtle Bay Resort to prepare a Revised SEIS which does the following:

- (A) Accurately and consistently describes the “Proposed Action” alternative;
- (B) Adequately and rigorously evaluates the “No Action” alternative as the benchmark or baseline to measure the environmental impacts caused by the “Proposed Action” alternative;
- (C) Adequately evaluates the cumulative traffic impacts from the “Proposed

Action” alternative and related projects, public and private, existent or planned in the region, including the 41,000 square foot multi-use facility/dormitory currently being constructed in Lai’e by BYU – Hawai‘i ; the 220 room Courtyard by Marriott Hotel planned to be constructed in Lai’e by Hawai‘i Reserves, Inc.; the 95,000 square feet of commercial development, 150 townhomes, 125 apartment units and 75 single family homes to be constructed in Hale‘iwa by Kamehameha Schools; and the 110 to 130 homes to be constructed along Kamehameha Highway, at Papailoa Road and Kapaeloa, by Kamehameha Schools; and

(D) Adequately evaluate the “No Action” alternative baseline for wetlands, marine water quality, and terrestrial and marine species and re-evaluate potential environmental impacts on the wetlands, marine water quality, and terrestrial and marine species.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Keep The North Shore Country prays for judgment against Defendants City and County Of Honolulu, George I. Atta, FAICP in his capacity as Director of the City and County of Honolulu’s Department of Planning and Permitting, and Turtle Bay Resort, LLC, jointly and severally, and provide the following relief:

A. A declaratory judgment that the City and the DPP Director set aside the acceptance of Turtle Bay Resort, LLC’s Final SEIS and that the Court order defendants City and the DPP Director to set aside DPP’s acceptance of the Final SEIS and order Turtle Bay Resort, LLC to prepare a revised SEIS that properly analyses and uses the No Action Alternative as the baseline against which other environmental impacts are considered.

B. A declaratory judgment that Turtle Bay Resort, LLC prepare a Revised SEIS that:

(i) Accurately describes the “Proposed Action” alternative;

(ii) Adequately and rigorously evaluates the “No Action” alternative as the benchmark or baseline to measure the environmental impacts caused by the “Proposed Action” alternative;

(iii) Adequately evaluates the cumulative traffic impacts from the “Proposed Action” alternative and related projects, public and private, existent or planned in the region, including the 41,000 square foot multi-use facility/dormitory currently being constructed in Lai’e by BYU – Hawai‘i ; the 220 room Courtyard by Marriott Hotel planned to be constructed in Lai’e by Hawai‘i Reserves, Inc.; the 95,000 square feet of commercial development, 150 townhomes, 125 apartment units and 75 single family homes to be constructed in Hale‘iwa by Kamehameha Schools; and the 110 to 130 homes to be constructed along Kamehameha Highway, at Papailoa Road and Kapaeloa, by Kamehameha Schools; and

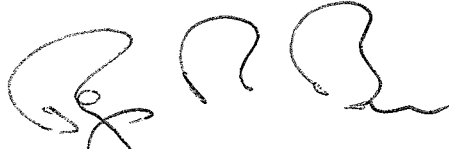
(iv) Adequately evaluates the “No Action” alternative baseline for wetlands, marine water quality, and terrestrial and marine species and re-evaluate potential environmental impacts on the wetlands, marine water quality, and terrestrial and marine species.

C. An injunction against any ground work or construction by Turtle Bay Resort, LLC relating to the “Proposed Action” alternative project until the SEIS required in paragraph (B) above is completed and approved.

D. Other appropriate preliminary and permanent injunctive relief as the Court deems appropriate.

E. Keep The North Shore Country be awarded reasonable attorneys' fees and costs of this action as permitted by statute.

DATED: Honolulu, Hawai'i, December 2, 2013.

Handwritten signatures of four individuals: Philip R. Brown, Effie Steiger, Justin M. Chu, and Rory R. Wicks. The signatures are written in black ink and are positioned above a horizontal line.

PHILIP R. BROWN
EFFIE STEIGER
JUSTIN M. CHU
RORY R. WICKS
(Pending Admission Pro Hac Vice)

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEEP THE NORTH SHORE COUNTRY, a)
Hawai'i nonprofit corporation,)

Plaintiff,)

vs.)

CITY AND COUNTY OF HONOLULU, a)
Hawai'i municipal corporation; GEORGE I.)
ATTA, FAICP in his official capacity as the)
Director of the City and County of)
Honolulu's Department of Planning and)
Permitting; TURTLE BAY RESORT, LLC,)
a Delaware limited liability company; JOHN)
DOES 1-10; JANE DOES 1-10; DOE)
CORPORATIONS 1-10; DOE ENTITIES)
1-10; and DOE GOVERNMENTAL UNITS)
1-10)

Defendants.)

CIVIL NO. _____

(Declaratory Judgment)

SUMMONS

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

STATE OF HAWAII

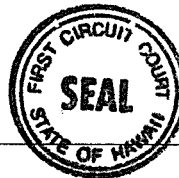
You are hereby summoned and required to file with the Court and serve upon the Law Offices of Philip R. Brown, Plaintiffs' attorney, whose address is Pauahi Tower, Suite 2005, 1003 Bishop Street, Honolulu, Hawaii, 96813, an Answer to the Complaint for Declaratory and Injunctive Relief which is herewith served upon you, within 20 days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint for Declaratory and Injunctive Relief.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court 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, Hawaii, DEC - 2 2013.

H. CHING



CLERK OF COURT