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 By *[Signature]*  
 Dorena Olivas Brun

Attorneys for Plaintiff  
 KAWAILOA DEVELOPMENT LLP

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

KAWAILOA DEVELOPMENT LLP, a  
 Hawaii limited liability partnership,

Plaintiff,

vs.

HAWAI'I DAIRY FARMS, LLC, a foreign  
 limited liability company  
 Defendant.

CIVIL NO. 14-1-0141  
 JRV  
 (Declaratory Judgment)

COMPLAINT FOR DECLARATORY,  
 INJUNCTIVE AND OTHER RELIEF;  
 SUMMONS

**COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF**

Plaintiff KAWAILOA DEVELOPMENT LLP, a Hawai'i limited liability partnership ("Plaintiff"), by and through its attorneys, Goodsill Anderson Quinn & Stifel, A Limited Liability Law Partnership LLP, states and alleges, as its Complaint for Declaratory, Injunctive and Other Relief against Defendant HAWAI'I DAIRY FARMS, LLC, a foreign limited liability company ("Hawai'i Dairy Farms") ("Defendant"), as follows:

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COSTS PAID  
 \$315.00  
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1. This action for declaratory and injunctive relief is brought pursuant to the Hawai'i Environmental Policy Act ("HEPA"), which is codified in Hawai'i Revised Statutes ("HRS") Chapter 343.

2. The legislative purpose of HEPA is to integrate the review of environmental concerns with existing planning processes and to alert decision-makers to significant environmental effects which may result from the implementation of certain actions. HRS § 343-1.

3. HEPA establishes a framework for environmental review covering many categories of actions. HRS § 343-5(a). These include actions that "[p]ropose any wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent." *Id.*

4. Whenever one of these HEPA "triggers" is present, an environmental assessment must be prepared "at the earliest practicable time to determine whether an environmental impact statement shall be required." HRS § 343-5(a)-(b).

5. Hawai'i Administrative Rules ("HAR") Chapter 11-62 defines "wastewater" as "any liquid waste, whether treated or not, and whether animal, mineral or vegetable, including agricultural, industrial and thermal wastes."

6. HAR Chapter 11-62 defines "treatment unit" as "any plant, facility, or equipment used in the treatment of wastewater including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment."

7. Defendant has proposed to construct and operate a wastewater treatment unit and is therefore required to study the impacts of its wastewater treatment unit and its dairy farm as required by HRS Chapter 343.

8. The adverse impacts of the wastewater treatment unit and the dairy farm have not been studied in the Chapter 343 environmental review process.

9. Study of impacts from the wastewater treatment unit and the dairy farm will alert decision-makers in the planning processes to environmental effects which may result from them.

#### THE PARTIES

10. Plaintiff Kawailoa Development LLP is a Hawai'i limited liability partnership doing business in the State of Hawai'i.

11. Defendant Hawai'i Dairy Farms, LLC is a foreign limited liability company organized in the State of Delaware and registered to do business in the State of Hawai'i.

#### JURISDICTION AND VENUE

12. The actions which are the subject of this Complaint occurred in the County of Kaua'i, State of Hawai'i, and relate to real property located in said County of Kaua'i, State of Hawai'i.

13. The Court has subject matter jurisdiction over the Plaintiff's claims under Hawai'i Revised Statutes ("HRS") §§ 343-7(a), 607-25, 603-21.5 and 632-1 *et seq.*

14. An actual controversy exists between Plaintiff and Defendant, and action in this Court is necessary to resolve that controversy.

15. Venue is proper in the Fifth Circuit Court under HRS § 603-36(5) because the dairy farm is located in the County of Kaua'i, State of Hawai'i.

## STANDING

16. Plaintiff Kawaihoa Development LLP has standing as the closest neighboring landowner to the dairy. Plaintiff possesses business, recreational, environmental and aesthetic interests which will be directly and indirectly adversely affected by the wastewater treatment unit and the dairy farm, and these types of harms could be avoided with the preparation of an environmental assessment.

17. Plaintiff owns the Grand Hyatt Kaua'i Resort & Spa and the Poipu Bay Golf Course, which are less than three miles away from the proposed location of the dairy farm and its effluent ponds, and relies on a pristine surrounding environment in order to attract and maintain its business. The adverse impacts from the dairy pose the direct threat of diminishing Plaintiff's ability to utilize its properties and run its business.

18. Plaintiff has standing because any discharge and pollution from the dairy farm would diminish the quality and value of Plaintiff's properties, and would pose a health risk to Plaintiff's employees and guests.

19. Plaintiff has standing because any odor from the dairy farm would diminish the quality and value of Plaintiff's properties. Any air quality problems stemming from the dairy farm would pose a health risk to Plaintiff's employees and guests.

20. Plaintiff has standing because any flies from the dairy farm would diminish the quality and value of Plaintiff's properties.

21. Plaintiff has standing because any harm to endangered species will cause impacts to tourism and to the local economy, and will negatively impact the natural environment at and near its properties.

22. The failure to prepare an environmental assessment has adversely affected Plaintiff's public participation rights in that Plaintiff has been and will be further frustrated in its ability to participate in the debate and decision-making over whether to approve and to implement this project because the necessary data, study, and environmental analysis which would be provided in an environmental assessment, and which has not been otherwise provided, has not been available. As stated by the Hawai'i Supreme Court in *Sierra Club v. Department of Transportation*, 115 Hawai'i 299, 343, 167 P.3d 292, 336 (2007), it prejudices the rights and interests of Plaintiff in public participation by denying it the ability to participate actively in the process of environmental review.

#### FACTS COMMON TO ALL CLAIMS

23. Defendant is developing a 582-acre dairy farm in Māhā'ulepū on the island of Kaua'i ("Dairy").

24. Grove Farm Company, Inc. holds parcels that comprise Māhā'ulepū valley and coast.

25. Defendant is developing the Dairy on land leased from Grove Farm Company, Inc., and identified as TMK 4-02-09-003-001 and 4-02-09-0003-006.

26. In 2008, the National Park Service ("NPS") published its reconnaissance survey of Māhā'ulepū.

27. According to NPS, the long-term conceptual plans for Māhā'ulepū valley have included an interpretive pedestrian path around the valley, where hundreds of acres would be dedicated to traditional Hawaiian taro-growing, native Hawaiian healing plants, organic greens, fruit orchards, and other "grow what you eat" crops.

28. According to NPS, habitats for five endemic endangered birds are scattered throughout Māhā‘ulepū. The endemic endangered birds known in the area are the Hawaiian coot (‘alae ke‘oke‘o), common moorhen (‘alae ‘ula), Hawaiian duck (koloa maoli), Hawaiian stilt (ae‘o), and the Hawaiian goose (nēnē).

29. According to NPS, manmade reservoirs at Waitā, Pu‘u Hi and Māhā‘ulepū provide a year-round attraction for these five endangered birds.

30. According to NPS, intermittent streams and wetlands at Māhā‘ulepū also provide habitats for these endangered birds.

31. According to NPS, nēnē, koloa and other waterfowl frequent the taro lease land in Māhā‘ulepū valley, and a broad natural depression in the valley that fills with water after heavy rain draws many waterbirds, including koloa.

32. According to NPS, Newell’s shearwater, a threatened endemic bird species, nests near the Waitā Reservoir.

33. According to NPS, Māhā‘ulepū and Kīpū Kai, in combination with Hulē‘ia, provide a much-needed mosaic of varied wetland habitats that should be protected and restored to be reliably available for endangered Hawaiian waterbirds.

34. According to NPS, the wetlands in Māhā‘ulepū valley are linked hydrologically to the Makauwahi Cave complex, a critical habitat for endangered arthropods that rely on seepage of nutrient-rich water.

35. According to NPS, known petroglyphs are found on Grove Farm agricultural lands in Māhā‘ulepū valley.

36. According to NPS, because sensitive conservation areas are mingled with active agricultural land, future activities on agricultural land could cause major impacts on significant resources.

37. Impacts on the endangered species and archeological features that have been identified by NPS have not been studied by Defendant in an environmental review process pursuant to Chapter 343.

38. Defendant has announced that its Dairy will operate with approximately 1,800 milking cows.

39. The United States Environmental Protection Agency ("EPA") has determined that the Dairy is a Confined Animal Feeding Operation ("CAFO").

40. Shortly after being advised by EPA that the Dairy qualifies as a large CAFO, the Dairy held a public meeting and claimed they were not a CAFO.

41. According to EPA, the waste produced per day by one dairy cow is equal to that of 20-40 people.

42. According to EPA, improperly stored or used, animal waste can pollute rivers and underground drinking water supplies.

43. According to EPA, when contaminants from animal waste seep into underground sources of drinking water, the amount of nitrate in the ground water supply can reach unhealthy levels. Infants up to three months of age are particularly susceptible to high nitrate levels and may develop Blue Baby Syndrome (methemoglobinemia), an often fatal blood disorder.

44. According to EPA, the microorganisms found in animal wastes, such as cryptosporidium, can also pose significant public health threats. For example, after a severe

rainstorm in 1993, an outbreak of cryptosporidium in Milwaukee's drinking water supply caused 100 deaths and sickened 430,000 people. If the presence of these microorganisms exceeds the standards set by the Safe Drinking Water Act, community and private well owners will not only face health risks, but will also have to find new sources for their drinking water supplies. This can be extremely costly and impractical.

45. According to EPA, manure, and wastewater containing manure, can severely harm river and stream ecosystems. Manure contains ammonia which is highly toxic to fish at low levels. Increased amounts of nutrients, such as nitrogen and phosphorus, from Animal Feeding Operations can cause algal blooms which block waterways and deplete oxygen as they decompose. This can kill fish and other aquatic organisms, devastating the entire aquatic food chain.

46. According to EPA, air quality problems associated with Animal Feeding Operations are caused by gases emitted from the decomposition of animal wastes and by the dust generated by animal activity and farming practices. These air pollutants can cause respiratory illness, lung inflammation, and increase vulnerability to respiratory diseases, such as asthma. Emissions of reactive organics and ammonia from Animal Feeding Operations can play a role in the formation of air pollutants regulated by the Clean Air Act to protect public health. Soil disturbance by animals or farm equipment can generate particulate matter. Emissions from Animal Feeding Operations are a major concern in areas, such as the San Joaquin Valley and California's South Coast, where ozone and particulate matter often exceed national health standards.

47. According to EPA, in addition to negative health impacts, ozone can reduce agricultural yields and make plants more vulnerable to disease. Odorous and potentially



toxic gases, such as sulfur dioxide, produced by the decomposition of animal wastes, may also cause nausea, headaches, and throat and eye irritation after prolonged exposure. Methane emissions from waste decomposition at Animal Feeding Operations also contribute to global warming.

48. The Defendant will operate an Animal Feeding Operation. None of the foregoing impacts from Animal Feeding Operations described by EPA has been studied by Defendant in an environmental review process pursuant to Chapter 343.

49. Manure collected from the Dairy's milking parlor and yards will be transferred into a two-pond effluent system, which will serve as holding ponds for the material to be recycled for irrigation.

50. First, the Dairy's manure will be transferred into the settling pond. A stirrer pump is operated two hours per day to break up the solids in the settling pond.

51. Treatment of the wastewater using solid separators, two stage lagoons, two-stage waste holding ponds, etc., may be needed to further reduce percent solids.

52. The measurement of the Dairy's settling pond includes a minimum treatment volume.

53. Second, the liquid effluent from the Dairy's settling pond overflows into the storage pond through screen pipes, where it is diluted before being applied to the pasture.

54. The measurement of the Dairy's storage pond includes a minimum treatment volume.

55. Both effluent ponds contain aeration equipment for treating wastewater.

56. The Dairy will apply effluent irrigation to its pasture as fertilizer.

57. On March 18, 2014, Defendant received an agricultural exemption from the County of Kaua'i under Kaua'i County Ordinance Sec. 22-7.6(e), which exempts agricultural operations from permit requirements of the Grading, Grubbing and Stockpiling Ordinance.

58. Defendant has begun grading and grubbing activities related to the construction of the Dairy.

59. Plaintiff owns the Grand Hyatt Kaua'i Resort & Spa and the Poipu Bay Golf Course. Defendant's wastewater treatment unit will greatly diminish the use, value and enjoyment of Plaintiff's properties.

#### COUNT I

#### DECLARATORY RELIEF

60. Plaintiff realleges and incorporates herein as if fully set forth its allegations in Paragraphs 1-59 of this Complaint.

61. HEPA establishes a framework for environmental review covering many categories of actions, including actions that utilize any wastewater treatment unit. HRS § 343-5(a).

62. As Defendant proposes to construct and operate a wastewater treatment unit, an environmental assessment, at a minimum, is required.

#### COUNT II

#### INJUNCTIVE RELIEF

63. Plaintiff realleges and incorporates herein as if fully set forth its allegations in Paragraphs 1-62 of this Complaint.

64. Plaintiff, as well as the public at large, will suffer irreparable harm if Defendant is permitted to construct and operate the dairy farm without legally required environmental review.

65. The Court has the authority, in equity, to enjoin Defendant from constructing and operating the dairy farm without legally required environmental review.

### COUNT III

#### PUBLIC NUISANCE

66. Plaintiff realleges and incorporates herein as if fully set forth its allegations in Paragraphs 1-65 of this Complaint.

67. Plaintiff brings this action to enforce public, collective rights, guaranteed by the Hawai'i Constitution and state statutes.

68. The Dairy is a public nuisance pursuant to Hawai'i law as discussed in *Marsland v. Pang*, 5 Haw. App. 465, 701 P.2d 175 (Haw. Ct. App. 1985).

69. Public policy favors the protection of Plaintiff's, and the public's environmental rights.

70. The Court has the authority, in equity, to enjoin the dairy farm because it is a public nuisance, until and unless it complies with Hawai'i environmental law.

#### PRAYER FOR RELIEF

Based on the foregoing, Plaintiff prays for the following relief:

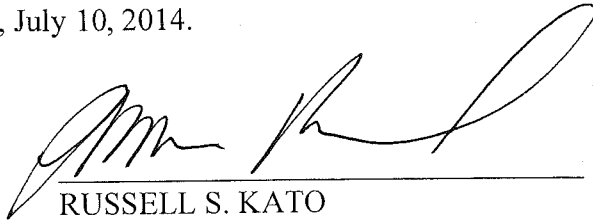
- (1) that the Court take jurisdiction over this matter and hold a hearing or hearings with respect to the substantive claims on this Complaint;
- (2) that the Court issue judgment, declaring that Defendant may not construct the Dairy until the environmental review process is lawfully completed;

(3) that the Court issue judgment permanently enjoining Defendant from constructing the Dairy farm until Defendant fully complies with Chapter 343;

(4) that the Court issue judgment, declaring that the Dairy farm, operating without the required environmental review, is a public nuisance;

(6) that the Court grant Plaintiff its costs, attorneys' fees, and such other and further relief as the Court may deem proper.

DATED: Honolulu, Hawai'i, July 10, 2014.



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HAWAI'I DAIRY FARMS, LLC  
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Defendant.

CIVIL NO. 14-1-0141

(Declaratory Judgment)

SUMMONS

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STATE OF HAWAII

To the above-named Defendant:


You are hereby summoned and required to serve upon LISA WOODS MUNGER,  
Goodsill Anderson Quinn & Stifel, A Limited Liability Law Partnership LLP, attorney for  
Plaintiff KAWAILOA DEVELOPMENT LLP, whose address is First Hawaiian Center, Suite  
1600, 999 Bishop Street, Honolulu, Hawaii 96813; an answer to the Complaint for Declaratory,

Injunctive and Other Relief ("Complaint") which is herewith served upon you, within twenty (20) days after service, 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.

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: JUL 10 2014

  
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Clerk of Court Ex Officio Clerk  
Circuit Court 5 Circuit