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EX OFFICIO CLERK
CIRCUIT COURT OF THE FIFTH CIRCUIT
HONOLULU, HAWAII

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Circuit Court 5th Circuit

Attorneys for Defendant

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

DONN CARSWELL, GALE CARSWELL,)	CIVIL NO. 06-1-0049
FRANK O. HAY, PAUL T. MATSUNAGA,)	(Injunctive Relief)
ARLENE Y. MATSUNAGA, DOES 1-130,)	(Declaratory Judgment)
)	
Plaintiffs,)	DEFENDANT'S ANSWER TO
)	COMPLAINT FILED APRIL 11, 2006
vs.)	
)	CERTIFICATE OF SERVICE
DEPARTMENT OF LAND AND)	
NATURAL RESOURCES, STATE OF)	
HAWAII, INDIVIDUAL DOES 1-10, DOE)	
PARTNERSHIPS 1-10, DOE)	
CORPORATIONS 1-10 AND DOE)	
ENTITIES 1-10,)	
)	
Defendants.)	
)	

DEFENDANT'S ANSWER TO COMPLAINT FILED APRIL 11, 2006

FIRST DEFENSE:

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE:

1. Defendant denies the allegations in paragraphs 1 and 2 of the complaint.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 3-10 of the complaint.

3. For answer to paragraph 11 of the complaint, defendant states that Senate Resolution No. 25 (1965) speaks for itself.

4. For answer to paragraph 12 of the complaint, defendant denies that Haw. Rev. Stat. § 171-44 (1993) is correctly quoted and admits that the predecessor to section 171-44 was originally enacted in 1965.

5. For answer to paragraph 13 of the complaint, defendant admits that in 1965 the State entered into leases of properties at Koke'e and Waimea Canyon by direct negotiation.

6. Defendant admits the allegations in paragraph 14 of the complaint.

7. For answer to paragraph 15 of the complaint, defendant admits that plaintiffs Carswells are lessees who own improvements ~~until the end of the lease term.~~ Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the remaining allegations in the paragraph.

8. For answer to paragraphs 16 and 17 of the complaint, defendant admits that plaintiffs Hay and Matsunagas are lessees who own improvements until ~~the end of the lease term.~~ Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the remaining allegations in the paragraph.

9. Defendant denies the allegations in paragraph 18 of the complaint.

10. Defendant admits the allegations in paragraphs 19-21 of the complaint.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 22 of the complaint.

12. Defendant admits the allegations in the first sentence of paragraph 23 of the complaint. Defendant denies the remaining allegations in the paragraph.

13. Defendant denies the allegations in paragraph 24 of the complaint.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 25-29 of the complaint.

15. For answer to paragraph 30 of the complaint, defendant admits that the board met on February 10, 2006, to discuss issues relating to Koke'e and Waimea Canyon State Parks as stated on the board's agenda.

16. For answer to paragraph 31 of the complaint, defendant admits that the agenda is correctly quoted and denies that the agenda is attached as Exhibit "B."

17. Defendant denies the allegations in paragraphs 32 and 33 of the complaint and states that the board's action is as stated in the minutes of the board meeting.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 34 of the complaint.

19. Defendant denies the allegations in paragraph 35 of the complaint.

20. For answer to paragraphs 36 and 37 of the complaint defendant states that pursuant to the terms of the subject leases ownership of the cabins is in lessees until expiration or termination of the leases, at which time ownership shall vest in the State. Defendant further admits that it will not pay compensation to lessees for cabins that revert to the State pursuant to the terms of the subject leases. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of other allegations, if any, in these paragraphs.

21. Defendant admits it has stated that lessees may remove the cabins at their own expense prior to December 31, 2006, subject to the terms of the lease and applicable law.

22. For answer to paragraph 39 of the complaint, defendant admits that pursuant to state law and applicable rules, removal of cabins would require a Conservation District Use Permit ("CDUP") and a building permit from the County of Kauai.

23. For answer to paragraph 40 of the complaint defendant states that the procedures for obtaining a CDUP are as stated in applicable law and rules. The paragraph does not accurately state or summarize applicable law and rules.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraphs 41-47 of the complaint.

25. Defendant denies the allegations in paragraphs 48-49 of the complaint.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 50-51 of the complaint.

27. Defendant denies the allegations in paragraphs 52-53 of the complaint.

28. For answer to the allegations in paragraphs 54-56 of the complaint, defendant denies that plaintiffs have any such rights and defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of allegations regarding waiver.

29. Defendant denies the allegations in paragraph 57 of the complaint.

30. For answer to the allegations in paragraph 58 of the complaint, defendant denies that plaintiffs have any such right and defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of allegations regarding waiver.

31. Defendant denies the allegations in paragraph 59 of the complaint.

32. For answer to the allegations in paragraphs 60-61 of the complaint defendants state that the referenced cases speak for themselves. Defendant denies the cases have applicability to this case.

33. For answer to the allegations in paragraph 62 of the complaint defendant denies that plaintiffs have any such right and defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of allegations regarding waiver.

34. For answer to paragraph 63 of the complaint, defendant admits that one or more plaintiffs belatedly and untimely requested a contested case hearing. Defendant denies that the request is attached as Exhibit "C."

35. Defendant admits the allegations in paragraph 64 of the complaint.

36. Defendants are without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations in paragraph 65 of the complaint.

37. For answer to paragraph 66 of the complaint, defendant realleges and incorporates its responses to the referenced paragraphs.

38. Defendant denies the allegations in paragraphs 67-71 of the complaint.

39. For answer to paragraph 72 of the complaint, defendant denies that plaintiffs are entitled to any of the relief requested.

40. Defendant denies all allegations not specifically admitted, denied, or controverted in this answer.

THIRD DEFENSE:

Plaintiffs' claims are barred by sovereign immunity.

FOURTH DEFENSE:

This court lacks subject matter jurisdiction over plaintiffs' claims.

FIFTH DEFENSE:

Plaintiffs' claims are barred by waiver, estoppel, and laches.

SIXTH DEFENSE:

Plaintiffs have failed to name indispensable parties.


SEVENTH DEFENSE:

Plaintiffs' claims are not ripe or are otherwise not justiciable.

WHEREFORE, defendant prays that:

1. The complaint be dismissed;
2. It be awarded its attorneys' fees and costs; and
3. The court grant such further relief as may be just, proper, and equitable.

DATED: Honolulu, Hawai'i, April 24, 2006.



William J. Wynhoff
Deputy Attorney General
Attorney for Defendant

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Defendants.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served on the following persons at the address shown by mail on April 24, 2006 :

Daniel G. Hempey
Elif Z. Yarnall
3175 Elua Street, Suite C
Lihue, Hawai'i 96766

DATED: Honolulu, Hawai'i, April 24, 2006.



William J. Wynhoff
Deputy Attorney General
Attorney for Defendant