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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

FRIENDS OF SHERWOOD FOREST, MOANA KEA AMONG, MAUREEN HARNISCH, ARCHIBALD KAOLULO, AND MITCH WERTH

Plaintiffs,

vs.

CITY AND COUNTY OF HONOLULU, DOES 1-10,

Defendants.

Civil Case No.: 1CCV-20-0675 (DEO)
(Environmental Court)

MEMORANDUM IN SUPPORT OF MOTION

Hon. Judge Dean E. Ochiai

No trial date set.

MEMORANDUM IN SUPPORT OF MOTION

I. SUMMARY OF RATIONALE FOR REQUESTING TRO AT THIS TIME

Issuance of a Temporary Restaining Order ("TRO") and Preliminary Injunction is requested at this time to prevent the imminent bulldozing of natural vegetation and possible further disturbance of iwi kūpuna at Waimānalo Bay Beach Park ("WBBP") as part of Defendant City and County of Honolulu's ("Defendant City") "mitigation plan". Under the current plan, the entire 4-acre project site is to be bulldozed and replaced by a blanket of chemically-infused hydro-mulch, which would be contrary to the preservation of the coastal forest at WBBP and inconsistent with protection of the public's natural environment and cultural assets, endangered species, and the Waimānalo community's sense of place. This "mitigation" will also likely cause unwarranted run-off, including from any hydro-mulch, into neighboring properties and the stretch of oceanfront that is treasured by local beachgoers.

II. STATEMENT OF FACTS

A. Parties/Standing

Plaintiffs are organizational and individual residents of the City and County of Honolulu and users of Waimānalo Bay Beach Park, also known as Hunananiho or "Sherwood Forest", the subject property in this litigation. See Complaint filed herein.

Defendant City and County of Honolulu is the developer of the subject property. See Declaration of Timothy A. Vandeveer.

B. The Project

The proposed development in WBBP called the Waimānalo Bay Beach Park Master Plan (the "Proposed Development" or "Plan") calls for three different phases of construction (short, mid, and long range) including camp sites, group camping and gathering areas, walking trails,

picnic areas, and comfort stations at the Beach Park at a projected cost to taxpayers of approximately 32 million dollars.

"Phase 1" of Defendant City's proposed development project at WBBP (which is characterized as a "mid-long-range" recreational improvement in the Master Plan) is within a 3.88-acre portion of the 74.76-acre park. According to Defendant City, the scope of work involves construction of a new 205 ft. by 340 ft. multi-purpose recreational field, an 11-stall asphalt concrete parking lot, 2,500 sq. ft. of accessible concrete walkways, a 2,500-sq. ft. concrete pad for a "play structure", and 1,430 linear feet of 4-inch diameter potable water line piping. This initial phase of the project involves a massive removal of open space through grubbing and grading of vegetation generally to allow for asphalt and concrete paving. In essence, Phase 1 involves the concentrated destruction of a major portion of a key asset of this nature-based park – removal of a major section of "Sherwood Forest".

C. RELEVANT BACKGROUND FACTS

On April 23, 2019, bulldozers arrived at the park and local resident Jody Green alerted neighbors and the news media. Contrary to responses given in the Environmental Assessment by Defendant City's Project Manager to community questions regarding the trees of Sherwood Forest, that "no ironwoods are proposed for removal to accommodate proposed park elements," one of the project's first actions was to clear cut approximately four acres of old-growth ironwood trees for the "multi-purpose" sports field, playground complex, and parking lot (See photos in Plaintiffs' Complaint Dkt. No. 1, Figure 1 at pg. 14).

After overwhelming community opposition (including numerous City Council Members and a formal resolution from the Waimānalo Neighborhood Board asking City and County of Honolulu Mayor Kirk Caldwell to stop the project), on August 12, 2019, Mayor Caldwell

announced that the Proposed Development was substantially changing in scope as part of a "huge compromise" with the community. As part of the new "compromise", the Mayor's office announced that the City and County of Honolulu planned to "cut back" on the Master Plan and only go forward with construction of Phase 1 of the plan, including a multi-field sports complex, an 11-stall parking lot, a playground, and "planting trees".

In a letter dated September 25, 2019, Defendant City admitted that it was wrong in saying the Waimānalo Bay Beach Park was not on the National Register of Historic Places. In the letter that City officials addressed to "stakeholders", the Mayor's office stated that (the Beach Park's designation on the National Register of Historic Places) "doesn't mean that no work can be done there. It means care needs to be taken with respect to the historic items." That same day, 28 protestors were arrested for blocking construction of the controversial park project.

On September 26, 2019, Plaintiffs filed a lawsuit against the City and County of Honolulu in United States District Court for the District of Hawai'i. The lawsuit included a Motion for Temporary Restraining Order and Preliminary Injunction. That same day, an object of archaeological interest was found on the Phase 1 construction site and reported to the State Historic Preservation Division.

On Tuesday, October 1, 2019, Mayor Kirk Caldwell halted the project at Waimānalo Bay Beach Park while officials "wait for further information from the State Historic Preservation Division and the Oahu Island Burial Council."

On January 14, 2019 Mayor Caldwell announced that the City was planning to "abandon the master plan for its construction project at Sherwood Forest". However, according to a City Council resolution drafted by the Mayor's Office and presented to the Waimānalo Neighborhood Board by City and County of Honolulu Managing Director Roy Amemiya, work

would continue on Phase 1 of the plan "in some form".

On Monday, March 23, 2020, Mayor Kirk Caldwell issued a stay-at-home ("lockdown") order in response to the COVID-19 virus.

On April 3, 2020 a grading permit for Phase 1 of construction was issued for "Construction of a Multi-purpose field" at Waimānalo Bay Beach Park. The permit did not acknowledge or authorize trenching at the site. The permit did not include a flood variance.

On April 6, 2020, without notice bulldozers arrived at the WBBP to continue and proceed with construction on "Phase 1" of the WBBP Master Plan for Defendant City. This happened *during* the Covid-19 pandemic "lock-down". During this time, the Covid-19 pandemic frustrated Plaintiffs' access to the federal court. However, the Mayor proceeded with decimating the Park's natural reforestation in pursuit of "some form" of development.

At an April 6, 2020 press conference, Mayor Caldwell stated that "we're not proceeding with Phase 1…Phase 1 *is no longer in existence*…". However, he made it clear that the City would be proceeding with a "grassy field" and "cultural and historical park".

On April 7, 2020, one day after construction crews had resumed construction at Waimānalo Bay Beach Park, Mayor Caldwell announced that he was stopping construction at WBBP "indefinitely" due to the discovery of iwi kūpuna (a 3-inch upper arm bone fragment) within the project area. However, the Mayor made conflicting statements regarding both the reason for the shutdown and how long it might last, stating that the project was put on hold due to the discovery and (in another instance) due to "health and safety concerns" for the community, and also that the project would only be paused "while we consult with the appropriate entities." Whether or not Phase 1 (or any variation thereof) or some new idea for development would proceed once construction resumes also remains unclear.

On April 13, 2020 the federal case against the City and County of Honolulu was

voluntarily dismissed without prejudice by Plaintiffs.

On April 27, 2020 Plaintiffs filed their Complaint in this matter in State Circuit Court (Civ. No. 1CCV-20-0000675). A Motion for Temporary Restraining Order and Preliminary Injunction was filed the same day.

On or about May 27, 2020, Deputy Corporation Counsel Brad Saito reached out to counsel for Plaintiff's and advised him that "the current City administration has decided that it does not want to move forward with the development of the project", requested an extension of time to answer the Complaint, and asked that the Motion for TRO be withdrawn without prejudice "so we can devote our time to creating a mutually acceptable settlement agreement".

On May 30, 2020, Plaintiffs filed a Withdrawal of Temporary Restraining Order and Preliminary Injunction Without Prejudice and notified the Court to request a cancellation of the TRO hearing that had been scheduled for June 9, 2020. Plaintiffs also advised Mr. Saito that Plaintiffs would allow the deadline for the Answer to the Complaint to be postponed during the settlement talks (this deadline was extended numerous times during the duration of the talks). In return for the withdrawal and postponement, on or about June 2, 2020 Plaintiffs asked Mr. Saito that Mayor Caldwell refrain from further press conferences or pronouncements about the project at Waimānalo Bay Beach Park while the parties engaged in settlement negotiations.

On June 18, 2020 Mayor Kirk Caldwell held a press conference and announced that the Sherwood Forest situation had been "settled". In a City and County press release put out the same day, Department of Design and Construction Deputy Director Haku Milles explained that there are "still things that have to be done to restore the site, including leveling the construction mounds and planting ground cover." The City and County of Honolulu would later explain that this included a "mitigation plan" for the site.

However, it soon became clear to Plaintiffs that the "mitigation" and "restoration" of the previous impacts to WBBP were instead actually a pretext to develop the parcel. This included, among other things, the City's current plans to grub, grade, and level the *entire* parcel (not just limiting mitigation to impacted areas or only removing remaining construction debris). It would also include the addition of imported "hydro-mulch" being added to the parcel. Plaintiffs believe that the "mitigation plan" would pose the same dangers to the environment as the Phase 1 development plan that were raised in Plaintiffs' Complaint and original TRO and also enable a future City administration to pick up where previous construction crews left off, possibly pushing through future elements of the original (inadequate) Master Plan.

After several months attempting to come to a mutual settlement agreement to ensure that the development was cancelled and that the mitigation plan was not instead a *de facto* version of Phase 1, on Monday, August 10, 2020, Plaintiffs' counsel notified Mr. Saito that Plaintiffs had rejected the latest draft of the Settlement Agreement (based upon the aforementioned planned "mitigation") and asked that the Answer to the Complaint be submitted by August 31, 2020.

Though the Project has changed in numerous ways over the past year, Plaintiffs believe that the planned "mitigation" of the already-devastating development impacts at WBBP constitutes mitigation in name only, and that the City actually plans to pursue the goals of the Phase 1 development under the guise of mitigation. Therefore, all of the claims detailed in their complaint against Defendant City remain and Plaintiffs respectfully ask this Court to issue a Temporary Restraining Order and Preliminary Injunction until such time as the City can demonstrate that the development is indeed cancelled and the Park and Plaintiffs will not be irreparably harmed by the "mitigation plan" now being proposed.

C. THE PERMITS AND REQUIREMENTS

Defendant City was required to conform and adhere to the conditions imposed by all applicable permits and governmental approvals, including but not limited to, the Special Management Area Permit, issued and established by the City and County of Honolulu for grading of the Phase 1 project site, and the NPDES Permit issued by the State of Hawai‘i Department of Health, pursuant to federal and state law, both prior to and during construction. Besides going beyond the scope of its original permits, Defendant City is currently in violation of environmental requirements. For example, in violation of ROH Chapter 21 Sec. 21A-1.7(F) and 44 CFR 60.3(d)(3), Defendant City has not established a floodway plan or conducted a flood encroachment survey at WBBP. See Declaration of Timothy A. Vandeveer.

III. ARGUMENT

Plaintiffs seek the issuance of a Temporary Restraining Order ("TRO"), and a preliminary injunction, temporarily and permanently enjoining Defendant City and their agents and representatives from:

(1) Clearing, cutting, poisoning, or otherwise removing and trees, vegetation, or any other natural features in the area known as “Sherwood Forest”; and,

(2) Excavating, dredging, bulldozing, or otherwise, moving dirt, fill, gravel and other material on the subject project area; and,

(3) Importing dirt, fill, “hydro-mulch”, gravel and other material to the subject project area; and,

(4) Destroying any and all records and documents relating to the transportation of dirt, fill, gravel and other material to the subject project area, the use of fertilizer, and pesticides, and excavation, trenching, or the removal of trees, that occurred as alleged herein after; and,

(5) Enjoining any and all construction or “mitigation” on the project until State and County governmental agencies can initiate proceedings to revoke and/or modify the existing permits, devise an appropriate archaeological mitigation plan, conduct flood

hazard studies and flood encroachment surveys, and otherwise determine the need for a Supplemental Environmental Assessment/Impact Statement, and,

(6) Changing the ***status quo*** by removing vegetation, grading, trenching or excavating soil, and hauling in additional imported soil and material, as of the filing of this Motion ***pendente lite***.

This TRO should remain in effect until a hearing on the motion for a preliminary injunction can be heard by this Court.

All of the elements necessary for the issuance of a TRO and preliminary injunction are satisfied or have been met by Plaintiffs. At a minimum, Plaintiffs request a TRO be issued for a certain period of time, preferably for thirty (30) days, but at least for ten (10) days. A formal request for an expedited preliminary injunction hearing is also requested herein. Issuance of a TRO is appropriate and necessary to protect the public's natural environment and cultural assets, *endangered species*, the Waimānalo community's sense of place, and prevent unwarranted run-off into neighboring properties and the stretch of oceanfront that is treasured by local beachgoers.

"A plaintiff seeking a preliminary injunction must establish that (they) (are) likely to succeed on the merits, that (they) (are) likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in (their) favor, and that an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) quoting *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008). As the court noted in *All. for the Wild Rockies v. Cottrell*, "…'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." 632 F.3d 1127, 1135 (9th Cir. 2011)

In the instant case, Plaintiffs have raised "serious questions going to the merits" as to Defendant City's original Environmental Assessment and its insufficiency due to inadequate community consultation, failure to consult and submit documentation of consultation with the Office of Hawaiian Affairs, and a failure to consider reasonable alternatives, including a "no action" alternative involving preserving the open space and rural nature of WBBP (as stated objectives in the Master Plan) and instead maintaining and repairing the numerous parks in the area with existing sports facilities that are in a state of disrepair. If the proposed "mitigation" is indeed just a *de facto* version of the development proposed in the Master Plan, this EA is still woefully inadequate and Defendant City should be required to supplement the assessment based on their current stated goals.

To wit, the failure to implement a project that is substantially similar to the project detailed in the Master Plan and analyzed in the Final Environmental Assessment (FEA) in violation of the Special Management Area Permit and subsequent permits and approvals. Due to changes in size, scope, intensity, use, and timing (among other things), the project is not remotely similar to what was proposed in the 2012 Master Plan/FEA. Notably, Defendant City has changed the size, scope, intensity, use and timing of the project numerous times *in the last six months*. It is currently unclear whether *any of the phases* originally contemplated in the environmental studies and disclosed to the public will end up being constructed on the site or whether the "mitigation" plan will instead be yet another version of development not contemplated in the Master Plan.

Finally, Plaintiffs raise serious questions in regard to public safety from the City's failure to demonstrate that the cumulative effect of the proposed development/"mitigation plan" will not exacerbate existing flooding problems in the region.

Plaintiffs have shown an existing and ongoing threat of irreparable harm to the WBBP parcel as well as the potential for irreparable harm to neighboring properties due to the failure to conduct a flood encroachment survey and that an injunction is in the public interest. Defendant City has repeatedly shown that they are not only willing to alter and change the project on a whim, but also that they are determined to move forward with project in the face of overwhelming negative public sentiment; even going so far as to force residents out their homes to oppose the controversial development by initiating construction in the midst of a public health crisis. Given the ongoing failure to adequately engage and consult the community as well as conflicting statements about nature of the project and when it will likely resume, there is little trust that the City will not proceed as soon as possible.

IV. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. The City Failed to Adequately Address Substantial Changes in the Scope and Size of the Project in Violation of HRS § 205A-6 and HAR § 11-200-13

Similar to the requirement for a supplemental statement under HAR § 11- 200-26, when a project is implemented and incorporates or relies on a previous environmental assessment, the work on the ground must be "substantially similar." HAR § 11-200-13. Under the requirements for substantial similarity for an EIS supplemental statement, a change in "size, scope, intensity, use, location, or timing, among other things," may constitute a substantial change. See HAR § 11-200.1-30. Additionally, supplemental statements "shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or **where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with**." HAR § 11-200-27 (emphasis added).

A phased project, as was originally proposed and assessed at WBBP, is generally treated as a single action for purposes of HEPA. HAR § 11-200-7. Whether Defendant City wants to pursue the project Phase 1 as part of the Waimānalo Bay Beach Park Master Plan, or as separate actions where each phase requires a separate EA, the current construction at the park requires an updated or new assessment because the EA from 2012 is not substantially similar to the current amended project and does not adequately address the intensity of the environmental impacts.

Because the current project is not substantially similar to that proposed in the EA, the City cannot rely on the previous EA to adequately support the project. Defendant City must comply with HEPA and fully examine the impacts of this project under its current conditions before proceeding. This includes any "mitigation plan" being considered that would involve the same or substantially similar impacts to the environment at WBBP.

B. The original FEA is inaccurate and insufficient

The original 2012 FEA failed to meet basic requirements of the HAR pertaining to Environmental Assessment. According to the FEA, the extent of the required public "consultation" amounted to approximately 0.01 percent of Waimanalo's residents. The failure of project planners to adequately consult the community was evidenced by the outpouring of public and political opposition that came with increased awareness outside the limited channels of engagement utilized by Defendant City. Beyond its failure to adequately engage the local community regarding the project, the contractor did not to respond to written comments as required by HAR § 11-200.1-18, subsection (d)(10), which requires "[w]ritten comments, if any, and responses to the comments received…". The contractor received a written comment in November 2010 stating that no athletic fields should be built without a cost benefit analysis that considered improvement of existing fields at Waimānalo Recreational Park. The FEA does not

address this particular comment, nor does it consider this alternative (which is a viable "no action" alternative not considered by the City).

The consultant for Defendant City also made false statements in addressing comments made about the project in the EA. Responding to a written comment regarding the trees of Sherwood Forest, the Project Manager wrote that "[p]ark elements have been designed to preserve large stands of trees and no ironwoods are proposed for removal to accommodate proposed park elements." Among the first actions taken by Defendant City in April 2019 was to clear cut approximately four acres of the parcel for the multi-purpose recreation field as part of Phase 1 of construction, including large stands of trees and ironwoods.

The DPP also did not consider reasonable alternatives to the project as required by Hawai'i Revised Statues (**"HRS"**) Chapter 344, specifically the repair and upgrade of existing ball fields in the nearby area. This proposed action would have considered the alternative of upgrading WBBP without building additional ball fields. This is a necessary alternative from the environmental, historical / cultural, and fiscal perspective, as there are already ball fields nearby and the proposed WBBP ball fields constitute a significant portion of the over $32 million price tag.

A frequent theme of the public comments received in opposition to the proposed Master Plan pertained to Defendant City's plan to build more sports fields instead of repairing and maintaining the existing ball fields in the community, four of which are located within less-than two miles of Waimānalo Bay Beach Park. This alternative was not even mentioned in the FEA. The money saved by not razing trees and building ball fields at WBBP could potentially be spent on upgrades to existing facilities. The FEA states that the proposed organized sports fields at

WBBP would relieve pressure on existing facilities, an argument that is contradicted by public comment which points out that existing facilities are not heavily used due to their poor condition.

The FEA lists the WBBP project objectives as:

- Improve existing park services including repair of comfort stations and supporting infrastructure.
- Add park services including camping and picnicking.
- To minimize operational and maintenance costs, utilize Low Impact Development (LID) and green building techniques for new improvements.
- Maintain the security and rural character of the Park.

All of these objectives could be met without building ball fields, ball fields that are unnecessary due to similar facilities existing nearby.

The DPP's failure to consider reasonable alternatives such as eliminating the proposed multi-purpose sports fields for organized recreation from the project due to the existing field facilities nearby is in violation of HRS § 344-4, especially given the negative impact that clear cutting trees has on the habitat and concrete paving has on flood mitigation. This omission represents a failure to take a "hard look" at the impacts of a project required by an environmental assessment.

The FEA is also insufficient and should have been supplemented due to "significant new circumstances" since the original EA was published in 2012, including increased tourism, traffic, population growth, and public and political opposition to the WBBP Master Plan. The FEA also fails to take into account impacts from climate change that are reflected in current City land use policy. The FEA also failed to properly assess cumulative impacts on the environment from development in and around the area, including along the two-lane Kalaniana‘ole Highway that fronts WBBP.

C. In violation of ROH Chapter 21 Sec. A-1.7 and 44 CFR 60.3(d), the City failed to identify a floodway or conduct a flood encroachment survey

The WBBP Master Plan section pertaining to "Natural Hazards" (including the floodplain) omits that a portion of the proposed development in Phase 1 is within the Area of Special Flood Hazard (Zone AE). There is no floodway designated in the construction area in Phase 1. The emergency egress road proposed in the Master Plan is also entirely within Zone AE *and crosses Inoaole Stream*, which is already designated as a floodway (Zone AO).

According to 44 CFR 60.3(d)(3), for development within Zones AE and AO the developer must ensure that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. This regulation pertains not only to structures, but *any* development activity that triggers an encroachment study including: fill, new construction, substantial improvements and "other development". Projects, such as filling, grading or construction of a new building, must be reviewed to determine whether they will obstruct flood flows and cause an increase in flood heights upstream or adjacent to the project site.

As the proposed "mitigation plan" would include filling and grading, a flood encroachment survey should still be required. That Defendant City erred in not completing one when the full Master Plan was being pursued certainly does not excuse their continued flouting of State and Federal law as they continue to attempt to develop the parcel.

V. PLAINTIFFS WILL SUFFER IRREPERABLE INJURY WITHOUT THE INJUNCTION

A. Plaintiffs' recreational activities

To put it simply, to allow Defendant City to continue to destroy a major portion of Sherwood Forest is not reversable. The current "mitigation plan" deigns to do just that. Once

felled, the mature tree growth is gone for the foreseeable future. Allowing the City's immediate construction or "mitigation" activities will injure Plaintiffs and the Waimanalo Community generally, by permanently converting a portion of the parcel into non-recreational use by pouring concrete for parking stalls and a playground "pad" – permanently destroying the open space and forested areas that the community enjoys. The sports complex proposed for construction as part of Phase 1 will also frustrate the "water-based recreation" purposes of WBBP by attracting participants and spectators to the area primarily for the purpose of "organized recreational activities" and consequently reduce the number of opportunities for beach and water recreation activities. The addition of hydro-mulch as part of the current "mitigation plan" will have lasting impacts on the ability of the forest to regrow to its prior state.

B. Cultural and historic resources

Future construction, including the currently proposed "mitigation", is likely to further disturb and destroy sub-surface archaeological sites in the WBBP parcel, which is listed on the National Register of Historic Places as part of the Bellows Field Archaeological Area. City Defendants have submitted an archaeological mitigation plan to the State Historic Preservation Division (SHPD) but given the recent discovery of an archaeological item on the "Phase 1" project site, that plan is obviously insufficient, and the project is currently awaiting a SHPD mitigation plan reassessment.

Though City Defendant has stated a desire to proceed with construction once a new SHPD mitigation plan is in place, Plaintiffs argue that work should not proceed until an updated Archaeological Inventory Survey for the entire project, as recommended in the FEA. Though not acknowledged in the Master Plan or EA, archaeologists have since admitted that the planned trenching and pipe construction for Phase 1 are likely to disturb more iwi kūpuna (human

burials) located in the Jaucus sand deposits nearer to the ocean. The likelihood of finding numerous and significant cultural and historic items, including iwi kūpuna, makes such harm inevitable.

C. Environmental degradation

The clear-cutting and paving of large portions of the 3.88-acre portion of the 74.76-acre WBBP will have negative and irreparable effects on the habitat of endangered and threatened species such as the Hawaiian Hoary bat, as well as marine life, due to increased likelihood of flooding and runoff from development of the parcel.

D. Flooding

The developer has not ensured that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge in violation of the law. This regulation pertains not only to structures, but *any* development activity that triggers an encroachment study including: fill, new construction, substantial improvements and "other development".

Without a flood encroachment survey, there is no guarantee that the development will not exacerbate the already bad flooding which has occurred in the area, including at the polo fields and horse stables directly across the highway from the entrance to the park (which has experienced severe flooding in the past) and the residential neighborhoods bordering WBBP to the south.

Further, the hydro-mulch now proposed in Defendant City's "mitigation plan" is likely more problematic from a flooding perspective than any remaining construction debris (which City planners have pointed to in order to justify the need for "mitigation") as the NPDES permit for the WBBP Master Plan is mainly concerned with debris being washed into the nearby ocean.

The hydro-mulch is lighter and likely would contain herbicides and pesticides not currently on the site.

E. Totality of the project

Since the City did not consider alternatives for sports fields and facilities such as repairing existing nearby sports facilities, the proposed project will potentially be a major waste of taxpayer money.

Defendant City has publicly made promises that it will only pursue "Phase 1" of the proposed development and seems to argue that the inaccurate and insufficient FEA and SMA permit only apply to the original scope of the project (and the multiple phases it encompassed) and not to Phase 1 (or the proposed mitigation formerly known as Phase 1 and now referenced as "cancelled" by City and County of Honolulu Mayor Kirk Caldwell). The catch here, as explained above, is that Phase 1 is intended to destroy the assets of this nature based park, such that it can be argued, that once those assets have been destroyed, there is no reason for a future administration to stop or delay implementation of building construction in these locations. In sum, the project must be considered in its totality and future phases of the project as originally contemplated must be taken into consideration when assessing the likelihood of irreparable injury.

VI. THE INJUNCTION WILL NOT SUBSTANTIALLY INJURE OTHERS

A preliminary injunction will not harm Defendant City – the project went almost seven years from completion and acceptance of the FEA to initiation of work. Any costs associated with potential construction delays are outweighed by the potential permanent damage to cultural resources, the fragile coastal ecosystem, and water-based recreation activities for the community.

Defendant City has argued that they might lose $300,000 by stopping the project, however, the City could use the $300,000 to repair existing facilities at other nearby parks for immediate use in fulfillment of their stated goals of providing viable sports fields near Kalaniana‘ole Highway, while also responding to the community’s overwhelming desire for preserving the character of the WBBP. The $300,000 also pales in comparison to the $32,000,000 projected cost for constructing a multi-purpose sports complex that no one wants.

VII. THE INJUNCTION FURTHERS THE PUBLIC INTEREST

Injunctive relief is clearly in the public interest as it preserves the water-based recreational activities in the park and avoids irreparable environmental and cultural injury to the mature forest park asset, and in doing so seeks to preserve the Waimanalo Community’s sense of place.

Plaintiff Friends of Sherwood Forest seek an injunction to protect Waimānalo Bay Beach Park from urbanization by preserving open space and the unique marine environment and shoreline.

Individual plaintiffs Among and Harnisch seek injunction to stop adverse impacts from the proposed development on infrastructure and traffic for residents and businesses of Waimānalo, the neighboring communities, and all of O‘ahu.

As residents of the Waimānalo Beach Lots, which neighborhood is adjacent to the subject parcel, individual plaintiffs Kaolulo and Werth seek injunction due to serious concerns regarding the City’s failure to properly study the impacts of development on the possible encroachment of flood waters into surrounding neighborhoods.

All plaintiffs in this lawsuit seek injunction to stop the conversion of this culturally and environmentally sensitive community beach park into a massive sports complex that contravenes state and local laws and to preserve the recreational opportunities for future generations.

VIII. CONCLUSION

All of the required elements for a temporary restraining order and a preliminary injunctive relief are met. Plaintiffs respectfully request that the Court expeditiously grant the requested injunctive relief.

DATED: Honolulu, HI 96816, August 31, 2020.

MARGARET WILLE & ASSOCIATES LLLC

/s/ Timothy Vandeveer
Timothy Vandeveer
Margaret (Dunham) Wille

Attorneys for Plaintiffs