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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WALTER JOHN KELLY, et al.,
 Plaintiff,

vs.

1250 OCEANSIDE PARTNERS, a Hawai'i
 limited partnership, et al.,
 Defendants.

)
) CIVIL NO. 00-1-192K
) (Other Civil Action)
)

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW, AND**
) **ORDER GRANTING JOINT RULE**
) **60(b) MOTION TO PARTIALLY**
) **VACATE THIRD AMENDED FINAL**
) **JUDGMENT DATED AUGUST 27,**
) **2004**
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This matter was heard before the Court on March 14, 2006 pursuant to Plaintiffs Protect Keopuka Ohana, Walter John Kelly, Charles Ross Flaherty, Jr., Patrick M. Cunningham and Michele Constans Wilkins and Defendants 1250 Oceanside Partners, County of Hawai'i, Christopher Yuen, Dennis Lee, State of Hawai'i Department of Health, Dr. Chiyone Fukino, State of Hawai'i Department of Land and Natural Resources and Peter Young's Joint Rule 60(b) Motion Re Third Amended Final Judgment Entered August 27, 2004. Present at the hearing were Plaintiffs Jim Medeiros, Michele Constans Wilkins and Pat Cunningham with Walter John (Jack) Kelly, and Charles Ross Flaherty, Jr. appearing by telephone represented by Robert

D.S. Kim, Esq., Defendants 1250 Oceanside Partners by Lyle Anderson represented by Robert D. Triantos, Esq., County of Hawaii, Planning Director and Director of Public Works by Mayor Harry Kim represented by Ivan Torigoe, Esq., Department of Health and Dr. Chiyone Fukino represented by Heidi Rian, Esq. and Department of Land and Natural Resources represented by James Paige, Esq.

The Court, having heard the arguments in support of the motion and having reviewed the exhibits received in evidence, hereby makes and enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

If it should be determined that any of these Findings of Fact should have been set forth as Conclusions of law, then they shall be deemed as such.

1. The parties have entered into a Settlement Agreement that addresses the concerns and issues between the parties as well as the many concerns raised by this Court's prior orders. The Court has received the Settlement Agreement into evidence.

2. Under the terms of the Settlement Agreement, the Parties have agreed to a number of provisions consistent with this Court's prior Orders. In particular:

- (A) Oceanside will apply to the State Land Use Commission (LUC), under the terms and conditions of the Settlement Agreement, to move the development site generally from the Agricultural District into the Rural District;
- (B) Oceanside will accept the Court determination that the stepping

stone trail crossing the Hokuli'a site is owned by the State of Hawai'i.

- (C) Oceanside will not pursue development of the Members' Lodge, the approvals for which the Court determined were invalid as spot zoning;
- (D) Oceanside, and its successors, will continue an enhanced water monitoring program and has agreed to a Permanent Injunction to be issued against it; and
- (E) All "inadvertent discoveries" of human remains pursuant to "sweeps" shall immediately be treated as previously identified under Haw. Rev. Stat. Sec. 6E.

3. The parties have agreed that the Chief Judge (presiding judge of the Third Circuit) shall resolve all disputes pertaining to any provision within the Settlement Agreement, and that the decision is binding and non-appealable.

4. The Plaintiffs have now submitted a Stipulation of Fact, that the Court has received into evidence, making it appropriate for the Court to determine independently the impact of these facts on the claims and affirmative defenses advanced.

CONCLUSIONS OF LAW

If it should be determined that any of these Conclusions of Law should have been set forth as Findings of Fact, then they shall be deemed as such.

1. On March 7, 2006, the Hawaii Supreme Court filed its order of remand to this Court for the purposes of formally considering this motion. The Court has

reacquired jurisdiction over the entire case and may now decide the issue raised by the present motion.

2. Hawai'i Rules of Civil Procedure Rule 60(b) provides in pertinent part:

On motion and upon such terms that are just, the court may relieve a party.....from a final; judgment, order, or proceeding for the following reasons:(5) ...It is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of judgment.

3. Rule 60(b) "may be utilized to seek the vacation of a judgment on the grounds that the case has been settled so that it would not be equitable to have it remain in effect....." Wright, Miller & Kane, *Federal Practice and Procedure, Civil § 2863*.

4. The Court concludes it is no longer equitable that portions of the Third Amended Final Judgment, and the Orders which it incorporates, have prospective application. The parties have settled their differences regarding the Project, and the Plaintiffs have withdrawn their objections to completion of the Project given the significant changes to the Project and the benefits to the community, the culture, and the environment through the Settlement Agreement.

5. In addition, the Court concludes that vacating portions of the Third Amended Final Judgment, and the Orders which it incorporates, is in the interest of justice as the parties have agreed to follow the Court's orders as described in Paragraph 2 of the Findings of Fact. The Settlement Agreement resolves all issues pending on appeal between the Plaintiffs and Defendants 1250 Oceanside, a Hawai'i

limited partnership. The issues that will remain on appeal involve the Plaintiffs and the State Department of Health and County of Hawai'i.

6. The Court also finds that vacating portions of the Third Amended Final Judgment, and the Orders which it incorporates, is appropriate given the new evidence on stipulated facts submitted by the Plaintiffs. The Court has independently determined from the new evidence that the affirmative defense of laches prevents Plaintiffs from pursuing portions of Count IV of their Fifth Amended Complaint.

7. The components of laches are well established, *see Adair*, 64 Haw. at 320, 640 P.2d at 300 (1982), citing *W. McClintock*, EQUITY § 528 at 71 (2ed. 1948).

8. Plaintiffs have now acknowledged, in the form of a judicial admission, imputed knowledge of the planned dwelling/agricultural lot use of the property no later than 1995.

9. The validity and sufficiency of Oceanside's entitlements was first challenged in these proceedings in the Second Amended Complaint, filed in December of 2000.

10. Whether a claim is barred by the doctrine of laches is determined by the particular circumstances of each case. *Small v. Badenhop*, 67 Haw. at 640.

11. In light of the new Stipulated Facts provided to the Court, the Court concludes that the elements of laches are now present in this case, barring the challenge to Hokuli'a based upon its alleged failure to comply with the provisions of Hawai'i Rev. Stat. Chapter 205.

12. This Court does not vacate its Judgment lightly. A court may vacate a

judgment “whenever that action is appropriate to accomplish justice.” *In Re Hana Ranch Co.*, 3 Haw.App. 141, 642 P.2d 938 (1982). However, based on the findings of facts and conclusion of law set forth above, the Court finds that justice will best be served by vacating portions of the Third Amended Final Judgment entered August 27, 2004.

ORDER

1. **IT IS HEREBY ORDERED** that the Joint Rule 60(b) Motion to Partially Vacate Third Amended Final Judgment Dated August 27, 2004 is **GRANTED**.

2. **IT IS FURTHER ORDERED** that, pursuant to Rules 60(b)(5) and (6) of the Hawai'i Rules of Civil Procedure, portions of the Court's Third Amended Final Judgment dated August 27, 2004, and portions of the Orders incorporated therein, are hereby vacated, insofar as they relate to Count IV of the Fifth Amended Complaint.¹ In

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The Court hereby vacates the following Orders (including findings of fact, conclusions of law and orders) all of which deal with land use issues, except that the Court does not vacate those portions of the following Orders which address whether the County approval of the Members Lodge constituted “spot zoning” (the spot zoning findings, conclusions and orders are to remain unchanged):

a. “Order Granting in Part and Denying in Part Plaintiff’s Motion for Partial Summary Judgment Re: HRS Chapter 205 [Count IV in the Fifth Amended Complaint] Filed October 12, 2001,” filed April 5, 2002, (as supplemented by “Order Denying Defendant 1250 Oceanside Partners’ Motion for Reconsideration of Order Granting in Part and Denying in Part Plaintiffs’ Motion for Partial Summary Judgment Re: HRS Chapter 205 [Count IV in the Fifth Amended Complaint] Filed October 12, 2001” and “Order Denying Defendant 1250 Oceanside Partners’ Motion to Dismiss or in the Alternative for Partial Summary Judgment on Count IV of the Third Amended Complaint [Count IV of the Fifth Amended Complaint]” filed October 1, 2002.

b. “Order Denying Defendant 1250 Oceanside Partners’ Motion to Dismiss or in the Alternative for Partial Summary Judgment on Count IV of the Third Amended Complaint [Count IV of the Fifth Amended Complaint] Filed October 12, 2001,” filed April 5, 2002.

c. “Order Denying Defendants Christopher Yuen, in his official capacity as the Planning Director for the County of Hawaii, Dennis Lee in his capacity as the Chief Engineer, County of Hawaii, and County of Hawaii’s Motion for Summary Judgment as to Count IV [Count IV of the Fifth Amended Complaint] Filed October 12, 2001; Order Denying Defendant 1250 Oceanside Partners’ Joinder in Defendants Christopher Yuen, in his official capacity

as the Planning Director for the County of Hawaii, Dennis Lee in his capacity as the Chief Engineer, County of Hawaii, and County of Hawaii's Motion for Summary Judgment as to Count IV [Count IV of the Fifth Amended Complaint] Filed October 23, 2001," filed on April 5, 2002.

d. "Order Denying Defendants Christopher Yuen, in his official capacity as the Planning Director for the County of Hawaii, Dennis Lee in his capacity as the Chief Engineer, County of Hawaii, and County of Hawaii's Motion to Reconsider Order Granting in Part and Denying in Part Plaintiff's Motion for Partial Summary Judgment re: HRS Chapter 205 [Count IV in the Fifth Amended Complaint] Filed October 12, 2001 Filed April 15, 2002; Order Denying Defendant 1250 Oceanside Partners' Joinder in Defendants Christopher Yuen, in his Official Capacity as the Planning Director for the County of Hawaii, Dennis Lee in his Capacity as the Chief Engineer, County of Hawaii, and County of Hawaii's Motion To Reconsider Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment re; HRS Chapter 205 Filed October 12, 2001, Filed April 22, 2002," filed on October 1, 2002.

e. "Order Granting in Part and Denying in Part Plaintiff Protect Keopuka Ohana's Motion for Partial Summary Judgment re Equitable Estoppel Defense and Vested Rights Claim Filed September 12, 2002," filed on April 29, 2003;

f. "Findings of Fact; Conclusions of Law; Order Regarding Trial on Count IV of the Fifth Amended Complaint," filed on September 9, 2003 (amended by "Amended Findings of Fact; Conclusions of Law; Order Regarding Trial on Count IV of the Fifth Amended Complaint," filed on October 22, 2003).

g. "Order Denying Defendant 1250 Oceanside Partners' Rule 59 Motion Regarding Amended Findings of Fact, Conclusions of Law, Order Regarding Trial on Count IV of the Fifth Amended Complaint Entered October 22, 2003," filed on December 2, 2003.

h. "Order Denying Defendant 1250 Oceanside Partners' Motion to Modify Amended Findings of Fact, Conclusions of Law, Order Regarding Trial on Count IV of the Fifth Amended Complaint Filed October 22, 2003", filed on December 2, 2003.

i. "Order Denying Defendant 1250 Oceanside Partners' Second Motion to Clarify, Alter, Amend and/or Obtain Relief From Amended Findings of Fact, Conclusions of Law, Order Regarding Trial on Count IV of the Fifth Amended Complaint filed October 22, 2003," filed on December 22, 2003.

j. "Order Granting in Part Defendants County of Hawaii, Christopher Yuen In His Official Capacity As Planning Director For the County of Hawaii, and Dennis Lee, In His Official Capacity As the Chief Engineer, County of Hawaii's Motion to Alter or Amend and/or to Correct or Obtain Relief From the Amended Final Judgment Filed January 21, 2004," filed April 30, 2004.

k. "Order Granting in Part Defendant 1250 Oceanside Partners' Motion to Modify, Amend or Clarify Amended Final Judgment Filed January 21, 2004," filed April 30, 2004.

l. "Order Granting in Part and Denying in Part Defendant 1250 Oceanside Partners' Motion for Relief From Amended Final Judgment Filed January 21, 2004," filed July 26, 2004.

m. "Order Denying Defendants County of Hawaii, Christopher Yuen, In His Official Capacity As the Planning Director For the County Of Hawaii, Dennis Lee, In His Official Capacity As the Chief Engineer, County of Hawai'i's Motion To Amend Findings, For New Trial, Or For Relief From Third Amended Judgment Filed August

place of such Orders and such provisions in the Third Amended Final Judgment, the Court is entering a Fourth Amended Final Judgment, changing the Third Amended Final Judgment only as needed for consistency with this order.

DATED: Kealahou, Hawaii _____

JUDGE OF THE ABOVE-ENTITLED COURT

27, 2004.