

FILED

GOODSILL ANDERSON QUINN & STIFEL
A Limited Liability Law Partnership LLP
RUSSELL S. KATO 2495-0
LISA WOODS MUNGER 3858-0
LISA A. BAIL 6021-0
CHRISTINE A. TERADA 10004-0
First Hawaiian Center, Suite 1600
999 Bishop Street
Honolulu, Hawai'i 96813
Telephone: (808) 547-5600
Facsimile: (808) 547-5880

2017 MAY -4 PM 2:00

5TH CIRCUIT COURT
STATE OF HAWAII

CLERK CHRISTINE MARTINEZ

Attorneys for Plaintiffs
KAWAIILOA DEVELOPMENT LLP

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

KAWAIILOA DEVELOPMENT LLP, a
Hawai'i limited liability partnership,

Plaintiff,

vs.

HAWAII DAIRY FARMS, LLC, a foreign
limited liability company; and STATE OF
HAWAII DEPARTMENT OF HEALTH,

Defendant.

CIVIL NO. 14-1-0141 JRV
(Declaratory and Injunctive Relief)

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AS
TO COUNTS I AND II OF THE FIRST
AMENDED COMPLAINT FOR
DECLARATORY, INJUNCTIVE AND
OTHER RELIEF

HEARING

Date: March 21, 2017

Time: 1:00 p.m.

Judge: Hon. Randal G.B. Valenciano

No Trial Date Set

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AS TO COUNTS I AND II OF THE FIRST AMENDED COMPLAINT
FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF**

Plaintiff's Motion for Summary Judgment as to Counts I and II of the First

Amended Complaint for Declaratory, Injunctive and Other Relief, filed *ex officio* herein on

January 31, 2017 (hereinafter the "Motion"), came on for hearing before the Honorable Randal

Valenciano on March 21, 2017 at 1:00 p.m. Lisa Woods Munger and Lisa A. Bail appeared on

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

Clerk, Circuit Court, Fifth Circuit

behalf of Plaintiff Kawaioloa Development LLP (“Plaintiff”); Kendall J. Moser appeared on behalf of Defendant State of Hawai‘i Department of Health; and Michael C. Heihre and Patricia J. McHenry appeared on behalf of Defendant Hawai‘i Dairy Farms, LLC (“Hawai‘i Dairy Farms”).

Having reviewed and considered the Motion, the written submissions by the parties, oral argument of counsel, and based upon the records and files herein, the Court finds and concludes as follows:

1. The Court interprets the laws to give them effect. Repeal by implication is not favored. *Malama Maha‘ulepu v. Land Use Commission*, 71 Haw. 332, 337, 790 P.2d 906, 909 (1990).

2. Plaintiff has standing to require compliance with the law.

3. A wastewater treatment unit is being constructed as part of Hawai‘i Dairy Farms’ proposed dairy and such wastewater treatment unit triggers Hawai‘i Revised Statutes (“HRS”) Chapter 343. The definition of wastewater treatment unit applied by the Court is consistent with the Hawaii Administrative Rule which defines wastewater to include agricultural wastewater.

4. None of the exceptions in HRS § 343-5.5 apply, and Defendants must follow the environmental review process as laid out in Chapter 343.

5. If the legislature intended to create an exemption for agricultural activities in Chapter 343, it could have done so, but it did not. The Court will not create an exemption where one is clearly not articulated in the statute.

6. In *Citizens for the Protection of North Kohala Coastline v. County of Hawaii*, 91 Haw. 94, 979 P.2d 1120 (1999) (“*Citizens*”), the Hawai‘i Supreme Court addressed the need for decision-makers to have environmental information before decisions are made. In

this case, approvals were granted to Hawai'i Dairy Farms before a final Environmental Impact Statement ("EIS") was accepted. That is, decisions were made before information from the environmental review process was made available. That is not the ideal way for decisions to be made. The way to assure that appropriate decisions are made is to arm decision-makers with available information. Hiding or not providing information puts decision-makers in a tough situation. The ideal situation is to provide as much information as possible so decision-makers can make appropriate decisions.

7. The Hawai'i Supreme Court has held that environmental review must be conducted at the earliest practicable time to alert decision-makers to issues and give them an opportunity to consider available information when making decisions. The EIS cannot be done while decisions are being made; it must be completed before decisions are made. An EIS prepared after decisions are made is a post hoc rationalization, does not provide information to decision-makers, and is not preferred, according to the Hawai'i Supreme Court.

8. The dairy's additional permits will require discretionary approval.

9. Since Hawai'i Dairy Farms has already obtained approvals without completing the environmental review process, the Court revokes all prior approvals. New approvals can be issued at a later time, but information must be provided to the agencies before they make decisions. All approvals shall take the EIS into account, consistent with *Citizens*.

11. There are no genuine disputes as to any material facts and Plaintiff is therefore entitled to judgment as a matter of law.

Based on the foregoing, IT IS HEREBY ORDERED DECLARED AND DECREED that as to Counts I and II of the first amended complaint:

(1) Plaintiff's motion for summary judgment is granted;

(2) The environmental review process triggered by Hawai'i Revised Statutes ("HRS") Chapter 343 must be completed before any approvals are issued to Hawai'i Dairy Farms for its proposed dairy;

(3) All prior approvals issued to or already obtained by Hawai'i Dairy Farms for its proposed dairy are revoked;

(4) Plaintiff's motion for summary judgment is denied to the extent that the Plaintiff has prayed for an injunction. **MAY - 3 2017**

DATED: _____

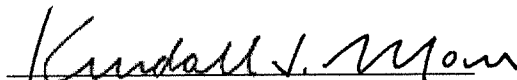


JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

C. MICHAEL HEIHRE
PATRICIA J. McHENRY

Attorneys for Defendant
HAWAI'I DAIRY FARMS, LLC


KENDALL J. MOSER

Attorney for Defendant
STATE OF HAWAI'I DEPARTMENT OF HEALTH

In the Circuit Court of the Fifth Circuit, State of Hawaii
KAWAILOA DEVELOPMENT LLP vs. HAWAI'I DAIRY FARMS, LLC, ET AL.
Civil No. 14-1-0141 JRV

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTS I AND II OF THE FIRST AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF