

Sydney Ross Singer
P.O. Box 1880
Pahoa, Hawaii 96778
808-935-5563
Plaintiff, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

SYDNEY ROSS SINGER

Plaintiff,

vs.

MALAMA O PUNA;
DEPARTMENT OF LAND AND
NATURAL RESOURCES
OFFICE OF CONSERVATION
AND COASTAL LANDS
(DLNR/OCCL); COUNTY OF
HAWAII; BIG ISLAND
INVASIVE SPECIES
COMMITTEE; HAWAII
TOURISM AUTHORITY; DOE
CORPORATIONS 1-100; DOE
PARTNERSHIPS 1-100; DOE
ENTITIES 1-100; DOE
INDIVIDUALS 1-100

Defendants.

) CIVIL NO. 10-1-0036

(Other Civil Action)

)

(REMANDED FROM U.S.
DISTRICT COURT ON 4/26/2010
CIVIL NUMBER 10-00153 JSM-
KSC)

)

)

PLAINTIFF'S MOTION FOR
SUMMARY JUDGEMENT AND
INJUNCTIVE RELIEF;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF
SYDNEY ROSS SINGER;
EXHIBITS "A"- "Z"; NOTICE OF
HEARING; CERTIFICATE OF
SERVICE

)

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(NO TRIAL DATE SET)

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Hearing: July 7, 2010

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Time: 8:00 AM

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JUDGE: HON. GLEN S. HARA

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PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

AND INJUNCTIVE RELIEF

Pursuant to Rule 56(a) AND 65(d) H.C.R.P., Plaintiff Sydney Ross Singer moves this Court for an order that grants summary judgment and injunctive relief in favor of the Plaintiff's claims asserted in his amended complaint filed February 16, 2010.

This motion is based on the attached memorandum, declaration, exhibits, and the records of the files herein.

DATED: Hilo, Hawaii, May 11, 2010.

SYDNEY ROSS SINGER

PLAINTIFF, PRO SE

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MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
) JUDGMENT AND INJUNCTIVE
RELIEF

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TABLE OF CONTENTS

	Page
1. INTRODUCTION.....	7
2. BACKGROUND.....	9
3. THE SITES.....	12
4. ARGUMENTS.....	13
A. HEPA VIOLATION.....	13
1. Numerous EA Triggers.....	13
2. EA or EA Exemption Letter Required.....	14
3. DLNR Failure to do EA or Issue EA Exemption Letter.....	15
4. Time Limit for HEPA Challenge.....	15
5. EA Required for Environmentally Sensitive Areas.....	15
6. Numerous Significant Effects Require EA.....	16
B. DLNR VIOLATIONS.....	18
1. No EA or EA Exemption Letter.....	19
2. CDUPO Should Have Been Required.....	19
3. EA Process Required Despite CDUP Determination.....	20

C. COUNTY OF HAWAII VIOLATIONS.....	21
1. EA Exemption Invalid.....	21
2. SMA Major Permit Required.....	22
D. MALAMA O PUNA VIOLATIONS.....	23
1. Responsibility for EA.....	23
2. Falsification of Information on SMA minor Permit.....	24
3. Noncompliance with DOH and DLNR requirements.....	27
4. SMA Permits Not Valid.....	27
5. Need to Remove Trees.....	28
6. Pesticide Not Labeled for Mangroves or Marine Areas.....	29
7. This Eradication Using Poisons is Experimental.....	29
8. Endangered Species Act Violation.....	30
E. HAWAII TOURISM AUTHORITY VIOLATIONS.....	31
F. BIG ISLAND INVASIVE SPECIES COMMITTEE VIOLATIONS...	32
5. SUMMARY.....	33
A. HEPA VIOLATION.....	33
B. PUBLIC TRUST DOCTRINE AND THE PRECAUTIONARY PRINCIPLE.....	33
6. INJUNCTIVE RELIEF.....	35

TABLE OF AUTHORITIES

'Ohana Pale Ke Ao v. Board of Agriculture,

118 Hawaii 247 (Hawaii App. 2008).....21

Sierra Club v. Department of Transportation,

115 Hawaii 299, 307-08, 167 P.3d 292, 300-01 (2007).....21

Nat'l Cotton Council of Am. v. EPA, 553 F.3d 927, 931 (6th Cir. 2009).....30

Hawaii Supreme Court 2003 Waiahole Ditch Decision (Water Use Permit

Applications, 94 Hawaii 97; 9 P.3d 409, 2000).....34

STATUTES

Hawaii Revised Statute (HRS) 343.....7,9,14-16,19-22,24,27,28,32,33

HRS 205A-41.....13-15

HRS 152.....20

HRS 149A-31(1)B.....30

HRS 195D.....32

HRS 429.....33

HRS 634-30.....33

Hawaii Administrative Rules (HAR) Chapter 11-200 ...7,9,14-17,22,23,33

HAR 13-5.....19,20

HAR 4-68, subtitle 6.....20

HAR 15-150-11(5).....23

HAR 11-54-1.1.....28

Hawaii Constitution Art. XI, Section 9.....11

Hawaii Constitution Art. XI, Section 1.....34

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND
INJUNCTIVE RELIEF

1. INTRODUCTION

Plaintiff Sydney Ross Singer, a resident of the State of Hawaii, has brought this citizen suit to stop the illegal poisoning of acres of State owned, shoreline, conservation lands because: There was *no Environmental Assessment or Environmental Impact Statement* for this poisoning, in violation of the Hawaii Environmental Policy Act (HEPA), HRS 343 and HAR 11-200 and no public comments were allowed prior to implementation of this poisoning project. Had all of the required environmental studies been carried out with the appropriate forums for public input and participation, there would have been the opportunity to address the following additional legal arguments:

- 1) This poisoning is being done as part of a mangrove eradication project to kill all mangroves on the Big Island based on the rationale that "mangroves are a noxious weed", yet there is no legal justification for that rationale;
- 2) The use of poison to kill mangroves degrades water quality and is a *public health threat*, and no signage has been posted warning the public that the areas has been poisoned. The use of poison to kill mangrove trees is an admitted *experiment*, constituting "original research";
- 3) The poison used, an herbicide called Habitat, *is not labeled for use on mangroves and is prohibited for use in marine and estuarine areas*;
- 4) *Endangered species* are known to live in the areas being poisoned and are threatened by this use of poison and loss of mangrove habitat. If the appropriate environmental studies were conducted the fact that

fish counts are significantly lower since the poisoning would be addressed;

- 5) The mangroves being poisoned are not being removed from the area and *are being left in place to rot*, creating a blighted landscape, a public nuisance, and water quality degradation (there is no clean-up plan for the now toxic dead plants);
- 6) There are numerous governmental agencies that have partnered in this project and have allowed it to proceed *without statutorily required permits*, such as a Conservation District Use Permit and SMA Major permit. Areas being poisoned are within the conservation zoning district which is supposed to be receive the highest level of scrutiny before permits are issued. There was no other way to stop this poisoning than to bring suit in this Court.
- 7) Plaintiff frequently uses these shoreline areas and beaches and is being *irreparably and irrevocably harmed* by this environmental destruction that has denied Plaintiff full use and enjoyment of these areas, and by this violation of his right to comment on an environmental assessment, and by this violation of Plaintiff's Constitutional right to a healthy environment;
- 8) There has been violation of the Hawaii Constitution's Public Trust Doctrine, Hawai`i Constitution, Article XI, Section 1, as implemented by the "precautionary principle"; in other words, when the science is uncertain, government agencies should err on the side of conservation, and the party seeking to impact the natural resource has the burden of proving the lack of adverse impact. Injunctive relief to stop this project, to require an environmental assessment, and an environmental impact statement if needed, and, if appropriate, to remove the dead trees, will serve the public interest and the environment.

For these reasons, Plaintiff is entitled to summary judgment on his First Amended Complaint filed on February 18, 2010 because of violations of the Hawaii Environmental Policy Act (HEPA), Hawaii Rev. Stat. §§343 and Hawaii Administrative Rules (HAR) Chapter 11-200, relating to Hawaii's environmental protection laws. Plaintiff therefore asks for summary judgment in favor of Plaintiff's amended complaint and injunctive relief to stop this eradication project until an environmental assessment or environmental impact statement is done, to have the poisoned, dead mangroves removed from the shoreline areas, and any other relief as the court may deem just and equitable under the circumstances.

2. BACKGROUND

Mangroves serve a vital role in the ecology of shoreline ecosystems throughout the world. They serve as fish nurseries, clean the water, protect the shoreline from tsunamis and storm surge, protect the coral reefs from runoff and sedimentation, and provide organic matter as part of the food chain.

Research shows that the more mangroves there are, the lower the water turbidity, and the cleaner the water. This information directly contradicts MOP's negative characterization of mangroves as causing turbidity and water quality degradation.

In an article entitled, *Mangroves as alien species: the case of Hawaii*, by James A. Allen, USDA Forest Service, Institute of Pacific Islands Forestry. He explains the beneficial services provided by mangroves to the Hawaiian environment. The article states, "*Mangroves are playing some of the same roles in Hawaii for which they are valued in their native habitats, such as sediment retention, water quality improvement, and the production and export of organic matter. They may also be providing shoreline protection and other important goods and services.*"

It further states, "Mangroves appear to have a generally positive influence

on water quality in Hawaii. Sediment retention, for example, can be quite high in Hawaiian mangroves, and may contribute to improving the quality of offshore waters...On Molokai, turbidity was lower on coral reefs adjacent to mangroves than on reefs with no adjacent mangroves and a negative relationship was found between mangrove basal area and turbidity of adjacent waters (Bigelow et al., 1989). The authors attributed these patterns to effective sediment retention by mangroves. In addition to an apparent role in reducing suspended sediments, Walsh (1967) reported that the high nitrate and phosphate levels in Heeia Stream were reduced significantly in the upper reaches of the swamp, indicating that the mangroves may be serving as a sink for these nutrients.” (Global Ecology and Biogeography Letters (1998) 7, 61-71.)

Mangroves are under attack here in Hawaii because they are non-native and are altering the shoreline ecosystems where they grow.

However, the purpose of this case is not to settle the controversy of whether mangroves should or should not be eradicated from the Big Island.

It is about whether this eradication, which is being done as a poisoning experiment on public shoreline conservation lands, can be done without an environmental assessment, without any public comment, in violation environmental protection laws, and in violation of Plaintiff's and public's Constitutional Environmental Rights.¹

The poisoning of the mangroves is being done by Malama o Puna (MOP), a non-profit entity, in association with its partner, the Big Island Invasive Species Committee (BIISC). BIISC is an unincorporated association consisting of private and governmental members, including Defendants County of Hawaii and DLNR

1 According to Article XI, “ENVIRONMENTAL RIGHTS **Section 9**. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law. [Add Const Con 1978 and election Nov 7, 1978]”

OCCL.

According to the April 21, 2005 meeting minutes of BIISC, attached as EXHIBIT "N", Malama o Puna has been actively involved in killing mangroves on the Big Island, removing 10,000 mangrove plants by 2005 from tide pools at Wai Opae. This was done manually, and without any permits.

In 2008, MOP began eradication of mangroves with the use of herbicides at Wai Opae with funding from the Hawaii Tourism Authority (Contract No. BT 08-32) and the National Fish and Wildlife Foundation (Hawaii Coastal Restoration Fund, Wai Opae Invasive Mangrove Eradication, Contract No. 2005-0324-006).

In an application to the U.S. Fish and Wildlife Foundation, Ann Kobsa of MOP stated, ***"This will be the first herbicide-based eradication effort of red mangrove that will have been attempted anywhere, to our knowledge, and as such, will be reportable as original research."*** See attached EXHIBIT "T".

According to MOP, the purpose for using this herbicide was to reduce the cost of mangrove removal. Instead of manual removal of the trees, this experiment was to simply poison the trees and leave them in place to rot, thereby obviating the need and cost for removal. As stated in MOP's National Fish and Wildlife Foundation Application for Hawaii Coastal Restoration Funds, "Costs of other eradication efforts that utilize heavy machinery or manual labor were reported at \$108,000 and \$377,000 per ha., respectively, and the DLNR spent \$40,000 on just 0.5 ha. We were aware of no eradication efforts that have employed herbicide. One study on Garlon-4 showed good control (Smith, *et al*, no date), but this herbicide is not approved for coastal use. Our current efforts are aimed at determining the most effective methodologies for killing the mangroves using shoreline-approved systemic herbicides and manual techniques. These methodologies will be worked out by early 2008." See attached EXHIBIT "T".

On their website, MOP states, "Elsewhere non-herbicidal eradication of red mangrove has been very expensive, costing between \$32,000 and \$125,000 per acre. We hope to offer a much more economical alternative that will allow extirpation of mangrove infestations in many more coastal areas."

The herbicide used is a BASF product, Habitat. The EPA label for this

product, which determines its legal use, does not include its use on mangroves. In addition, while in the past this herbicide had been labeled for use in marine areas, as of **August 25, 2009, the label for Habitat explicitly excludes its use in marine areas.** See attached EXHIBIT P and attached EXHIBIT “I” for label that was to be amended.

According to the USFS, which has been conducting post-poisoning fish counts at Wai Opae, results show a dramatic reduction in fish numbers, with native species suffering greater losses of numbers than non-native species. See attached EXHIBIT “D”.

After the Wai Opae poisoning, MOP approached the USFWS and the USFWS proposed a collaboration of MOP and BIISC in the eradication of the other mangrove sites on the island. Kobsa Decl. at § 18. The USFWS suggested that MOP contribute its experience developed at Wai Opae, and BIISC contribute the field crew. *Id.* The USFWS offered to fund the project. MOP and USFWS entered into FWS Agreement No. 122009G013 for \$50,000. MOP Ex. “11”. As a result there are four new sites where mangrove eradication is underway or planned to occur. Kobsa Decl. § 18.

3. THE SITES

The **Paki Bay** eradication site, TMK (3) 1-6-001:3, includes coastal land, which is owned by the State. Portions of Paki Bay are also located within the shoreline area, as defined by HRS § 205A-41. See attached EXHIBIT “B”.

The **Pohoiki** eradication site, TMK's (3) 1-4-002:7, (3) 1-4-002:8, (3) 1-3-008:16, (3) 1-3-008:33, and (3) 1-4-002:9, includes conservation land; land owned by the County of Hawaii; coastal land, which is owned by the State; and is located within the shoreline area, as defined by HRS § 205A-41. See EXHIBIT “A”.

The **Onekahakaha** eradication site, TMK (3) 2-1-14:13 and 35, includes conservation land; land owned by the County of Hawaii; coastal land, which is owned by the State; and is located within the shoreline area, as defined by HRS § 205A-41. See EXHIBIT “A”.

The **Honokohau** site, TMK (3) 7-4-008:71, is located on State land, and is conservation land. It is also an historic site. See EXHIBIT “C”.

MOP obtained a Right of Entry for the Paki Bay, Pohoiki, and Onekahakaha sites from the DLNR on July 8, 2009. The DLNR OCCL did not require a Conservation District Use Permit, and did not require an environmental assessment and did not issue an EA exemption letter.

The USFWS issued a retroactive categorical exclusion from an environmental assessment on January 26, 2010 for this project, several months after this project began. See attached EXHIBIT “M”.

The County of Hawaii issued an environmental assessment exemption letter for work on county land at Onekahakaha and Pohoiki on August 8, 2009. However, at both of these locations there is state owned conservation and shoreline land, as well, requiring an EA or EA exemption letter from the state.

The County issued an SMA minor permit on May 30, 2009 for Paki Bay, on August 26, 2009 for Onekahakaha, and on September 24, 2009 for Pohoiki. See EXHIBIT “U”.

On November 2, 2009, the USFWS approved advanced funding under this contract for mangrove eradication. See attached EXHIBIT “O”. Work began thereafter at Paki Bay. Eradication of mangroves at Pohoiki began on or around the last week of December. See attached Declaration of Sydney Ross Singer. Work at Onekahakaha and Honokohau have not yet begun, as of this date. Id.

4. ARGUMENTS

A. HEPA VIOLATION

1. Numerous EA Triggers

The Hawaii Environmental Policy Act, HRS 343 and HAR 11-200, requires that environmental assessments (EA) and environmental impact statements (EIS) be prepared for actions that meet certain criteria. According to HRS 343-5

“(a) Except as otherwise provided, an environmental assessment shall be required for actions that

(1) Propose the use of state of county lands or the use of state of

county funds...

- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined by section 205A-41;
- (4) Propose any use within an historic site;

In addition, HAR 11-200-6(b) states,

“Chapter 343, HRS, establishes certain categories of action which require the agency processing an applicant's request for approval to prepare an environmental assessment. There are seven geographical categories and two administrative categories. (1) The seven geographical categories are: (A) The use of state or county lands; (B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS; (C) Any use within the shoreline area as defined in section 205A-41, HRS; (D) Any use within any historic site as designated in the national register of Hawaii register;...”

It is clear that there are numerous EA triggers under HRS 343 that apply to this eradication project. These are the use of state lands, county lands, conservation lands, shoreline lands, and at an historic site (Honokohau, which is a within Kaloko-Honokohau National Historic Park).

2. EA or EA Exemption Letter Required

Because of these triggers an EA for these projects should have been done, or there should have been issued an exemption letter explaining why an EA is not required. According to HAR 11-200-8(e), “Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in chapter 343, HRS, and each agency shall produce the records for review upon request.”

3. DLNR Failure to do EA or Issue EA Exemption Letter

No EA or exemption letter was issued by the DLNR OCCL, which has jurisdiction over conservation and shoreline lands. See attached EXHIBIT “R”, an admission by Sam Lemmo, Director of the DLNR OCCL, that there is no EA exemption letter for any of the sites where mangroves are being eradicated.

4. Time Limit for HEPA Challenges

HEPA lawsuits challenging the failure to prepare an EA are subject to a 120-day limitations period: (a) Any judicial proceeding, the subject of which is a lack of assessment required under section 343-5, shall be initiated within 120-days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within 120-days after the proposed action is started. The council or office, any agency responsible for approval of the action, or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved.” HRS 343-7(a) emphasis added.

Since there was no EA or formal determination by the DLNR that a statement is not required (EA exemption letter), Plaintiff must pursue judicial proceedings within 120-days of the start of the action.

These eradication projects were not funded until November 2, 2009, and poisoning at Paki Bay began in November, 2009 after funding was received. Therefore, Plaintiff needed to start judicial proceedings prior to March 1, 2010. Plaintiff filed original complaint on February 8, 2010, and was therefore within the time limit for initiating judicial proceedings under HRS 343.

Plaintiff's complaint therefore falls within the time limit for HRS 343.

5. EA Required for Environmentally Sensitive Areas

This mangrove eradication project should not have been exempted from an EA. Under HAR 11-200-8(b), “All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.” Emphasis added.

According to HAR 11-200-12(b),

“In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short-term and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it: (11) Affects or is likely to suffer damage by being located in an environmentally sensitive area, such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;...” Emphasis added.

From this it follows that this eradication project, which is along shoreline, tsunami zone, flood plain, erosion-prone areas, and coastal waters is being done is a particularly sensitive environment. In addition, MOP admits that this eradication project is being done in sensitive environmental areas. See Defendant MOP's Answer to Amended Complaint and Petition for Preliminary Injunction, §12.

Since this eradication is being done in a particularly sensitive environment, exemptions to an EA are inapplicable. An EA should have been prepared by the state and county.

6. Numerous Significant Effects Require EA

As a result of no EA having been done, the significance of potential environmental effects of the eradication of mangroves using poison and leaving them in place to rot was never addressed, but should have been. Again, referring to HAR 11-200-12(b),

“...In most instances, an action shall be determined to have a significant effect on the environment if it: (1) Involves an irrecoverable commitment to loss or

destruction of any natural or cultural resource; (2) Curtails the range of beneficial uses of the environment; (5) Substantially affects public health; (7) Involves a substantial degradation of environmental quality; (9) Substantially affects a rare, threatened, or endangered species, or its habitat; (10) Detrimentally affects air or water quality or ambient noise levels.”

As to item (1), “*Involves an irrecoverable commitment to loss or destruction of any natural or cultural resource*”, despite the fact that the mangroves in Hawaii were introduced, they are a natural resource. Eradication of mangroves is a irrevocable commitment to loss and destruction of this natural resource.

As to item (2), “*Curtails the range of beneficial uses of the environment*”, Plaintiff wishes to quote the article entitled, *Mangroves as alien species: the case of Hawaii*, by James A. Allen, USDA Forest Service, Institute of Pacific Islands Forestry. “The likely continued presence of mangroves in Hawaii may provide useful opportunities for ecologists. The presence of mangroves on tropical coastlines where they did not previously occur, for example, provides an opportunity to take a new perspective on their functional roles within tropical coastal ecosystems such a by comparing nearshore fisheries in areas with and without mangroves. It also provides an opportunity to examine the development of new ecosystems with rare or unique species interactions.” (Global Ecology and Biogeography Letters (1998) 7, p. 69)

As for item (5), “*Substantially affects public health*”, the use of a poison creates water quality changes from decaying plant matter, and can result in fish die-offs, as described in the label for Habitat, the poison used. In addition, pieces of dead mangroves entering the surf and ocean pose a risk to human safety. There is also the risk to children and others playing among the dead mangroves. According to MOP's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction, page 37(E), mangrove prop roots that are decaying pose a threat to those who walk on them, as they can break under one's weight. It is clear leaving dead trees creates a public nuisance.

As for item (7), “*Involves a substantial degradation of environmental quality*”, environmental quality has been significantly degraded by this use of poison and

leaving the dead trees to rot in place. See attached EXHIBIT “S”, which is a picture taken by Plaintiff of unpoisoned mangroves at Onekahakaha compared to a picture of Wai Opae where 20 acres of mangroves were poisoned.

As for item (9), “*Substantially affects a rare, threatened, or endangered species, or its habitat*”, there are endangered species that live among the mangrove areas. The presence of two nominated endangered arthropods at Honokohau, and numerous other endangered species of birds, monk seals, and sea turtles that live in or near all the areas being poisoned, suggests that the destruction of these mangrove areas may significantly adversely impact these species. In fact, the National Park Service has opposed the use of poisons at Honokohau because of its potential impact on aquatic species. See attached EXHIBIT “G”.

As for item (10), “*Detrimentially affects air or water quality or ambient noise levels*”, water quality changes were apparent with the presence of a brown scum on the surface of the water in areas following poisoning. See attached EXHIBITS “J” and “F”. In addition, the label for the poison, Habitat, warns of water quality degradation following rapid defoliation of poisoned trees and the resulting decomposition of dead leaf matter. The Hawaii Department of Health also expressed water quality degradation concerns, and asked for a anti-degradation policy to be submitted by MOP, which was never done. See attached EXHIBIT “L”.

Given the above, there are clearly significant effects from this mangrove eradication project. However, since there was no EA, these effects were not addressed, and alternatives and mitigation measures were not discussed. The public was not provided its statutory and procedural rights under HRS 343 to comment or challenge this project.

B. DLNR VIOLATIONS

State shoreline and conservation lands are within the jurisdiction of the DLNR OCCL. HAR 13-5 et seq. The DLNR OCCL is responsible for reviewing projects within its jurisdiction for the need for a Conservation District Use Permit (CDUP) and for an EA.

1. No EA or EA Exemption Letter

No EA or exemption letter was issued by the DLNR OCCL, which has jurisdiction over conservation and shoreline lands. See attached EXHIBIT “R”, an admission by Sam Lemmo, Director of the DLNR OCCL, that there is no EA exemption letter for any of the sites where mangroves are being eradicated.

2. CDUP Should Have Been Required

The DLNR OCCL exempted this project from the need for a Conservation District Use Permit (CDUP) based on HAR 13-5-22, Identified Land Uses in the Protective Subzone, P4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS, (A-I), “Removal of noxious plants for maintenance purposes without the use of power tools that does not result in significant ground disturbance, (e.g., weeding). Noxious plants are defined in Chapter 152 HRS, and chapter 4-68, subtitle 6.”

According to HRS 152-1, ““Noxious weed” means any plant species which is, or which may be likely to become, injurious, harmful, or deleterious to the agricultural, horticultural, aquacultural, or livestock industry of the State and to forest and recreational areas and conservation districts of the State, as determined and designated by the department from time to time.”

“Department” means the department of agriculture. HRS 152-1.

However, according to Chapter 4-68, subtitle 6, the Hawaii Department of Agriculture's Noxious Weed List, the mangrove is not listed as a noxious weed. See EXHIBIT “Q”.

Since mangroves are not listed as a noxious weed, the CDUP exemption “P4 LANDSCAPING, REMOVAL OF NOXIOUS PLANTS” is not valid.

The category of activity which the DLNR OCCL should have used is P-12, Tree Removal. This would have required a CDUP for, “Removal of not more than five trees or more than five trees less than six inches in diameter measured at ground level”, and would have required a board approval for, “Removal of more than five trees, six inches or greater in diameter measured at ground level.” See

3. EA Process Required Despite CDUP Determination

If a CDUP is required, an EA is required. However, if a CDUP is not required, an EA or EA exemption letter is still required.

HRS 343-5 states in relevant part:

“Applicability and requirements. (a) Except as otherwise provided, an environmental assessment shall be required for actions that: (1) *Propose the use of state of county lands...*(2) *Propose any use within any land classified as a conservation district...*(3) *Propose any use within a shoreline area...*(4) *Propose any use within any historic site...*

...

(c) *Whenever an applicant proposes an action specified by subsection (a) that requires the approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. The final approving agency for the request for approval is not required to be the accepting authority.”* (Emphasis added.)

The foregoing statute unequivocally requires preparation of an EA for any “action” that proposed the use of state or county land, conservation land, shoreline, or historic sites. “Action” is defined as “any program or project to be initiated by any agency or applicant.” HRS 343-2 Pursuant to HRS 343-2, an agency is any department, office, board, or commission of the state or county government which is a part of the executive branch of that government”. “Applicant” is defined as “any person who, pursuant to statute, ordinance, or rule, officially requests approval for proposed action.” HRS 343-2 The DLNR OCCL and County of Hawaii are clearly an “agency”, and MOP is clearly an “applicant” for purposes of HEPA.

Requiring an EA makes sense logically to protect the environment, as well as

being a legal requirement. For example, a CDUP exemption for noxious weed removal makes no mention of land size. Clearly, however, it is a very different environmental situation if noxious weeds are removed from half an acre or are removed from 1000 acres. The need for an EA, however, addresses this land size issue and places a further context on reviewing the proposed action.

That the requirements of HRS 343 were intended to supplement decision-making by agencies involved in a permitting process was made clear in 'OHANA PALE KE AO v. BOARD OF AGRICULTURE (118 Hawaii 247 (Hawaii App. 2008)).

The Hawaii Supreme Court recently described the HEPA's environmental review process in *Sierra Club v. Department of Transportation*, 115 Hawaii 299, 307-08, 167 P.3d 292, 300-01 (2007), as follows:

“When no exemption applies and when one of the triggers of HRS 343-5 (a) is met, environmental review begins with the development of a draft EA. An EA, defined in HRS 343-2, is an informational document prepared by either an agency proposing an action or a private applicant, which is used to evaluate the possible effects of a proposed action.”

C. COUNTY OF HAWAII VIOLATIONS

The County of Hawaii owns land within the Pohoiki and Onekahakaha eradication sites, and is therefore required to prepare an EA or EA exemption letter, and to require either an SMA minor or major permit.

1. EA Exemption Invalid

The County of Hawaii Department of Parks and Recreation exempted this project from an EA on county lands under Exemption Class 4(1), “Minor Alterations in the Conditions of Land, Water or Vegetation; Landscaping within existing parks.”

However, HAR 11-200-8(b) states that,

“(l)f an exempt action is proposed in a particularly sensitive environment or if successive exempt actions could have a cumulative significant impact, the exempt status of the action would be invalid. Environmentally sensitive areas include, flood plains, wetlands, beaches and coastal areas, erosion-

prone areas,..."

The sites exempted from an EA are sensitive areas, wetlands, beaches, coastal areas, and erosion prone areas, and, therefore, the Hawaii County Department of Parks and Recreation's EA exemption for work at parts of Pohoiki and Onekahakaha was in violation of HRS 343 and HAR 11-200. To characterize this experiment in poisoning acres of mangroves and leaving them to rot along the sensitive shoreline as a "minor alteration" or "landscaping", as suggested in Exemption Class #4(1) is absurd, and clearly a violation of the letter and intent of HRS 343 and HAR 11-200.

2. SMA Major Permit Required

It should also be apparent that this experimental use of herbicide to eradicate mangroves from acres of sensitive shoreline, conservation lands does NOT constitute a "minor alteration in conditions of land, water or vegetation".

Had this process been honestly and competently executed by the County, an SMA Major permit would have been required. According to HAR 15-150-11 (5), the lead agency shall, *"Require a special management area use approval, and shall issue an EIS preparation notice with the office of environmental quality control, regardless of the valuation of fair market value of the proposal where the lead agency finds that the proposal may significantly affect the special management area and that sufficient information to evaluate this impact is not available."*

(Emphasis added.)

According to HAR 11-200-12, the criteria for "significant" include,

"Involves an irrevocable commitment to loss or destruction to any natural or cultural resource." Mangroves are a natural resource, and eradication of mangroves is an irrevocable commitment to destruction of this natural resource.

"Substantially affects public health". Mangroves improve water quality, so their loss will be a reduction in water quality. In addition, poisoning the mangroves and leaving them to rot creates a public health hazard, as described above.

“Substantially affects a rare, threatened, or endangered, or its habitat.” The areas being poisoned are known to be habitat for endangered species, as described in Count III of Amended Complaint.

“Detrimentially affects air or water quality or ambient noise level.” Water quality can be degraded by the use of poison, excessive leaf drop, resultant low oxygen, and other secondary impacts from the poisoning. In addition, mangroves are known to reduce turbidity in waters around coral reefs, and their loss may result in increased turbidity and reduced water quality.

“Affects or is likely to suffer damage by being located within an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water.” As described above, mangroves protect shoreline from tsunamis and wave action and prevent siltation and erosion. The areas they are in are sensitive shoreline areas, and include beaches, fresh water, and coastal water.

It is clear that the impact of mangrove eradication, especially by poisoning them and leaving them to rot in place, is “significant”.

Finally, the fact that this use of poison is an experiment means that sufficient information to evaluate this impact is not available.

This action should have required an SMA Major permit, which entails an environmental assessment.

D. MOP VIOLATIONS

1. Responsibility for EA

As the applicant for this eradication project, MOP is responsible for satisfying the requirement of HRS 343. An EA was not done, as required and discussed above. And an EA exemption letter was not issued by the DLNR OCCL. In addition, a categorical exclusion from needing a federal EA was not issued by USFWS until January 26, 2010, after Paki Bay and most of Pohoiki had already been poisoned. See EXHIBITS “J” and “K” showing poisoned trees at Pohoiki.

This poisoning was done after this lawsuit was filed and the funding source, USFWS, asked MOP to cease and desist.

2. Falsification of Information on SMA minor Permit

Malama o Puna received SMA minor permits from the County for Wai 'Opae, Onekahakaha, Pohoiki, and Paki Bay. The SMA minor permit has several items that must be checked for consistency with objectives and policies of HRS 205A, regarding the Special Management Area. Each item has been checked as consistent with 205A on all the permits, which is false and a misrepresentation of the facts. These checked items, and Plaintiff's response, follow. (Numbers are added for ease of future reference. Checked items are italicized, and Plaintiff's interpretation of them follows each item sequentially.)

1. *“Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.”*

Using poison to kill mangroves, an experiment in herbicide use against mangroves, can not be declared free of significant adverse environmental or ecological effects, since the results of the experiment are not known. In addition, public health and safety are threatened by water pollution from the poison and its secondary impacts on water quality, in addition to the threat to swimmers, surfers and boaters from floating and submerged dead trees and storm wrack resulting from the dead trees being left in place along the shoreline. Planning options are also eliminated since the alternatives of hand removal of the mangroves, or selective removal of some of the mangroves, or leaving the mangroves in place, are all eliminated by the wholesale poisoning of the mangroves.

2. *“Protect, preserve, and where desirable, restore those natural and man-*

made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.”

Mangroves provide a barrier along the shoreline, and are known to provide shoreline protection from storm surges and tsunamis. Removing mangroves exposes inland structures and resources, including historically significant ones, to damage from the ocean. While mangroves can grow in Hawaiian fishponds and cause structural damage and excessive leaf deposits in poorly circulating areas, their removal by hand has been shown effective. Using poison and leaving the trees to rot creates a threat to these ponds, as the roots of the mangroves are embedded in rock structures and storms and wind can push over the dead mangroves taking the structure with it. This is the opinion of the National Park Service regarding mangrove control at Honokohau, where there are Hawaiian fish ponds. See EXHIBIT “G”.

3. “Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.”

Mangroves can obscure coastal scenic and open space resources. In some cases, their removal may be desirable. However, poisoning the mangroves and leaving them to rot in place, which will take decades, negatively impacts on coastal scenery, since the view is obscured dead mangroves. This degrades, rather than improves, the existing coastal scenic and open space resources.

4. “Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.”

Mangrove ecosystems are valuable as fish nurseries, for coastal protection, for water quality improvement, and for other benefits. The fact that they were introduced to Hawaii does not mean that they are not valuable coastal ecosystems. While Defendants clearly disvalue mangroves because they are not native, that is only one valuation. Mangroves are not on the Hawaii Noxious Weed List, and around the world they are valued. To strip them of any value because of their non-native status, or because they have created a novel ecosystem in Hawaii, is arbitrary and capricious.

5. *“Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.”*

This item could have been used to promote the further spread of mangroves along our coastlines, since all of these are services mangroves are known to offer ecosystems. Removing mangroves increases the hazard to life and property from tsunamis and storm waves, and increases siltation, erosion, and pollution. Worse than removing mangroves is poisoning them and leaving them to break off and enter the surf and ocean, or to be driven inland by storm waves and tsunamis destroying property and threatening life and limb.

6. *“Improve the development review process, communication, and public participation in the management of coastal resources and hazards.”*

Without an environmental assessment there was no opportunity for public comment or involvement in this process. An SMA minor permit has no public hearings. This impairs communication and public participation, and denies the public due process.

7. *“Protect beaches for public use and recreation.”*

Leaving poisoned trees to rot along the shoreline creates a public nuisance, exposing the public to dangerous debris and water pollution. It also destroys the aesthetic quality of these areas, reducing the use, enjoyment, and value of the area as a recreational site.

8. *“Promote the protection, use, and development of marine and coastal resources to assure their sustainability.”*

Mangroves protect coastal resources, as described above. They aid the goal of sustainability.

Plaintiff admits that there are many ways to interpret the above items. Clearly, the desirability of mangroves in Hawaii and their role in the environment is controversial. However, this controversial nature of the issue has not been expressed or appreciated by the Defendants, who characterize this eradication of mangroves using an experimental poison method as benign and without any

significant environmental impacts. The County has denied the public its rightful involvement in this debate by falsely exempting this experiment from an environmental assessment, and has mischaracterized these issues in its SMA minor permits.

Finally, the SMA minor permit states that, *“The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.”*

The exemption to requirements for an EA granted by the County under its Comprehensive Exemption List was invalid. There was no state EA or EA exemption letter. And until January 26, 2010, there was no federal EA exemption. And according to HRS 343, actions involving shoreline, conservation land, state land, using state money require an environmental assessment.

3. Non-compliance with DOH and DLNR Requirements

The Hawaii Department of Health (DOH) required MOP provide an anti-degradation analysis for all mangrove eradication sites. According to a 5/18/2009 letter from Alec Wong of the DOH Clean Water Branch, “Any project and its potential impacts to State waters must meet the following criteria: a. Antidegradation policy (HAR Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected. Please provide antidegradation analysis for all the mangrove removal project locations to demonstrate compliance with HAR Section 11-54-1.1.” See attached EXHIBIT “L”.

MOP has failed to provide an antidegradation analysis.

4. SMA Permits Not Valid

As a Condition for Approval for each of the SMA minor permits granted by the County to Malama o Puna for mangrove eradication, it states, *“The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.”*

Malama o Puna failed to get an EA Categorical Exclusion from the USFWS

until January 26, 2010, and failed to do an EA or get an EA exemption letter from the DLNR OCCL. No proposed action can begin prior to the completion of the environmental assessment process, according to NEPA and HRS 343.

Hence, not all the conditions for approval of the permit were satisfied. No work should have been started by MOP under these SMA minor permits.

5. Need to Remove Trees

The method used by MOP to eradicate mangroves was to poison the trees and leave them in place to rot. There is no need to use poison if the trees are to be removed, as this use of poison is an alternative to removal.

However, in a letter dated 2/15/2009 from the DLNR, subject "Mangrove Removal", it states, "Please note the following: If the mangrove removal were to require power tools or were to result in significant ground disturbance, then the project would need a permit from DLNR. OCCL notes that drill and inject methods will kill larger mangroves without creating a ground disturbance; however, the dead hulks will have to be removed so that they don't become storm wrack." Emphasis added. See EXHIBIT "V".

The DOH also assumed the trees would be removed. In the letter from the DOH (see attached EXHIBIT "L"), it states, "2. Please provide the methods and site specific BMP's measures to be used at each project location for trimming, stockpiling, chipping, and disposing the mangroves."

In their contract with the State Tourism Authority for mangrove eradication at Wai Opae, under Scope of Services it states, "1. The Contractor shall remove invasive mangroves to restore and protect the coral gardens and tide pool ecosystems at Wai Opae..." See EXHIBIT "W". Emphasis added.

See also attached EXHIBITS "E1-3" and "S" for pictures recently taken by Plaintiff of Wai Opae, showing the mangroves have not been removed.

In all the SMA minor permits issued there are Conditions of Approval which assume the trees will be removed. "3. The applicant shall cut trees and vegetation by hand only and shall take care to minimize disturbance to the soil

when removing the vegetation. 4. Since there may be ponds in the area that have surface connection to the sea, property located a good distance from the sea can still be affected by tidal action. Therefore, all debris from vegetation cutting shall be removed from the SMA to avoid the possibility of any cut material making its way to the tidal zones and marine waters.” See EXHIBIT “U”.

It is clear that MOP was to remove the mangroves from the area. Instead, they have left them to rot in place, allowing the dead vegetation to make its way into tidal zones and marine waters.

6. Pesticide Not Labeled for Mangroves or Marine Areas

The herbicide being used to kill the mangroves, Habitat, is not labeled for mangroves. In addition, as of August 25, 2009, this herbicide's label has been amended to prohibit its use in marine areas. As stated in a letter from the US EPA to BASF, the manufacturer of Habitat, concerning additional label amendments, it states, “i. Remove 'estuary' and 'marine' from the list of permissible aquatic sites for this product. The RISK ASSESSMENT for this product explicitly states the following as a use limitation: “Do not apply to marine or estuarine areas.” See attached EXHIBIT “P”.

In addition, the letter states, “d. Per the Imazapyr RED, the following statements must be added to the 'Environmental Hazards' section as the first two sentences of the section: “This product is toxic to plants. Drift and runoff may be hazardous to plants in water adjacent to treated areas.” id.

This product label changed prior to the poisonings done at these sites.

7. This Eradication Using Poisons is Experimental

The Hawaii Pesticides Law, HRS 149A-31(1)B, states the following: “Prohibited acts. No person shall: (1) Use any pesticide in a manner inconsistent with its label, except that it shall not be unlawful to: (B) Apply a pesticide against any target pest not specified in the labeling if the application is to a crop, animal, or site specified on the label or labeling.” Mangroves are not on the label, and marine areas are prohibited on the label.

This is therefore an illegal use of pesticides and a violation of the Hawaii Pesticides Law.

Further, the Sixth Circuit decision in National Cotton Council et al. v. EPA on 1/7/2009 found that pesticides applied into the nation's waters constitutes the discharge of "pollutants" and violates the Clean Water Act (33 U.S.C. 1251 et seq.), and will require a National Pollution Discharge Elimination System (NPDES) permit. See attached EXHIBIT "H".

In addition, fish counts from the Wai Opae experiment were obtained and reviewed by the US Forest Service. In a report on progress from October 1, 2008 to September 30, 2009, the Forest Service states, "Results from this project were presented in July 2009 at a local conservation conference in Hawaii...Results demonstrated that mangroves provide habitat for both native and exotic fish. Eradication of mangroves reduced densities of native fish...It is unclear if changes to native fish densities were a short or long term response. Outcomes from this project include increased understanding of the habitat value invasive mangroves provide in Hawaii as well as that more monitoring is required before this technique can be used on a larger scale...However, it is still unclear what impacts the herbicide is having on native fish populations. Furthermore, fish data from this project revealed that invasive mangroves may be providing important habitat for native fish species." See attached EXHIBIT "D".

Despite this information, MOP continued using this poison to kill mangroves. In addition, the label for Habitat was amended since the Wai Opae experiment banning its use in marine areas.

8. Endangered Species Act Violation

Without an EA, there was no formal review of endangered species that may be impacted by this mangrove eradication and this use of poison along these shoreline areas, which are known to have endangered species.

In addition, according to MOP's National Fish and Wildlife Foundation Application for Hawaii Coastal Restoration Funds, III. Proposal A. Project Need, it states, "It is important to note that Wai Opae is also home to the endangered honu

(*Chelonia mydas*), 'io (*Buteo solitarius*), and monk seal (*Monachus schauinslandi*) even though no studies have been performed to determine the impacts of red mangroves on these species.” See EXHIBIT “T”.

This means that red mangrove removal and poisoning may have negative impacts on these endangered species.

In addition, according to the DOI NPS, they are gravely concerned about and opposed to the proposed use of pesticides in the aquatic environment where there are two candidate endangered arthropods, (the opae, *Metabetaeus lohena* and the orangeblack damselfly, *Megalagrion xanthomelas*), and the potential adverse effects of leaving the dead trees in place. (See Exhibit G) There was no formal determination by MOP of whether these candidate endangered arthropods are in the areas being poisoned. Other endangered species in the area include the Hawaiian stilt, Hawaiian coot, and Hawaiian duck, as well as the protected night heron and crown heron.

MOP is therefore in violation of the Hawaii Endangered Species Act, HRS 195D.

E. HAWAII TOURISM AUTHORITY VIOLATIONS

The Hawaii Tourism Authority (HTA) contracted with MOP for mangrove eradication at Wai Opae in 2008. HTA failed to perform an EA or provide an EA exemption letter. An EA was triggered by the same issues described for the Paki Bay, Pohoiki, Onekahakaha, and Honokohau, in addition to the trigger of using state funds. However, Plaintiff admits that judicial review under HRS 343 is barred by statute of limitations for the Wai Opae eradication project.

However, the contract with MOP for Wai Opae mangrove eradication was open until April 1, 2010. In their contract with MOP, under Scope of Services, it states, “The contractor shall remove invasive mangroves to restore and protect the coral gardens and tide pool ecosystems at Wai Opae.” Emphasis added. See EXIHBIT “W”.

MOP has failed to meet its contract obligations for removal of dead trees, and the HTA should require this from MOP.

In addition, by the HTA allowing MOP to poison mangroves and leave the

dead trees in place to rot it has created a public nuisance.

F. BIISC VIOLATIONS

The Big Island Invasive Species Committee (BIISC) is an unincorporated association that performs pest control services. See attached EXHIBIT “X”.

BIISC has been a partner in this eradication project. See attached EXHIBIT “Y”. BIISC has received funding from MOP for its participation in the project. See attached EXHIBIT “O”.

According to Ann Kobsa's declaration, as stated above, BIISC was included in this project from the start as a partner. They are therefore in violation for the same issues as MOP.

BIISC is subject to suit, according to HRS 429 and HRS 634-30.

HRS 429-1 states, “‘Nonprofit association’ means an unincorporated organization, other than one created by a trust, consisting of two or more members joined by mutual consent for a common, non-profit purpose...”

HRS 429-7(a) states, “A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.”

HRS 634-30, *Organizations and associations, service of process on; judgment*, states, “When two or more persons associate and act, whether for profit or not, under a common name, including associating and acting as a labor organization or employer organization, whether the common name comprises the names of the persons or not, they may sue in or be sued by the common name, and the process shall be served on any officer, trustee, or agent of the association if he can be found as shown by the return of the serving officer, then upon any one or more members of the association, or as otherwise provided by rule of court. Any such service constitutes service upon the association. The judgment in such cases shall accrue to the joint or common benefit of and bind the joint or common property of the association, the same as though all members had been named as parties to the action...”

BIISC was served on February 22, 2010 and service was accepted by Page Else, Office Supervisor. See attached EXHIBIT "Z". BIISC has failed to plead or otherwise defend, and is therefore in DEFAULT pursuant to Rule 55(a) H.C.R.P., and HRS section 634-21, *et seq.*

5. SUMMARY

A. HEPA VIOLATION

This mangrove eradication project involving Paki Bay, Pohoiki, Onekahakaha, and Honokohau is being done without a required EA or an EA exemption from the DLNR OCCL, in violation of HRS 343 and HAR 11-200.

The legislature's intent in enacting HEPA is expressed in HRS 343-1, which states:

"Findings and Purpose. The legislature finds that the quality of humanity's environment is critical to humanity's wellbeing, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the state and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

"It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations."

B. PUBLIC TRUST DOCTRINE AND PRECAUTIONARY PRINCIPLE

The Hawaii Constitution Section XI subsection 1 provides: "*For the*

benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of all people."

(Emphasis added.)

The precautionary principle requires long-term vision and mandates that government entities favor caution and conservation in any case in which information is uncertain. The burden of proving that its proposed use is consistent with the sustainable health of the ecosystem falls on the party proposing to use the resource.

In the Hawaii Supreme Court 2003 Waiahole Ditch Decision (Water Use Permit Applications, 94 Hawaii 97; 9 P.3d 409, 2000), the court said, "The duty to protect public water resources is a categorical imperative and the precondition to all subsequent considerations, for without such underlying protection the natural environment could, at some point, be irrevocably harmed and the duty to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial uses could be endangered."

The Court in Hawaii not only reinforced the public trust doctrine but argued that the precautionary principle was essential for implementing the doctrine. "... (w)here there are present or potential threats of serious damage, lack of full scientific certainty should not be a basis for postponing effective measures to prevent environmental degradation. In addition, where uncertainty exists, a trustee's duty to protect the resource mitigates in favor of choosing presumptions that also protect the resource." (Emphasis added.)

This experimental poisoning of mangroves should not have been allowed under the public trust doctrine, which also embraces the precautionary principle. The County and State, knowing the experimental nature of this project, should have, at the least, required an EA, if not an EIS. The County and State have

violated this public trust mandate and ignored the precautionary principle.

6. INJUNCTIVE RELIEF

This poisoning of 15 acres is using an herbicide that is not labeled for use on mangroves or marine areas, and is being done in sensitive shoreline conservation areas that are known to have nominated, threatened or endangered species which could be harmed directly and/or indirectly by the poison. The poisoned trees are being left to rot in place, creating a public nuisance, dead zones in the water, scum on the water's surface, a blighted viewplane of the coastline, and health and safety risks to the public using these coastal waters for swimming, snorkeling, surfing and boating.

Plaintiff can no longer use these recreational areas for fear of health and safety impacts. Water quality testing is not being done to determine the extent of the pollution caused by this mangrove poisoning and eradication. No signs are posted notifying the public of this poisoning currently being done at Pohoiki, despite the fact that it is a popular beach park with children frequently playing and swimming among the mangroves. Many residents, including Plaintiff, eat fish caught in this area.

Plaintiff is being irreparably and irrevocably harmed by being denied his procedural right to participate and comment in the EA process that should have been initiated for this project.

WHEREFORE, Plaintiff prays that this Court:

1. Find, order, adjudge and declare that Defendants' conduct, as alleged herein, violates the statutory provisions set forth above;
2. Issue a permanent injunction enjoining the Defendants MOP and BIISC, their agents, employees, successors and assigns, directly or indirectly, individually or in concert with others, or through any corporate or

other device to CEASE AND DESIST from continuing with this mangrove eradication project until an environmental assessment is done;

3. Enjoin the DLNR OCCL to require that MOP physically remove all the dead mangroves from the shoreline areas where they have been poisoned.

4. Enjoin the DLNR OCCL to require an environmental assessment before any further mangrove eradication work is done.

5. Enjoin the County of Hawaii to cancel its SMA minor permits for this eradication of mangroves at Paki Bay, Onekahakaha and Pohoiki, and to require an EA for such actions to proceed, in addition to requiring an EA for any eradication at Honokohau.

6. Enjoin MOP to post signage that these sites have been poisoned and may pose a health risk, perform an antidegradation analysis, immediately stop using Habitat for marine applications, and remove all dead mangroves from poisoned sites after an EA is completed for such action.

7. Enjoin the HTA to require MOP to remove dead mangroves from Wai Opae, as per contract agreement.

8. Award Plaintiff fees and costs for bringing this action.

9. Award Plaintiff such other relief as this Court may deem just and equitable under the circumstances.

Dated: Hilo, Hawaii May 3, 2010

SYDNEY ROSS SINGER

PLAINTIFF, PRO SE