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For Immediate Release
For information call:
PROTECT KEOPUKA OHANA
Jack Kelly (808) 328-8442
Jim Medeiros (808) 938-8559

NEWS RELEASE/ UPDATE

Public Trust Doctrine Upheld in Hokulia Ruling

Third Circuit Court Issues Final Judgment in Three-Year Legal Battle

Judge Ronald Ibarra ruled Wednesday that the plaintiffs in the long-running Hokulia case served to protect the public trust when State and County government failed to do so.

"The magnitude of the resultant burden on Plaintiffs was great. At great cost to them, Plaintiffs persisted in seeking private enforcement of protection of the Ala Loa and the burial sites, and enforcement of state land use laws," wrote Ibarra.

Four Kona residents, Michele Wilkins, Pat Cunningham, Charles Flaherty, Jack Kelly, and Hawaiian activist group Protect Keopuka Ohana have battled the developer, the county and State since the developer first muddied the ocean in September 2000.

The trial has been addressed in three phases focusing on the ownership and destruction of the ancient Ala Loa Trail, phase two relating to Burials and the Public Trust, and the last phase regarding violations of state land use law.

"The case has been an extremely complex, multi-issue, multi-party lawsuit, and has taken over three years to complete. As a result of the uniqueness of the claims raised, the parties were confronted with preparing for litigation for which few precedents have been set," Ibarra noted.

"Collectively, the three judgments following the three phases of trial cumulatively enhanced the capability of community residents and groups to insist on the enforcement of their rights as articulated by the Legislature and other laws as they affected important Hawaiian cultural concerns," the ruling proclaimed.

"Furthermore, they clarified for the first time the importance of following prescribed processes mandated by legislative action, which were previously being ignored by both government bodies and private developers without restraint. The decisions of this court were of significant statewide importance.

"Generally, the State and the County abandon their trust duties to protect the Ala

Loa and the burial sites on the Hokulia property, and the traditional and customary rights associated with those historical and cultural properties. The county, as well, abdicated its responsibility to enforce the land use laws.”

“Ibarra’s ruling today vindicates our position,” said Jim Medeiros Sr. CEO of Protect Keopuka Ohana. “All along we persisted in defense of the ‘aina, and to honor our ancestors who have suffered so much from the actions of the developer, the county and the state. It’s difficult to express how indebted we are to our attorneys, to Judge Ibarra for his strength and insight, and to all in the community who stood by us throughout this endeavor.”

“The extent of Oceanside’s financial reach vastly restrained the independence of virtually every law firm in Kona, from considering legal representation of the plaintiffs,” Ibarra wrote. “This financial position also emerged as a factor to dissuade several potential witnesses for the plaintiffs for fear of losing business or employment, or of the political consequences of standing up to a very large developer.

“Particularly in situations where the executive branch of government has the responsibility but for some reason fails to represent the public in matters of great importance and ensure proper enforcement, the Public Attorney General Doctrine allows for the award of attorneys fees for successful public interest litigants and their attorneys,” wrote Ibarra.

“All three phases of the litigation resulted in decisions that benefit the general public and future generations. Hawaii’s residents, both present and future, benefited directly and indirectly by the protection of the natural resources, as well as the protection of historic and cultural properties established by the court. Furthermore, the people statewide benefit when the state constitution and laws pertaining to the state’s natural resources are enforced by the state and county governments,” the ruling stated.

Final Judgment in the case was also filed on Wednesday, ultimately putting the case to rest at this level. All of Ibarra’s rulings are expected to be appealed to the State Supreme Court.

“The Ala Loa ruling is already on appeal and we expect appeals on every issue so there is still a lot of work to be done,” said plaintiff Kelly. “This is the first application of the Public Attorney General Doctrine in the history of our State. We hope that the Supreme Court recognizes the importance of this action and acts to preserve these rulings to protect our natural resources for past, present and future generations.”