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DEPARTMENT OF LAND AND NATURAL RESOURCES;
BOARD OF LAND AND NATURAL RESOURCES;
SUZANNE CASE, in her official capacity as Chairperson of
the Board of Land and Natural Resources

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL
RESOURCES; DEPARTMENT OF LAND
AND NATURAL RESOURCES; SUZANNE
CASE, in her official capacity as Chairperson of
the Board of Land and Natural Resources;
ALEXANDER AND BALDWIN, INC., and
EAST MAUI IRRIGATION, LLC,

Defendants.

Civil No. 19-1-0019-01 JPC

DEFENDANTS BOARD OF LAND AND
NATURAL RESOURCES; DEPARTMENT
OF LAND AND NATURAL RESOURCES;
and SUZANNE CASE, in her official
capacity as Chairperson of the Board of Land
and Natural Resources' ANSWER TO FIRST
AMENDED COMPLAINT FILED
DECEMBER 6, 2019; CERTIFICATE OF
SERVICE

Trial Date: None

**DEFENDANTS BOARD OF LAND AND NATURAL RESOURCES;
DEPARTMENT OF LAND AND NATURAL RESOURCES; and
SUZANNE CASE, in her official capacity as Chairperson of the
Board of Land and Natural Resources'
ANSWER TO FIRST AMENDED COMPLAINT FILED DECEMBER 6, 2019**

Defendants BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES and SUZANNE CASE, in her official capacity as Chairperson of the Board of Land and Natural Resources (collectively “the State”), by and through counsel, respectfully answer the First Amended Complaint (“the complaint”) filed December 6, 2019, as follows:

FIRST DEFENSE :

The complaint fails to state a claim upon which relief can be granted against the State of Hawai‘i (the “State”).¹

SECOND DEFENSE:

1. The State denies the allegations in paragraphs 14, 15, 25, 26, 38, 52, 60, 71, 72, 80, 81, 82, 89, 90, 101, 108, 109, 112, 113, and 127 of the complaint.

2. The State admits the allegations in paragraphs 1, 2, 3, 4, 18, 19, 20, 21, 22, 23, 24, 27, 30, 31, 32, 34, 35, 36, 45, 46, 50, 51, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 73, 74, 75, 76, 77, 78, 79, 83, 84, 85, 86, 87, 88, 98b – 98d, 100, 102, 103, 104, 105, 106, 107, 115, and 116 of the complaint.

3. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 5-13, and 54 of the complaint.

4. For answer to paragraph 16 of the complaint, the State avers that the Department of Land and Natural Resources (“DLNR”) is a department of the State. Its duties are as provided by law.

¹ The Department of Land and Natural Resources is a department of the sovereign state. The Board of Land and Natural Resources is the executive head of the department. For purposes of this lawsuit, they are one defendant referred to as the State of Hawai‘i or the State.

5. For answer to paragraph 17 of the complaint, the State avers that the Board of Land and Natural Resources (“BLNR”) is the executive head of the DLNR.

6. For answer to both paragraph numbered 28, the State avers that a report was produced and that it speaks for itself.

7. For answer to paragraph 29, the State avers that a letter was written and that the document speaks for itself.

8. For answer to paragraph 33 and its subparts, the State admits that there were reports that a tractor was removed along with some other construction materials. The State denies the remaining allegations.

9. For its answer to paragraphs 37 - 43, 47, 48, 49, 53, 91 - 98a (and its subparts), the State avers that the documents referenced speak for themselves. Any allegations inconsistent with those documents are denied.

10. For its answer to paragraph 44, the State cannot admit or deny because the allegations are vague as to “native aquatic life.”

11. For answer to paragraph 70, the allegations are misleading as the board received information before and at the November 9, 2018 meeting in the form of presentations and testimony, prior to their decision. There was extensive study and consideration given to aquatic species in the CWRM decision. The allegations are therefore denied.

12. For its answer to paragraphs 110 and 111, the State answers that they constitute legal conclusions rather than allegations of fact and so deny them.

13. For answer to paragraphs 99, 114, and 124 of the complaint, the State incorporates its responses to the referenced paragraphs.

14. The allegations of paragraphs 117 - 123 are argumentative and are denied.

15. For its answer to paragraphs 125 and 126, the State avers that the referenced statutes speak for themselves.

16. The State denies any allegation not otherwise specifically addressed.

THIRD DEFENSE:

Plaintiff's claims against the State are barred by the doctrine of sovereign immunity.

FOURTH DEFENSE:

Plaintiff's claims are not ripe, are barred by the political question doctrine, or are otherwise not justiciable.

FIFTH DEFENSE:

Plaintiff lacks standing.

SIXTH DEFENSE:

Plaintiff's claims are barred by waiver, estoppel, and laches.

SEVENTH DEFENSE:

Plaintiff failed to exhaust administrative remedies or its claims are barred by the doctrine of primary jurisdiction.

EIGHTH DEFENSE:

Plaintiff's claims are barred by the applicable statute(s) of limitations.

NINTH DEFENSE:

Plaintiff has failed to name indispensable parties.

TENTH DEFENSE:

The State reserves the right to add additional defenses that may be identified through discovery and pleadings.

WHEREFORE, the State requests that the complaint be dismissed with prejudice and that the State be awarded such other relief as this court deems appropriate.

DATED: Honolulu, Hawai‘i, December 12, 2019.

/s/ Amanda J. Weston
AMANDA J. WESTON
LINDA L.W. CHOW
Deputy Attorneys General
Attorneys for State Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was duly served on the following parties at their last known address by electronic mail on December 12, 2019:

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DATED: Honolulu, Hawaii, December 12, 2019.

/s/ Amanda J. Weston
AMANDA J. WESTON
Deputy Attorneys General
Attorneys for State Defendants