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**2CCV-26-0000147**  
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Attorney for Plaintiff  
AB MAUI QUARRIES, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

AB MAUI QUARRIES, LLC,

Plaintiff,

vs.

MAUI PLANNING COMMISSION;  
COUNTY OF MAUI, DEPARTMENT OF  
PLANNING; JOHN OR JANE DOES 1  
THROUGH JOHN OR JANE DOES 100; and  
all other persons associated with or acting by  
or through or under or in connection or in  
concert with any of the above-named  
Defendants or any of them

Defendants.

CIVIL NO. 2CCV-26-0000147

PLAINTIFF AB MAUI QUARRIES, LLC'S  
*EX PARTE* MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF WYETH M.  
MATSUBARA; EXHIBITS "1" – "2";  
*PROPOSED* ORDER GRANTING MOTION  
FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION

Trial: No Date Set

**PLAINTIFF AB MAUI QUARRIES, LLC'S EX PARTE MOTION FOR  
A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

COMES NOW Plaintiff AB MAUI QUARRIES, LLC (“Plaintiff”) and hereby moves for a temporary restraining order (“TRO”) against Defendants MAUI PLANNING COMMISSION and COUNTY OF MAUI, DEPARTMENT OF PLANNING (collectively “Defendants”), and all other persons associated with or acting by, through, under, in connection or in concert with Defendants. This action is required to enjoin Defendants from engaging in unlawful behavior, violating Plaintiff’s private property rights, and denying Plaintiff due process as a matter of law. This TRO is limited in scope and only restricts Defendants from actions that would improperly remove AB Maui’s permitted quarry area and otherwise alter land use entitlements affecting AB Maui’s Property before proper notice and opportunity to be heard is granted.

This Motion is sought *ex parte* per the Rules of the Circuit Courts of Hawaii (“RCCH”) Rule 7.2(b) and (f) and the Hawaii Rules of Civil Procedure (HRCPP) Rule 65(b), and is supported by the Memorandum in Support, the declarations filed herewith, and the records and files herein. While notice is not required, Plaintiffs will have delivered electronically a true and copy of this Motion and the supporting documentation to Defendants.

DATED: Honolulu, Hawaii, May 4, 2026.

/s/ Micah P. K. Aiu  
\_\_\_\_\_  
MICAHA P. K. AIU  
Attorney for Plaintiff  
AB MAUI QUARRIES LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

AB MAUI QUARRIES, LLC,

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MAUI PLANNING COMMISSION;  
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THROUGH JOHN OR JANE DOES 100; and  
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or through or under or in connection or in  
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Defendants.

CIVIL NO. 2CCV-26-0000147

MEMORANDUM IN SUPPORT OF MOTION

**MEMORANDUM IN SUPPORT OF MOTION**

**I. INTRODUCTION**

Plaintiff AB MAUI QUARRIES, LLC (“AB Maui” or “Plaintiff”) respectfully submits this Memorandum in Support of its *Ex Parte* Motion for a Temporary Restraining Order and Preliminary Injunction. AB Maui is the fee owner of that certain parcel of land identified by Tax Map Key (“TMK”) No. (2) 3-8-004-002 (portion), situated at Waikapu, Maui, Hawaii (the “Property”), which is currently subject to Conditional Use Permit No. 2006/0002 (“CUP”) and Special Permit No. 92-380 (“SP”). Hawaiian Cement, a Hawaii general partnership formerly authorized to quarry a portion of the Property pursuant to an Amended and Restated License Agreement, dated March 26, 2012 (the “License Agreement”), submitted an application to amend the CUP and SP on or about June 27, 2025, without AB Maui’s knowledge, consent, or authorization, in direct violation of Hawaii Administrative Rules (“HAR”) § 15-15-95(a) and Maui County Code (“MCC”) § 19.40.030.

Despite receiving written notice of AB Maui's objection and lack of consent on multiple occasions, Defendants continued to process Hawaiian Cement's application, and, upon information and belief, proceeded to approve it. This action is required to enjoin Defendants from engaging in unlawful behavior, violating Plaintiff's private property rights, and denying Plaintiff due process as a matter of law. This TRO is limited in scope and only restricts Defendants from actions that would improperly remove AB Maui's permitted quarry area and otherwise alter land use entitlements affecting AB Maui's Property before proper notice and opportunity to be heard is granted.

## **II. PERTINENT FACTUAL BACKGROUND**

### **A. Nan, Inc. and the Strategic Acquisition of the Property.**

Founded in 1990, Nan, Inc. ('Nan') is Hawaii's largest locally owned general contracting company, engaged in civil, infrastructure, transportation, and building construction throughout the State of Hawaii. Nan performs a wide range of public and private construction work, including roadway construction, utilities, earthwork, and related civil construction services.

In 2023, Nan acquired Grace Pacific LLC, one of the state's largest asphalt paving contractors, materials, and construction companies. While Grace Pacific had already owned two quarries, one on Oahu and one on Molokai, as part of the acquisition A&B II, LLC, a Hawaii limited liability company ("A&B"), Nan acquired the membership interest in Plaintiff which owned two additional quarries on the Island of Maui. Nan sought and acquired the Property as a valuable long-term land asset, with the understanding that the Property had potential for continued and long-term quarry operations to support its overall operation in the State.

On or about November 6, 2023, A&B, Nan, and Plaintiff entered into that certain Membership Interest Purchase Agreement, pursuant to which, among other things, A&B agreed to sell to Nan A&B's interest in Plaintiff. In connection with that transaction, A&B executed a

Contribution Agreement pursuant to which A&B contributed, sold, transferred, and conveyed to Plaintiff its interest in certain quarry assets located on Maui and certain license agreements associated with those quarries. These quarries are sometimes known as: (a) the HC&D Quarry, identified as Tax Map Key Nos. (2) 3-8-001-0001 (por.), (2) 3-8-001-0004 (por.), and (2) 3-8-001-0021 (por.), comprising approximately 328 acres; and (b) the Hawaiian Cement Quarry, identified as Tax Map Key No. (2) 3-8-004:001 (por.), comprising approximately 336 acres (the “Property”). Nan’s acquisition of the Property was made with the understanding that it represented a significant long-term land and resource asset, and with the expectation that AB Maui would retain full control over the land use entitlements associated with the Property.

**B. AB Maui’s Acquisition of the License Agreement and Revocation of All Prior Authorizations.**

Also included among the assets conveyed pursuant to the Contribution Agreement was the Amended and Restated License Agreement dated March 26, 2012 (the "License Agreement") — an agreement between Plaintiff’s predecessor in interest and Hawaiian Cement, a Hawaii general partnership ("Hawaiian Cement"), which allowed Hawaiian Cement to quarry a portion of the Property for a term of twenty (20) years, from March 1, 2012 to February 29, 2032. AB Maui, as successor-in-interest to A&B under the License Agreement, holds all rights of the Licensor thereunder, including the right to consent to — or withhold consent from — any application affecting the CUP or SP encumbering the Property.

On or about January 26, 2024, AB Maui provided Hawaiian Cement written notice that AB Maui was its successor in interest under the License Agreement and that it was exercising its right under Paragraph 4 of the License Agreement to terminate the agreement upon thirty-six (36) months’ notice, to be effective on January 25, 2027. The January 26, 2024 Notice expressly stated that “any prior correspondence or authorizations to continue applications and/or

extensions for any special permit petition and/or any other motions or requests for the property covered by the License Agreement before the Land Use Commission, State of Hawaii and/or any other regulatory agency/authority/department are hereby revoked.” From and after January 26, 2024, Hawaiian Cement possessed no authorization from AB Maui to file or prosecute any application affecting the Property.

**C. Hawaiian Cement Filed Its Application Without AB Maui's Knowledge or Consent, in Violation of Applicable Law.**

Notwithstanding the express revocation of any prior authorizations, on or about June 27, 2025, Hawaiian Cement and its consultant Munekiyo Hiraga submitted an Application for Amendment to Permit Terms, Conditions, and Time Stipulations relating to CUP No. 2006/0002 and SP No. 92-380, which encumber the Property. Hawaiian Cement’s application did not include written authorization from AB Maui, as required by applicable law.

HAR § 15-15-95(a) expressly provides that if the person filing a special permit petition is not the fee simple owner, “the record shall include evidence that the person requesting the special permit has written authorization of all fee simple owners to file the petition.” Similarly, MCC § 19.40.030 requires that an “applicant with notarized written authorization for the application from the owner may file with the department of planning, an application for a conditional permit.” Hawaiian Cement had neither. Defendants failed to ensure that Hawaiian Cement's application met these mandatory statutory and regulatory requirements before accepting and processing it.

**D. Defendants Processed the Application Without Providing AB Maui Any Notice or Opportunity to Be Heard.**

MCC § 19.510.010 further requires that at the time of filing, the applicant file an affidavit certifying that notice of application was mailed to all owners and lessees of record located within five hundred feet of the subject parcel. Hawaiian Cement and/or its consultant Munekiyo Hiraga

failed to provide AB Maui notice of the application, and Defendants failed to ensure that proper notice was served on AB Maui, the fee owner of the Property.

On or about November 25, 2025, Defendant Maui Planning Commission held a meeting to discuss Hawaiian Cement's application. Because AB Maui had received no notice of the November 25, 2025 meeting, AB Maui was unable to appear, respond to commissioners' questions, or present its position regarding the future of the Property. At the conclusion of that meeting, Defendant approved Hawaiian Cement's application for amendment.

**E. AB Maui Objected Repeatedly**

On or about March 20, 2026, after inadvertently learning of Hawaiian Cement's pending application, AB Maui transmitted correspondence to Hawaiian Cement stating that Hawaiian Cement did not have AB Maui's consent to amend the permits in a manner that would improperly remove AB Maui's permitted quarry area and otherwise alter land use entitlements affecting the Property. Hawaiian Cement did not withdraw its application or notify AB Maui of any future proceedings.

On or about March 24, 2026, AB Maui notified Defendants directly that Hawaiian Cement did not have AB Maui's consent for the pending application. Defendants did not respond or notify AB Maui of any future hearings.

On or about April 20, 2026, Plaintiff learned that Defendant Maui Planning Commission had scheduled a hearing on April 28, 2026, to approve Hawaiian Cement's pending application through an informal virtual meeting it requested with the Director of Defendant County of Maui, Department of Planning and some of its representatives. Despite this informal communication, Defendants provided no written notice to AB Maui of the scheduled hearing as required by applicable law, and AB Maui received no formal notice of the proceedings.

Also on April 27, 2026, Plaintiff transmitted a letter to Defendants notifying them that Plaintiff objected to any action by Defendants that would “remove AB Maui’s permitted quarry area and otherwise alter land use entitlements affecting the Property.”

On May 1, 2026, AB Maui transmitted a cease-and-desist letter to Defendants reiterating that it had not consented to Hawaiian Cement's application, demanding that Defendants refrain from further action until proper notice was effectuated and AB Maui had been afforded an opportunity to be heard, and requesting that a contested case hearing be held to the extent required. *See* Exhibit “1”, Decl. of Matsubara at ¶ 7. As of the filing of this action, Defendants have not acknowledged receipt of either the April 27, 2026 or May 1, 2026 correspondence.

**F. AB Maui Terminated the License Agreement; Hawaiian Cement Has No Remaining Property Interest.**

On May 4, 2026, AB Maui notified Defendants and Hawaiian Cement that it had terminated the License Agreement and that Hawaiian Cement no longer had standing to bring or maintain the application. *See* Exhibit “2”, Decl. of Matsubara at ¶ 8. Hawaiian Cement's material breach of the License Agreement, including its failure to provide advance notice to and obtain the written consent of AB Maui prior to filing any application affecting the CUP or SP, and its failure to cure following written notice — constituted grounds for termination. *Id.* Following termination, Hawaiian Cement holds no possessory or contractual right to occupy or use the Property, and retains no cognizable property interest sufficient to confer standing before the Maui Planning Commission.

**III. LEGAL STANDARD**

Hawaii applies the following test for a temporary or permanent injunction: “(1) Is the plaintiff likely to prevail on the merits? (2) Does the balance of irreparable damage favor the issuance of a temporary injunction? and (3) Does the public interest support granting the

injunction?” *Life of Land v. Ariyoshi*, 59 Haw. 156, 158, 577 P.2d 1116 (1978). Injunctions are addressed to the equitable powers of the Court. The more the balance of irreparable damage favors issuance of the injunction, the less the party seeking the injunction has to show the likelihood of his success on the merits. *Penn v. Transportation Lease Hawaii, Ltd.*, 2 Haw. App. 272, 276, 630 P.2d 646, 650 (1981) (citing *Fox Valley Harvestore v. A. O. Smith Harvestore Prod.*, 545 F.2d 1096 (7th Cir. 1976); *Benda v. Grand Lodge of Intern. Ass'n, etc.*, 584 F.2d 308 (9th Cir. 1978)). Likewise, the greater the probability the party seeking the injunction is likely to prevail on the merits, the less he has to show that the balance of irreparable damage favors issuance of the injunction. *Id.*

#### **IV. ARGUMENT**

##### **A. Plaintiff is likely to prevail on the merits**

AB Maui is likely to prevail on the merits because Defendants’ actions violate fundamental principles of due process and Hawai‘i land use law.

First, Defendants have acted, or are poised to act, without providing AB Maui notice or an opportunity to be heard, in violation of constitutional due process protections under both the Hawai‘i Constitution and the United States Constitution. Any decision rendered by Defendant Maui Planning Commission is made pursuant to HAR § 15-15-91, which states, “Conditions imposed by the commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer.” Failure to ensure that proper notice was made to affected owners undermines private property interest, due process, and the integrity of the permitting review process. Government action that deprives a property owner of vested land use rights without notice and a hearing is unlawful.

The Hawaii Supreme Court has stated that “[c]onstitutional due process protections mandate a hearing whenever the claimant seeks to protect a ‘property interest,’ in other words, a benefit to which the claimant is legitimately entitled.” *Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawaii 64, 68, 881 P.2d 1210, 1214 (1994). This court conducts a two-step analysis to determine whether there was a due process right to a contested case hearing, considering: “(1) [whether] the particular interest which [the] claimant seeks to protect by a hearing [is] ‘property’ within the meaning of the due process clauses of the federal and state constitutions, and (2) if the interest is ‘property,’ what specific procedures are required to protect it.” *Sandy Beach*, 70 Haw. at 376, 773 P.2d at 260.

*Sandy Beach* involved a challenge to an SMA use permit application by community members, some of whom lived near the proposed development. 70 Haw. at 366, 773 P.2d at 254. The community group claimed their personal, economic, and aesthetic interests, such as their view of the ocean and value of their properties, would be injured by the development. 70 Haw. at 367, 773 P.2d at 255. We stated that “[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. [They] must have more than a unilateral expectation to it. [They] must, instead, have a legitimate claim of entitlement to it.” 70 Haw. at 377, 773 P.2d at 260 (citations omitted). We then held that the community group’s interests were “of an aesthetic and environmental nature” and did not rise to the level of a property interest within the meaning of the due process clause of the Hawai‘i Constitution. 70 Haw. at 377, 773 P.2d at 261.

Here, while CUP 2006/0002 and SP 92-380 are issued to the applicant Hawaiian Cement, the conditions imposed therein, and benefits run with the land. These conditions and benefits survive any temporary user of property. AB Maui possesses vested rights in its permitted quarry

operations. Defendants may not simply transfer or materially alter those rights absent compliance with strict legal standards—which Defendants have not met here. Defendants’ willingness to entertain or act upon a third party petition affecting AB Maui’s Property without AB Maui’s participation exceeds their lawful authority and constitutes arbitrary and capricious agency action.

Second, Hawaiian Cement's application was filed in direct violation of mandatory statutory and regulatory requirements. HAR § 15-15-95(a) expressly mandates that any person who is not the fee simple owner of the subject land must include "written authorization of all fee simple owners" in the record before a special permit petition may be filed. MCC § 19.40.030 likewise requires notarized written authorization from the property owner as a condition precedent to filing an application for a conditional permit. Hawaiian Cement's application contained no such authorization. A filing that does not comply with mandatory requirements is incomplete and cannot serve as the basis for any valid Planning Commission action.

Furthermore, MCC § 19.510.010 required Hawaiian Cement to provide notice of application to all owners of record within five hundred feet of the Property at the time of filing, and to file an affidavit certifying such notice. Hawaiian Cement failed to do so. As the fee owner of record, AB Maui was entitled to this notice. As a result, AB Maui was unaware of and unable to participate in the November 25, 2025 planning commission meeting at which Defendants approved Hawaiian Cement's application — a proceeding that directly and materially affected AB Maui's property rights.

Third, following termination of the License Agreement, Hawaiian Cement has no remaining property interest in the Property. Under applicable planning regulations, only a property owner or a party holding a cognizable property interest in the subject land may bring or

maintain an application before the Planning Commission. Hawaiian Cement's loss of any property interest strips it of standing to prosecute the application, and any approval based on that application is legally infirm.

Accordingly, AB Maui has demonstrated a strong likelihood of success that Defendants have not provided notice and an opportunity to be heard and that any action by Defendants are unlawful.

**B. Plaintiff will suffer immediate and irreparable harm if injunctive relief is not granted**

Irreparable harm is clear. The loss or impairment of vested property rights constitutes irreparable harm as a matter of law. If Defendants are permitted to approve Hawaiian Cement's unauthorized application, the resulting amendment to CUP No. 2006/0002 and SP No. 92-380 could permanently alter the land use entitlements associated with AB Maui's Property. AB Maui's ability to quarry and otherwise utilize its own land in accordance with its existing entitlements will be irreparably compromised. Once Defendants alter the permitted quarry area or land use entitlements affecting the Property, AB Maui cannot be fully compensated by monetary damages alone. Regulatory uncertainty, loss of operational continuity, reputational harm, and disruption to contractual relationships are all harms that cannot be undone after the fact.

Moreover, the denial of procedural due process is itself a form of irreparable harm. AB Maui was excluded from the November 25, 2025 hearing at which Defendants approved Hawaiian Cement's application. AB Maui could not answer commissioners' questions, present evidence, or advocate for its own land use interests. That deprivation cannot be undone after the fact. Monetary damages are wholly inadequate to compensate AB Maui for the loss of its land

use entitlements or for the violation of its fundamental right to be heard. The harm to AB Maui is immediate, concrete, and irreparable, warranting emergency injunctive relief.

**C. Public policy favors protection of property rights**

Finally, the public interest strongly favors the protection of property rights. *Ride The Ducks of Phila., LLC v. Duck Boat Tours, Inc.*, 138 F. App'x 431, 434-35 (3d Cir. 2005) ("The public has a strong interest in seeing that . . . property rights are respected."). The public interest is served by requiring strict compliance with the mandatory notice and consent provisions of HAR § 15-15-95(a), MCC § 19.40.030, and MCC § 19.510.010; statutes that exist precisely to protect fee simple landowners from having their property rights altered without their knowledge or consent. Permitting a party that lacks both standing and the required landowner authorization to obtain a planning commission approval, without ever notifying the fee owner, would fundamentally undermine the integrity of the land use permitting process and expose all landowners in the County of Maui to the same abuse.

Granting the TRO merely preserves the status quo by preventing Defendants from altering AB Maui's permitted quarry area or land use entitlements until due process is afforded. Defendants will suffer no prejudice by being required to comply with constitutional and procedural requirements.

By contrast, denying the TRO would allow Defendants to effectuate legally questionable actions that may permanently damage AB Maui's property rights and business operations.

**V. CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant its *Ex Parte* Motion for a Temporary Restraining Order and Preliminary Injunction, enjoining Defendants from taking any action to remove, reduce, or otherwise alter AB Maui's permitted quarry area or land use entitlements or from taking any further action, including but not limited

to, issuing any decision, order, or approval, or conducting any further hearings in furtherance of Hawaiian Cement's application to amend CUP No. 2006/0002 and SP No. 92-380, unless and until proper notice and an opportunity to be heard are provided, and pending a hearing on the merits of this Motion.

DATED: Honolulu, Hawaii, May 4, 2026.

/s/ Micah P. K. Aiu  
MICAH P. K. AIU  
Attorney for Plaintiff  
AB MAUI QUARRIES, LLC

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Defendants or any of them

Defendants.

CIVIL NO. 2CCV-26-0000147

DECLARATION OF WYETH M.  
MATSUBARA

DECLARATION OF WYETH M. MATSUBARA

I, Wyeth M. Matsubara, declare under penalty of perjury that the following is true and correct:

1. I am Vice President for Defendant Nan, Inc. ("Nan") the sole member of Plaintiff AB Maui Quarries LLC. As Vice President for Nan, I have personal knowledge of the matters as set forth herein.

2. AB Maui is the fee simple owner of that certain real property identified by Tax Map Key No. (2) 3-8-004:001 (portion), located in Maui, Hawaii (the "Property"). The Property is currently subject to Conditional Use Permit No. 2006/0002 ("CUP") and Special Permit No. 92-380 ("SP").

3. Plaintiff did not receive any notice from Hawaiian Cement or Defendants MAUI PLANNING COMMISSION and COUNTY OF MAUI, DEPARTMENT OF PLANNING regarding Hawaiian Cement's application to amend CUP No. 2006/0002 and SP No. 92-380 as it pertains to the Property.

4. Hawaiian Cement did not seek or obtain AB Maui's consent prior to filing its application.

5. On all previous amendments to the Planning Commission in regards to CUP No. 2006/0002 and SP No. 92-380 involving our property, Hawaiian Cement sought and received the fee owner's consent to pursue the application pursuant to the rules, including seeking AB Maui Quarries LLC's consent on a previous 2021 motion to amend the CUP No. 2006/0002 and SP No. 92-380 that was subsequently withdrawn in 2023 after we did not provide consent when asked.

6. AB Maui Quarries has never provided and does not consent to Hawaiian Cement's application to amend CUP No. 2006/0002 and SP No. 92-380.

7. AB Maui transmitted a cease and desist letter to Defendants reiterating its objection, demanding that Defendants refrain from further action, and requesting a contested case hearing. A true and correct copy of the May 1, 2026 correspondence is attached hereto as Exhibit "1".

8. On May 4, 2026, AB Maui transmitted notice to Defendants and Hawaiian Cement that it had terminated the License Agreement due to Hawaiian Cement's material breaches, including its failure to provide advance notice to and obtain written consent of AB Maui prior to filing any application affecting the CUP or SP, and its failure to cure following written notice thereof. Hawaiian Cement no longer holds any possessory or contractual right to

occupy or use the Property. A true and correct copy of the May 4, 2026 Notice of Termination is attached hereto as Exhibit “2”.

9. AB Maui has never provided, and does not provide, its consent to Hawaiian Cement's current application.

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii; May 4, 2024.

/s/ Wyeth M. Matsubara

WYETH M. MATSUBARA

# AB Maui Quarries, LLC

636 Laumaka Street  
Honolulu, Hawaii 96819  
Telephone: (808) 842-4929  
Facsimile: (808) 841-8281

May 1, 2026

## VIA EMAIL TO

[planning@mauicounty.gov](mailto:planning@mauicounty.gov) and  
[jacky.takakura@co.maui.hi.us](mailto:jacky.takakura@co.maui.hi.us)

Ms. Jacky Takakura, Acting Director  
Planning Department, County of Maui  
One Main Plaza  
2200 Main Street, Suite 315  
Wailuku, Maui, Hawai'i 96793

Maui Planning Commission  
C/O Planning Department, County of Maui  
One Main Plaza  
2200 Main Street, Suite 315  
Wailuku, Maui, Hawai'i 96793

**Re: Cease and Desist – Unlawful Action on Property Belonging to AB Maui Quarries, LLC's, TMK (2) 3-8-004:001 (por.), Pu'unēnē, Island of Maui, Hawai'i (SP92-380) (CUP 2006/0002)**

Dear Director Takakura, Chairperson Ward, and members of the Maui Planning Commission,

AB Maui Quarries, LLC ("AB Maui") is the fee owner of that certain parcel of land identified as Tax Map Key ("TMK") No. (2) 3-8-004:001 (portion), which is currently subject to the Conditional Use Permit ("CUP") 2006/0002 and Special Permit ("SP") 92-380. AB Maui understands you are taking action regarding said property owned by AB Maui, without notice to and/or the consent of AB Maui, and such action improperly alters land use entitlements affecting AB Maui's Property. **Demand is hereby being made that you immediately cease and desist any and all such actions until proper notice is effectuated and AB Maui has been given opportunity to be heard.** In the alternative, we demand that you reject and return Hawaiian Cement's application as incomplete and unauthorized and take no further action on it. Finally, to the extent required demand is made that a contested case hearing be held, and AB Maui be allowed to appear in any and all further matters that involves any portion of AB Maui's Property. For the avoidance of doubt, this relates only to CUP 2006/0002 and SP92-380 and any action that would modify permits that affect AB Maui's Property only.

As you already know, Hawaiian Cement submitted an application to amend CUP 2006/0002 and SP92-380 without AB Maui's written authorization and without providing AB Maui—the actual landowner—any notice or meaningful opportunity to participate in any proceeding that directly affects AB Maui's property interest. This is a denial of due process and a direct infringement on AB Maui's fundamental property rights, because it prejudices AB Maui's ability to protect its property interests before decisions are made that could materially affect the use, value, and entitlements associated with AB Maui's land. As the sole fee simple owner of the property, AB Maui retains all right, title, and interests in the subject property and Hawaiian Cement failed to obtain our prior consent to any such amendment. Maui County Code Chapter 19.68 clearly requires that for any application "[w]here the applicant is not the legal owner of the subject property, a notarized document from the legal owner authorizing the application" and requires the applicant to "give notice of the application to those on record as the

Exhibit "1"

RE: Cease and Desist – Unlawful Action on Property Belonging to AB Maui Quarries, LLC’s TMK (2) 3-8-004:001 (por.), Pu‘unēnē, Island of Maui, Hawai‘i (SP92-380) (CUP 2006/0002)  
May 1, 2026

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owners and lessees of real property located within five hundred feet of the real property . . . [b]y mailing a copy of the notice by certified or registered mail, return receipt requested, to all of those persons identified[.]” Similarly, Hawaii Administrative Rule (“HAR”) § 15-15-95 also requires that “if the person is not the owner or sole owner in fee simple of the land, the record shall include evidence that the person requesting the special permit has written authorization of all fee simple owners to file the petition, which authorization shall also include an acknowledgement that the owners and their successors shall be bound by the special permit and its conditions.” The onus is on the Maui Planning Commission and Maui Planning Department to ensure that these requirements are met prior to advancing any application. Intentional failure to do so is unlawful and a willful dereliction of duty.

Any decision by you is made pursuant to HAR § 15-15-91, which states, “Conditions imposed by the commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer.” Failure to ensure that proper notice was made to affected owners undermines private property interest, due process, and the integrity of the permitting review process. AB Maui received no advance notice of the filing and no meaningful opportunity to address the application prior to submission. This is not a harmless technicality—this is the kind of omission that deprives the affected landowner of timely participation and frustrates the transparency expected of the permitting process. Where an applicant is not the fee owner of the property and cannot produce the required written landowner authorization, the County has no valid basis to accept or act upon the application as filed. Any agency action taken on an unauthorized application—especially one that can bind current and future owners since these condition “run with the land”—is beyond the Commission’s legal authority, and void and/or voidable as a matter of law, basic administrative fairness, and due process. Additionally, this Cease and Desist is being provided that should you proceed with any action relating to our property, we will pursue this matter in court and oppose any right you may have to qualified immunity or otherwise.

Because AB Maui’s fee ownership is a protected property interest, the County cannot process or entertain an application that seeks to alter entitlements affecting AB Maui’s land without providing AB Maui notice and a meaningful opportunity to be heard at a time when participation can matter. Proceeding otherwise constitutes a denial of fundamental fairness and procedural due process and would taint any resulting staff recommendation or Commission action.

AB Maui does not consent to any action that changes, extinguishes, re-defines, or otherwise impairs land use entitlements that run with (or have historically encumbered/benefited) AB Maui’s Property. As stated above, you are being directed to cease and desist further actions affecting our property without documented notice and express authorization from AB Maui Quarries, LLC. Please acknowledge receipt of this letter by close of business today and by Monday, May 4, 2026 provide a written statement detailing your position and/or course of action regarding AB Maui’s Property.

RE: Cease and Desist – Unlawful Action on Property Belonging to AB Maui Quarries, LLC’s TMK (2) 3-8-004:001 (por.), Pu‘unēnē, Island of Maui, Hawai‘i (SP92-380) (CUP 2006/0002)  
May 1, 2026

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Should you wish to discuss this matter further, please do not hesitate to contact me a (808) 842-4929 or by email at [maiu@nanhawaii.com](mailto:maiu@nanhawaii.com).

Sincerely,



Micah P. K. Aiu, Esq.  
General Counsel

cc: [daniel.e.ordenker@hawaii.gov](mailto:daniel.e.ordenker@hawaii.gov)  
[dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov)  
[josiah.k.nishita@co.maui.hi.us](mailto:josiah.k.nishita@co.maui.hi.us)

# AB Maui Quarries, LLC

636 Laumaka Street  
Honolulu, Hawaii 96819  
Telephone: (808) 842-4929  
Facsimile: (808) 841-8281

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May 4, 2026

**VIA EMAIL TO**

[planning@mauicounty.gov](mailto:planning@mauicounty.gov) and  
[jacky.takakura@co.maui.hi.us](mailto:jacky.takakura@co.maui.hi.us)

Ms. Jacky Takakura, Acting Director  
Planning Department, County of Maui  
One Main Plaza  
2200 Main Street, Suite 315  
Wailuku, Maui, Hawai'i 96793

Maui Planning Commission  
C/O Planning Department, County of Maui  
One Main Plaza  
2200 Main Street, Suite 315  
Wailuku, Maui, Hawai'i 96793

**Re: Termination of License Agreement between AB Maui Quarries, LLC and Hawaiian Cement, TMK (2) 3-8-004:001 (por.), Pu'unēnē, Island of Maui, Hawai'i (SP92-380) (CUP 2006/0002)**

Dear Director Takakura, Chairperson Ward, and members of the Maui Planning Commission,

Please take notice that effective May 4, 2026, AB Maui Quarries, LLC ("AB Maui"), the fee owner of that certain parcel of land identified as Tax Map Key ("TMK") No. (2) 3-8-004:001 (portion), has terminated that certain Amended and Restated License Agreement, dated March 26, 2012 ("License") between AB Maui and Hawaiian Cement. The Property is currently subject to the Conditional Use Permit ("CUP") 2006/0002 and Special Permit ("SP") 92-380. As the License has been terminated and Hawaiian cement no longer holds any contractual right to occupy or use the Property, Hawaiian Cement has no standing to bring any application before the Maui Planning Commission with respect to the Property. Accordingly, any pending applications should be denied.

As previously stated in AB Maui's correspondence date May 1, 2026, Hawaiian Cement submitted its application to amend CUP 2006/0002 and SP92-380 without AB Maui's written authorization and without providing AB Maui—the fee owner of the Property—any notice or meaningful opportunity to participate in any proceeding that directly affects AB Maui's property interests. This is a denial of due process and a direct infringement on AB Maui's fundamental property rights, because it prejudices AB Maui's ability to protect its property interests before decisions are made that could materially affect the use, value, and entitlements associated with AB Maui's land. In addition, AB Maui has determined, in good faith, that Hawaiian Cement has and continues to violate material covenants in the License, including, without limitation, its obligations to provide notice and obtain written consent of AB Maui prior to submitting any application affecting the CUP and SP. These violations constitute a material breach of the License. Hawaiian Cement was provided written notice of such breach and a reasonable opportunity to cure, and failed to do so. Accordingly, Hawaiian Cement's License has been terminated effective May 4, 2026.

Exhibit "2"

RE: Termination of License Agreement between AB Maui Quarries, LLC and Hawaiian Cement, TMK (2) 3-8-004:001 (por.), Pu'unēnē, Island of Maui, Hawai'i (SP92-380) (CUP 2006/0002)  
May 4, 2026

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As it relates to any application or modification of a CUP or SP, only the property owner or any applicant with a property interest can bring such an action before a Planning Commission. Given that Hawaiian Cement no longer has any property interest in the Property to which CUP 2006/0002 and SP92-380 encumbers, Hawaiian Cement has no standing to amend, modify, or otherwise affect such CUP and SP. This situation gives additional support to AB Maui's position that landowner consent is required at all times for any application or modification affecting the Property.

AB Maui requests that the pending application related to CUP 2006/0002 and SP92-380 be withdrawn.

Should you wish to discuss this matter further, please do not hesitate to contact me a (808) 842-4929 or by email at [maiu@nanhawaii.com](mailto:maiu@nanhawaii.com).

Sincerely,



Micah P. K. Aiu, Esq.  
General Counsel

cc: [daniel.e.ordenker@hawaii.gov](mailto:daniel.e.ordenker@hawaii.gov)  
[dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov)  
[josiah.k.nishita@co.maui.hi.us](mailto:josiah.k.nishita@co.maui.hi.us)

# AB Maui Quarries, LLC

636 Laumaka Street  
Honolulu, Hawaii 96819  
Telephone: (808) 842-4929  
Facsimile: (808) 841-8281

May 4, 2026

VIA CERTIFIED MAIL AND  
EMAIL TO [lee@leemartinhi.com](mailto:lee@leemartinhi.com)

Mr. Terrence M. Lee  
Pacific Guardian Center  
737 Bishop Street, Suite 1450  
Honolulu, Hawaii 96813

Mr. David Gomes  
Hawaiian Cement  
PO Box 488  
Kahului, Hawaii 96732

**Re: Termination of License Agreement, Effective Immediately**

Dear Mr. Lee,

This is a follow up to my March 24, 2026 correspondence in which AB Maui Quarries, LLC (“AB Maui”) successor-in-interest to Alexander & Baldwin, Inc., under the Amended and Restated License Agreement, dated March 26, 2012 (“License”) provided you notice that based on our interpretation of the License, Hawaiian Cement would be in default if it “fails at any time to have any portion of the Rock Extraction Area designated as Licensed Premises” “and/or “abandons the Licensed Premises.” Instead of withdrawing your pending application, on March 28, 2026, your application was heard again before the Maui Planning Commission. We were provided with no notice of the March 28, 2026 proceeding and for all relevant times, you lacked AB Maui’s consent. We also note the provisions in the Third Amendment to Amended and Restated License Agreement, dated September 12, 2023, which requires that “Licensee shall at all times and at its expense fully observe, fulfill and comply with the terms and conditions of all permits, certifications, or approvals from any Government Authority relating to the License or activities on the Licensed Premises, including without limitation, the SUP and CUP[.]” Based upon statements made in your pending application and by your consultant Munekiyo Hiraga, including but not limited to “Applicant is seeking to further amend the pending SP amendment request to: 1) remove the existing quarry area and proposed expansion area from consideration, effective January 31, 2027 and 2) propose a new Supplemental Quarry site of 125 acres”, AB Maui in good faith considers your amendment and other actions a default under the License.

Your actions frustrate the overall purpose and intent of the License Agreement. You did not have AB Maui’s consent to alters land use entitlements affecting AB Maui’s Property and violated Hawaii Administrative Rule (“HAR”) § 15-15-95 and other statues, rules, and regulations that “requires written authorization of the fee owner” regarding your pending application. Finally, you cannot have a Rock Extraction Area without a valid permit covering such area. **Since you have not withdrawn your application, and you have been provided more than 30 days to do so since my March 24, 2026 correspondence, AB Maui is terminating the License, effective immediately. Your license is hereby TERMINATED.** You are hereby directed to remove yourself from AB Maui’s Property. AB Maui reserves all rights it may have by contract, law, and at equity.

Enclosure "1"  
to Exhibit "2"

Mr. Terrence M. Lee and Mr. David Gomes  
RE: Termination of License Agreement  
May 4, 2026

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Effective immediately, any entry upon or continued presence anywhere on AB Maui's Property by Hawaiian Cement, its agents, employees, contractors, or invitees—whether within or outside the prior Licensed Premises/Rock Extraction Area—without AB Maui's express written permission will constitute an unlawful entry and trespass. No further license, consent, or permission is granted for entry onto the property. AB Maui will pursue all rights and remedies available at law and in equity—including without limitation injunctive relief, summary possession/ejectment, and recovery of damages, attorneys' fees, and costs—and will coordinate with appropriate law enforcement as warranted.

Should you have any questions or concerns, please do not hesitate to contact me at [maiu@nanhawaii.com](mailto:maiu@nanhawaii.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Micah Aiu".

Micah P. K. Aiu, Esq.  
General Counsel

MICAH P. K. AIU  
636 Laumaka Street  
Honolulu, Hawaii 96819  
Telephone: (808) 842-4929  
Facsimile: (808) 842-8281  
Email: [maui@nanhawaii.com](mailto:maui@nanhawaii.com)

10589-0

Attorney for Plaintiff  
AB MAUI QUARRIES, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

AB MAUI QUARRIES, LLC,

Plaintiff,

vs.

MAUI PLANNING COMMISSION;  
COUNTY OF MAUI, DEPARTMENT OF  
PLANNING; JOHN OR JANE DOES 1  
THROUGH JOHN OR JANE DOES 100; and  
all other persons associated with or acting by  
or through or under or in connection or in  
concert with any of the above-named  
Defendants or any of them

Defendants.

CIVIL NO. 2CCV-26-0000147

**[PROPOSED]** ORDER GRANTING  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

**[PROPOSED]** ORDER GRANTING MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

MICAH P. K. AIU  
636 Laumaka Street  
Honolulu, Hawaii 96819  
Telephone: (808) 842-4929  
Facsimile: (808) 842-8281  
Email: [maiu@nanhawaii.com](mailto:maiu@nanhawaii.com)

10589-0

Attorney for Plaintiff  
AB MAUI QUARRIES, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

AB MAUI QUARRIES, LLC,

Plaintiff,

vs.

MAUI PLANNING COMMISSION;  
COUNTY OF MAUI, DEPARTMENT OF  
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THROUGH JOHN OR JANE DOES 100; and  
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or through or under or in connection or in  
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Defendants or any of them

Defendants.

CIVIL NO. 2CCV-26-0000147

ORDER GRANTING MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

ORDER GRANTING MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

THIS MATTER came before the Court upon Plaintiffs motion for a temporary restraining order and preliminary injunction. Plaintiff AB MAUI QUARRIES, LLC ("AB Maui") appeared by and through its attorney, Micah P.K. Aiu. The Court being fully apprised makes the following findings of fact.

## **I. FINDINGS OF FACT**

1. AB Maui is the fee simple owner of that certain real property identified by Tax Map Key No. (2) 3-8-004-002 (portion), situated at Waikapu, Maui, Hawaii (the "Property"), which is currently encumbered by Conditional Use Permit No. 2006/0002 ("CUP") and Special Permit No. 92-380 ("SP").

2. Hawaiian Cement, a Hawaii general partnership, was previously authorized to quarry a portion of the Property pursuant to the Amended and Restated License Agreement dated March 26, 2012 (the "License Agreement"). The License Agreement was AB Maui's predecessor in interest's agreement with Hawaiian Cement, and AB Maui succeeded to all rights of Licensor thereunder pursuant to a Membership Interest Purchase Agreement dated November 6, 2023 and related Contribution Agreement.

3. On or about January 26, 2024, AB Maui provided Hawaiian Cement written notice that it was exercising its right under Paragraph 4 of the License Agreement to terminate the agreement upon thirty-six (36) months' notice, effective January 25, 2027, and expressly revoked all prior authorizations for Hawaiian Cement to pursue any application or extension before any regulatory agency relating to the Property.

4. On or about June 27, 2025, Hawaiian Cement and its consultant Munekiyo Hiraga submitted an Application for Amendment to Permit Terms, Conditions, and Time Stipulations relating to CUP No. 2006/0002 and SP No. 92-380 (the "Application"), without AB Maui's knowledge, authorization, or consent, and without including written authorization from AB Maui.

5. Hawaiian Cement and/or its consultant Munekiyo Hiraga failed to provide AB Maui notice of the Application, and Defendants failed to ensure that proper notice was served upon AB Maui, the fee owner of the Property, as required by MCC § 19.510.010.

6. On or about November 25, 2025, Defendant Maui Planning Commission held a hearing on Hawaiian Cement's Application. AB Maui received no notice of the November 25, 2025 hearing and was unable to appear, respond to commissioners' questions, or advocate for its property interests. At the conclusion of that hearing, Defendants approved Hawaiian Cement's Application.

7. On or about March 20, 2026, AB Maui transmitted correspondence to Hawaiian Cement stating that Hawaiian Cement did not have AB Maui's consent to amend the CUP or SP. Hawaiian Cement did not withdraw the Application or notify AB Maui of any future proceedings.

8. On or about March 24, 2026, AB Maui transmitted correspondence directly to Defendants notifying them that Hawaiian Cement did not have AB Maui's consent. Defendants did not respond or notify AB Maui of any future hearings.

9. On or about April 20, 2026, Plaintiff learned that Defendant Maui Planning Commission had scheduled a hearing on April 28, 2026, to approve Hawaiian Cement's pending application through an informal virtual meeting it requested with representatives of one of the Defendants. Despite this informal communication, Defendants provided no written notice to AB Maui of the scheduled hearing as required by applicable law, and AB Maui received no formal notice of the proceedings.

10. On or about April 27, 2026, AB Maui transmitted a letter to Defendants objecting to any further action on Hawaiian Cement's Application. Defendants did not respond.

11. On May 1, 2026, AB Maui transmitted a cease-and-desist letter to Defendants reiterating its objection, demanding that Defendants refrain from further action until proper notice was effectuated and AB Maui was afforded an opportunity to be heard, and requesting a contested case hearing. As of the filing of this action, Defendants have not acknowledged

receipt of the April 27, 2026 or May 1, 2026 correspondence.

12. On May 4, 2026, AB Maui terminated the License Agreement based on Hawaiian Cement's material breach, including its failure to provide advance notice to and obtain the written consent of AB Maui prior to filing any application affecting the CUP No. 2006/0002 and SP No. 92-380, and its failure to cure following written notice thereof. Hawaiian Cement no longer holds any possessory or contractual right to occupy or use the Property and retains no cognizable property interest therein.

## **II. CONCLUSIONS OF LAW**

1. The Court has jurisdiction over this action and the parties to this action.
2. The above-referenced actions of Defendants constitute illegal trespass.
3. If the above-referenced actions are permitted to stand or continue, AB Maui will suffer immediate and irreparable harm for which there is no adequate remedy at law. There is proper cause for a preliminary injunction, AB Maui has no adequate remedy at law, AB Maui has suffered immediate and irreparable damage, and, unless such restraining order be granted, substantial and irreparable injury and damage will continue to AB Maui.
4. AB Maui is entitled to the temporary restraining order and preliminary injunction that they seek. AB Maui has a clear legal and equitable right to exclude others from its property. AB Maui has a well-grounded fear of immediate invasion of those rights. The acts complained of are resulting in and will continue to result in harm if the acts are not enjoined. The remedies are inadequate. There is a strong likelihood of AB Maui's success on the merits. The public interest weighs heavily in favor of enjoining the illegal conduct.
5. AB Maui is entitled to the temporary restraining order that it seeks.

## **III. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants MAUI PLANNING COMMISSION and COUNTY OF MAUI, DEPARTMENT OF PLANNING, and each of them, their members, officers, servants, agents, and employees, and all persons associated with or acting by, through, or under the Defendants, or any of them, or in connection or in concert with them or any of them, be and are hereby restrained and enjoined, pending the determination of this action or until further order of this Court.

A temporary restraining order is hereby issued restraining the Defendants and each of them, their members, officers, servants, agents, and employees, and each of them, and all persons associated with or acting by, through, or under the Defendants, or any of them, or in connection or in concert with them or any of them, from taking any action — including but not limited to scheduling or holding hearings, issuing notices, issuing decisions or approvals, making findings of fact or conclusions of law, or granting any relief whatsoever — in furtherance of or in connection with Hawaiian Cement's application to amend Conditional Use Permit No. 2006/0002 and Special Permit No. 92-380 as it pertains to Tax Map Key No. (2) 3-8-004-002 (portion), situated at Waikapu, Maui, Hawaii, until such time as AB Maui, as fee owner of the Property, has been afforded proper notice and a meaningful opportunity to be heard.

IT IS FURTHER ORDERED that the Defendants, and their officers and agents, shall immediately: (a) affirmatively direct members of the Defendants and their employees and/or all others acting in concert with them to cease and desist from engaging in the acts enjoined herein; (b) refrain from all acts enjoined herein, either direct or indirect, that violate this Order, and refrain from encouraging others to do the same; and (c) take all steps necessary to terminate such acts.

IT IS FURTHER ORDERED that this Order is effective immediately and that public peace officers shall enforce this Order, as any violation of this Order shall be deemed both civil and criminal contempt of Court.

IT IS FURTHER ORDERED that violation of this Order by Defendants shall result in Defendants being ordered to pay a liquidated damages penalty of \$\_\_\_\_\_ per violation to Plaintiff, as well as any other additional relief the Court finds appropriate.

IT IS FURTHER ORDERED that the Court shall issue an Order to show cause to Defendants to defend and appear why a preliminary injunction shall not be issued. This hearing shall be set at the earliest possible time not to exceed ten (10) days. This TRO becomes void after ten (10) days. The hearing shall be set on \_\_\_\_\_, at \_\_\_\_\_.

Dated: Honolulu, Hawai'i, \_\_\_\_\_.

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JUDGE OF THE ABOVE-ENTITLED COURT

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*AB Maui Quarries, LLC v. Maui Planning Commission; County of Maui, Department of Planning, et al.*, Civil No. 2CCV-26-0000147; **ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.**

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

AB MAUI QUARRIES, LLC,

Plaintiff,

vs.

MAUI PLANNING COMMISSION;  
COUNTY OF MAUI, DEPARTMENT OF  
PLANNING; JOHN OR JANE DOES 1  
THROUGH JOHN OR JANE DOES 100; and  
all other persons associated with or acting by  
or through or under or in connection or in  
concert with any of the above-named  
Defendants or any of them

Defendants.

CIVIL NO. 2CCV-26-0000147

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date noted below, a true and correct copy of the foregoing document will be duly served upon the following parties via USPS, email, and/or the Judiciary Electronic Filing and Service System (JEFS), addressed as set forth below:

MAUI PLANNING COMMISSION  
2200 Main Street  
One Main Plaza, Suite 315  
Wailuku, HI 96793

[planning@mauicounty.gov](mailto:planning@mauicounty.gov)

COUNTY OF MAUI,  
DEPARTMENT OF PLANNING  
c/o Acting Director Jacky Takakura  
2200 Main Street  
One Main Plaza, Suite 315  
Wailuku, HI 96793

[jacky.takakura@co.maui.hi.us](mailto:jacky.takakura@co.maui.hi.us)

DATED: Honolulu, Hawaii, May 4, 2025.

/s/ Micah P. K. Aiu

MICAH P. K. AIU

Attorney for Plaintiff

AB MAUI QUARRIES, LLC