

Electronically Filed
FIRST CIRCUIT
1CCV-23-0000517
28-MAY-2024
03:43 PM
Dkt. 170 ORD

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

NĀ KIA ‘I O WAI HĀ, an unincorporated
association, and MORRIS HICKS, TARA
ROJAS, MELINDA SONODA-PALE,
SUMMER-LEE KAU‘IONALANI
YADAO, individuals,

Plaintiffs,

v.

HAWAI‘I COMMUNITY
DEVELOPMENT AUTHORITY, State of
Hawai‘i, HONOKEA KALAELOA, a
limited liability company, and DOES 1–27,

Defendants.

CIVIL NO. 1CCV-23-0000517

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT, FILED JANUARY 3,
2024 [DKT. 55]

HEARING DATE: APRIL 11, 2024
TIME: 10:00 AM
JUDGE: SHIRLEY M. KAWAMURA

TRIAL DATE: NOVEMBER 4, 2024
JUDGE: SHIRLEY M. KAWAMURA

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS’ MOTION FOR
SUMMARY JUDGMENT, FILED JANUARY 3, 2024 [DKT. 55]**

On January 3, 2024, NĀ KIA ‘I O WAI HĀ, an unincorporated association, and MORRIS HICKS, TARA ROJAS, MELINDA SONODA-PALE, SUMMER-LEE KAU‘IONALANI YADAO, individuals (collectively, “Plaintiffs”), filed their Motion for Summary Judgment (“Motion”) as Docket No. 55. On January 12, 2024, Plaintiffs filed an Errata to the Motion (“Errata”) as Docket No. 94. On April 3, 2024, HONOKEA KALAELOA, a limited liability company (“Honokea”), and HAWAI‘I COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”) (collectively, “Defendants”), filed their Memorandums in Opposition (together,

“Opposition”) to the Motion as Docket Nos. 114 and 153, respectively. On April 8, 2024, Plaintiffs filed their Replies (“Replies”) to the Opposition as Docket Nos. 156 and 157. The Motion came on for hearing before the Honorable Shirley M. Kawamura on April 11, 2024 at 10:00 AM in Courtroom 12 at 777 Punchbowl Street, Honolulu, Hawai‘i 96813. BIANCA K. ISAKI and RYAN D. HURLEY, attorneys for Plaintiffs, joined by CHRISTINA D. LIZZI via Zoom, CHARLES D. HUNTER and JONATHAN S. MOORE, attorneys for Honokea, and ANDREW I. KIM and KEVIN C. TONGG, attorneys for HCDA, were present. Pursuant to the Court’s minute order of April 11, 2024, filed as Docket No. 160 thereafter, Plaintiffs submitted a supplemental briefing on April 26, 2024 as Docket No. 163, Honokea submitted a supplemental briefing on the same date as Docket No. 165 (together, “Supplemental Briefing”), and HCDA filed its Joinder (“Joinder”) to Honokea’s supplemental brief as Docket No. 167. The Court, having reviewed the Motion, the Errata, the Opposition, the Replies, and the memoranda and exhibits attached thereto, the Supplemental Briefing and Joinder, having heard the arguments of counsel and being duly informed of the status of the case, and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiffs’ Motion for Summary Judgment, filed January 13, 2024 is GRANTED in part and DENIED in part as follows:

A. Standard of Review

1. In cases reviewing the sufficiency of an environmental assessment (“EA”), see Haw. Rev. Stat. § 343-5; Haw. Admin. R. §§ 11-200.1-18 to -21, and whether an environmental impact statement (“EIS”) is required, see Haw. Rev. Stat. § 343-5; Haw. Admin. R. § 11-200.1-22, courts apply the “clearly erroneous standard.” Pele Def. Fund v. Dep’t of Land & Natural Res., 141 Haw. 381, 384–86 (Haw. Ct. App. 2018) (“[A]n agency’s determination that a proposed action will likely have no

- significant impact on the environment is an issue that should be reviewed under the *clearly erroneous standard*.”) (emphasis added); see also Kilakila ‘O Haleakala v. U. of Haw., 138 Haw. 364, 368 (2016) (“Because [defendant’s] conclusion that the Management Plan would not cause significant environmental impacts is not *clearly erroneous*, an environmental impact statement was not required.”) (emphasis added).
2. “This standard of review is deferential; the [C]ourt cannot substitute its judgment for that of the agency. The agency’s decision will only be overturned if the agency made ‘a clear error in judgment.’” Makua v. Rumsfeld, 163 F. Supp. 2d 1202, 1216 (D. Haw. 2001) (internal citations omitted).
 3. So long as the agency has taken a “hard look” at the “consequences of its actions, based its decision on a consideration of relevant factors, and provided a ‘convincing statement of reasons’ to explain why a project’s impacts are insignificant,” the court will defer to the agency. Id.
 4. Although Defendants cite to the “rule of reason” as the appropriate standard of review, the Court finds this standard is inapplicable; instead, the Court applies the above “clearly erroneous” standard based on where this matter stands within the environmental review process. Pele, 141 Haw. at 386 (“In Life of the Land, the supreme court considered whether an EIS contained sufficient information, not whether an EIS was necessary following the completion of an EA and issuance of a [finding of no significant impact (“FONSI”)]. As discussed above, the correct standard to be employed by a reviewing court in the latter circumstance is whether the subject agency clearly erred in determining whether the proposed action will likely have a significant impact on the environment.”).

B. Impact of Water Use and Injection

5. First, the Court addresses the impact of the proposed project's water use and injection, and asks "whether the [HCDA] *clearly erred* in determining whether the [project] will *likely* have a significant impact on the environment"? Id. (emphases added); see also Kepo'o v. Kane, 106 Haw. 270, 289 (2005) ("The proper inquiry for determining the necessity of an EIS based on the language of [Hawai'i Revised Statutes ("HRS")] § 343-5(c) . . . is whether the proposed action will 'likely' have a significant effect on the environment."). "As defined in HRS § 343-2, 'significant effect' includes irrevocable commitment of natural resources." Id. at 290; see also Haw. Rev. Stat. § 343-2.
6. In the instant case, the March 2023 Second Final Environmental Assessment ("FEA") for the nineteen-acre Honokea Surf Village proposed by Honokea in Kalaeloa, O'ahu, Hawai'i ("Project") indicates that the "Surf Lagoon, which will require the largest water demand, is projected to demand 6,870,000 gallons of potable water for its initial filling and periodic filling which will occur biennially." Sec. Final Env't Assessment 3-50; see also Pls.' Mot. for Summ. J., Ex. 1; Honokea's Mem. in Opp'n, Ex. B.¹ Although the FEA acknowledges that "water demand management is a complex combination of water demands encountered on *different time scales*," id. (emphasis added), the FEA is ambiguous as to the specific manner, time frame, and actual daily water use implicated by the initial and periodic filling of the lagoon. Instead, the FEA merely suggests a "multi-day" filling period, and does not specify how and what amount of water will be allocated over this shorter period of time. Id. at

¹ This Order shall cite to the Second Final Environmental Assessment directly instead of either party's exhibits throughout the remainder of the Order.

3-51 to -52. Instead, the FEA diffuses water use calculations by annualizing total water usage to ultimately present an approximation of 136,000 gallons per day. Id. at 3-50, 3-52.

7. Additionally, the FEA describes coordination with Hawai‘i Water Service (“HWS”) “over a multi-day period, subject to maximum allowable water meter flow and State-imposed source pumping rate restrictions.” Id. at 3-51. Because these parameters have been approved by the Commission on Water Resource Management (“CWRM”), Defendants conclude that the Project’s water use will not result in a significant impact that would trigger an EIS. Honokea’s Suppl. Br. 6.
8. However, Hawai‘i courts have found an irrevocable commitment of natural resources *likely* in similar cases. In Moloka‘i Homesteaders Coop. Ass’n v. Cobb, the Hawai‘i Supreme Court held that a proposed resort complex in a previously unpopulated area that required the transportation of water . . . would require an EIS if Chapter 343 had already been enacted and applied at the time of the project’s approval. 63 Haw. 453, 467 (1981) (“The use of a government pipeline, the implicit commitment of prime natural resources to a particular purpose, perhaps irrevocably, and the substantial social and economic consequences of the governmental approval of the proposal would dictate the preparation of an EIS.”). Significantly, the court found a likely irrevocable commitment of natural resources even when the pipeline in question was “being operated at approximately one-fourth its capacity.” Id. at 456.
9. Recently, in Kia‘i Wai v. Dep’t of Water, the Hawai‘i Supreme Court found that an eighteen-inch-diameter-wide transmission relief line needed for a mixed-use development—similar to the proposed project at issue here—“clearly implicate[d]

water resources” to a degree that would likely irrevocably commit natural resources. 151 Haw. 442, 458 (2022). While this Court concedes that the Kia‘i Wai court was predominantly concerned with increased water transmission capacity—which is not directly at issue here—without a clear picture of water use during the critical “multi-day” Surf Lagoon filling period, nor how this period will affect the sustainable yield of the Kapolei Aquifer System, the Court is unable to determine whether the Project’s impact will likely irrevocably commit natural resources. Thus, a revised FEA is needed on this point.

10. More importantly, the Kia‘i Wai court further examined whether the environmental assessment sufficiently considered secondary and cumulative impacts of the transmission line project before them. Id. at 455–62.
11. Hawai‘i Administrative Rules (“HAR”) § 11-200.1-2 defines “secondary impact” as “an effect that is caused by the action and is later in time or farther removed in distance, but is still reasonably foreseeable. An indirect effect may include a growth-inducing effect and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.” Haw. Admin. R. § 11-200.1-2.
12. The same section defines “cumulative impact” as “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes the other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” Id.

13. Considering the secondary and cumulative impacts of the project at issue in the Kia'i Wai case, the court eventually held that “by limiting the scope of its environmental analysis to the physical footprint of the proposed project,” the agency clearly erred and was thereby required to “issue a new EA” to account for such secondary and cumulative impacts. 151 Haw. at 466.
14. In the instant case, Honokea argues that there is no “presumptive significant impact” because the water Honokea proposes to use was irrevocably committed decades ago. Honokea’s Mem. in Opp’n 8. Honokea sets forth the history of this allocation to the HWS: In 1999, when the Navy sought to close the former Barbers Point Naval Air Station, it prepared a final environmental impact statement. See id. at Ex. C. This 1999 statement allocated a maximum withdrawal of 2.337 MGD. Id. at 3-44. When HWS took over the Barbers Point shaft after the base’s closure, HWS became subject to, and the beneficiary of, the same 2.337 MGD allocation of water rights that had been in place since 1979. Honokea’s Mem. in Opp’n 9. Thus, as argued by Honokea, by incorporating the Navy’s final environmental impact statement, the HCDA did not erroneously determine a FONSI upon review of the FEA due to the Project’s water usage below such allocation. Id.
15. The Kia'i Wai court, however, made clear that “the existence of past environmental review or the possibility of future analysis does not excuse [the Project’s] obligation to consider water withdrawals as a secondary impact” as part of the FEA. 151 Haw. at 459. Yet here, the FEA does not mention “secondary impacts” in any of the sections addressing water use. See Sec. Final Env’t Assessment 3-48 to -53.

16. Additionally, the Kia'i Wai court held that “the fact that increased surface water withdrawals would be subject to [future] regulatory approval [did] not excuse [the agency’s] failure to consider water use as a secondary impact.” 151 Haw. at 459–60.
17. Here, the water resources in the ‘Ewa-Kunia subaquifer of the Pearl Harbor aquifer hydrologic unit are nearly entirely allocated—15.545 MGD of the 16 MGD estimated as the aquifer’s sustainable yield. Sec. Final Env’t Assessment 3-50. Given the anticipated future water demands of the area, as discussed below, the FEA fails to adequately set forth the secondary, and cumulative, impacts of the Project’s water use.
18. Moreover, the FEA fails to adequately address the cumulative impact of the Project’s water use in the face of growing water demand in the area due to anticipated development—which the FEA admits is likely. See, e.g., id. at 3-89, 3-91. Although the FEA dedicates a section to “Cumulative Potable Water Demand Impacts,” its analysis is lacking. In this section, the FEA specifically notes:
- The Draft Kalaeloa Potable Master Plan [of] September 2016 . . . identified the need for Kalaeloa’s water system to be improved and expanded, with improvements to storage, transmission, and distributions systems, to accommodate *anticipated future water demands which are expected to triple over current usage to 3.266 MGD*. This increase is predicated mainly due to new housing units built in Kalaeloa. The 3.266 MGD is *higher than the current 2.337 MGD water allocation* for Barbers Point Wells, which means an additional water source totaling 0.930 MGD must be requested from [the Board of Water Supply (“BWS”)].
- Id. at 3-91 (emphases added).
19. The FEA states that “Honokea will not contribute or impede demand to BWS supply as it will be pulling its potable water demand from HWS”:

It is noted that Honokea will be drawing from HWS, a water utility separate from BWS. Honokea’s requested annual total water usage of approximately

0.136 MGD, while *significant*, falls within [HWS'] Water Use Permit of 2.337 MGD and is able to be accommodated within unused but already allocated pumping amounts permitted by CWRM to HWS within the 'Ewa-Kunia subaquifer. Honokea has obtained a will serve letter from HWS for future water service for this project.

Id. (emphasis added).

20. Though the water transmission *entity* may differ, the FEA also notes that “[w]hile HWS infrastructure and source wells are physically separate from BWS’ infrastructure, both HWS and BWS draw water for public needs from the *same underlying aquifer* in the ‘Ewa-Kunia region.” Id. at 4-3 (emphasis added). Thus, additional analysis is needed to fully capture the potential cumulative impact of anticipated growth and subsequent increased competing water demand.
21. Honokea may demonstrate in a revised FEA that increased water withdrawals will likely not have a significant impact on the environment. However, without additional analysis as to the secondary and cumulative impacts of the Project’s water use, the Court is unable to find that the HCDA fulfilled its requirement to take a “hard look” at this possibility. Sierra Club v. Dep’t of Transp. (Superferry I), 115 Haw. 299, 342 (2007). A revised FEA is needed on this point.
22. Similarly, the impact of the Project’s water injection remains unclear. The FEA states that the Project “will require the biennial draining of approximately seven million gallons of water.” Sec. Final Env’t Assessment 3-11. The “lagoon will be drained every other year, within the span of seven days, which equates to approximately one MGD.” Id. “Injection wells will be implemented to accommodate this water disposal.” Id. “The salinity of the injectate lagoon water is projected to be about 1,200 mg/l chloride which is similar to the water in the receiving aquifer.” Id. at 3-12.

23. However, the FEA also notes that agricultural “[i]rrigation water users are only able to pump when well salinity is below 1,000 mg/l chloride.” Id. at 3-14. Though the FEA states that “[i]n concentrations exceeding 1,000 mg/l requirement, pumping will need to cease [to] . . . reduce any potential detrimental impacts to the underlying groundwater quality,” id., it does not address in adequate detail how this will be monitored or guaranteed, besides a vague assurance that the water treatment system has been designed on a “no failure basis.” Id. at 3-12. This is particularly worrisome considering the projected salinity levels of the injectate are already above this amount. See id.
24. While the FEA does state that “[c]hloride levels of the injectate and of the groundwater underlying the project site will be monitored on a routine basis as a component of permitting requirements under HAR § 11-23,” Sec. Final Env’t Assessment 3-14, Hawai‘i case law indicates that a mere assertion that a project will comply with permitting requirements does not excuse the FEA from considering the secondary impacts of the injecting saline water on the receiving aquifer and other potential users. See Kia‘i Wai, 151 Haw. at 460 (finding subjection to regulatory approval, i.e., permits, does not excuse lacking secondary impact analysis).
25. Additionally, merely claiming that “because there are no existing groundwater users in the Kalaeloa Airport area, groundwater users in the area will not be impacted,” id., does not address the secondary nor cumulative impact of water injection on “reasonably foreseeable actions,” e.g., new housing development, as discussed above. See Haw. Admin. R. § 11-200.1-2.

26. Finally, the FEA continues in a conclusory fashion, stating that “[m]onitoring will protect and ensure groundwater dependent ecosystems including springs and seeps, submarine groundwater discharge, anchialine ponds, caves and karst systems, and deep-rooted plant communities including limu along with traditional and customary rights along the coastline that rely on the protection of groundwater resources.” Without specifying *how* it will monitor, protect, and ensure groundwater dependent ecosystems, the Court is unable to determine whether the HCDA made “a clear error in judgment” in its finding of “no significant impact.” Therefore, a revised FEA is needed on this point.

C. Land Use and Zoning

27. Turning to issues of land use and zoning, the Court finds limited case law in Hawai‘i addressing what a potential land use change may require in terms of environmental review.

28. HAR § 11-200.1-13 outlines significance criteria that could be indirectly triggered by a change in zoning, such as changes that “curtail the range of beneficial uses of the environment,” “have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community,” influence “population changes or effects on public facilities” and “ambient noise levels,” and/or have an “effect on scenic vistas and viewpoints.” Haw. Admin. R. § 11-200.1-13.

29. Additionally, Hawai‘i state courts have established that a *consideration* of a reclassification of property in order to facilitate development can trigger—at the very least—an EA to be prepared at the “earliest practicable time.” Sierra Club v. Off. of Plan., 109 Haw. 411, 416–17 (2006) (holding that the Land Use Commission’s

consideration of reclassification of property from an agricultural to urban district to facilitate development of the property constituted “action,” which triggered its obligation at the “earliest practicable time” to prepare an EA under the Hawai‘i Environmental Policy Act).

30. Here, the Court finds that Honokea has complied with its obligation to prepare an EA, and did so at the “earliest practicable time” despite the uncertain status of the rezoning.

31. Although not binding, the Court turns to California—a state with an analogous state environmental review act—for guidance as to whether a reclassification of land use requires an EIS in Hawai‘i. In City of Carmel-By-The-Sea v. Bd. of Supervisors, the California appellate court determined that “the fact that the environmental consequences of a rezoning may be more amorphous than those flowing from a precise development plan does not compel the conclusion that no EIR [California’s equivalent to an EIS] is required. . . . [T]he difficulty of assessing future impacts of a zoning ordinance does not excuse preparation of an EIR; such difficulty only reduces the level of specificity required and shifts the focus to the secondary effects.” 183 Cal. App. 3d 229, 229–230 (1986).

32. In the instant case, Defendants contend that no EIS is required since the proposed project conforms with the area’s development plan. First, the Court finds this argument tenuous—retail, restaurants, and indoor recreation are all not permitted—by right or by permit—under Figure 1.7 in HAR § 15-215. Reviewing the evidence in the light most favorable to the Defendants, even outdoor recreation and arenas and sports facilities are limited and require a conditional use permit.

33. Second, even if the Project did undeniably conform with the master plan, rezoning still requires a more detailed analysis. Id. at 253 (“The rezoning of a particular parcel . . . even if the result conforms with the plan, is a different matter, which necessarily requires a more detailed analysis.”).
34. Finally, the Court finds the FEA is lacking any analysis of the secondary and cumulative impacts that changing (or varying from) existing land use rules to accommodate the Project may cause. See Sec. Final Env’t Assessment 5-5 to -7. Without this analysis, the HCDA is unable to take a “hard look” as to whether any HAR § 11-200.1-13(b) factors are triggered, nor whether the Project will likely have a significant impact on the environment. A revised FEA is needed on this point. See Rumsfeld, 163 F. Supp. 2d at 1216.

D. Historic Preservation and Burials

35. Turning to historic preservation and burials, the Plaintiffs claim that the FEA evades identification of “previously identified” burials by proceeding under the State Historic Preservation Division (“SHPD”) rather than the O‘ahu Island Burial Council (“OIBC”). Pls.’ Mot. for Summ. J. 11–12.
36. However, the Court finds that the FEA provided extensive “supporting analytical data” by conducting two separate archaeological, cultural, and historical preservation studies. See Sec. Final Env’t Assessment 3-37 to -42, 5-35 to -36. “The . . . fieldwork consisted of a pedestrian survey of 100% of the 19.361-acre project area” with “[a]rchaeologists . . . spaced [five] to [ten] meters apart.” Id. at 3-37.
37. HAR § 13-300-1 defines “previously identified” as “burial sites containing human skeletal remains and any burial goods identified during archaeological inventory

- survey and data recovery of possible burial sites, or known through oral or written testimony.” Haw. Admin. R. § 13-300-1. Based on the aforementioned studies, the FEA reports that there are no “previously identified human remains” on the Project site. See Sec. Final Env’t Assessment 3-37 to -42.
38. While the archaeological survey done in connection with the FEA identified a possible burial site, this site was not disturbed. Id. at 3-41. Indeed, the FEA notes:
- Two of the [seventeen] sites have possible pre-contact features, including coral mounds and C-shaped coral structures. These have been identified by the design team and a [thirty]-foot non-development buffer will be utilized to protect the features in the event they require preservation.
- Id. at 5-35. “Based on the current archaeological information and design, the preliminary design of the Honokea Surf Village has taken into account sites recommended for preservation.” Id. at 3-42.
39. Because the coral mound identified as a possible burial site was not disturbed, and is not anticipated to be disturbed, the Project does not involve “previously identified human remains” nor trigger the jurisdiction of the OIBC. See Haw. Rev. Stat. §§ 6E-43, -43.5, -43.6; Haw. Admin. R. §§ 13-300-3.
40. Moreover the FEA provides, going forward, that “[i]f any cultural or archaeological resources are unearthed or ancestral remains are inadvertently discovered, the DLNR, SHPD, the [OIBC] representative and participating interests from recognized lineal and/or cultural descendants will be notified” and that “treatment of these resources will be conducted in strict compliance with the applicable historic preservation and burial laws. Sec. Final Env’t Assessment 6-1.
41. The Court thereby finds that the HCDA took the required “hard look,” see Rumsfeld, 163 F. Supp. 2d at 1216, its determination that the Project will likely have no

significant impact on historic preservation and burials is not clearly erroneous, and the FEA was sufficient in this regard.

E. Airport, Noise, Roads, and Bike Paths

42. “An agency's decision not to issue an EIS may be justified in some circumstances by the adoption of . . . mitigation measures.” Makua, 163 F. Supp. 2d at 1217.

43. “In evaluating the sufficiency of mitigation measures, the court considers ‘whether they constitute an adequate buffer against the negative impacts that may result’ Specifically, the court examines ‘whether the mitigation measures will render such impacts so minor so as not to warrant an EIS.’” Id. at 1217–18 (internal citations omitted).

44. “While the agency is not required to develop a complete mitigation plan detailing the precise nature of the mitigation measures, the proposed mitigation measures must be developed to a *reasonable degree*. ‘A perfunctory description or mere listing of mitigation measures, without supporting analytical data, is insufficient to support a finding of no significant impact.’” Id. at 1218 (emphasis added) (internal citations omitted).

45. Here, in regard to airport related land use constraints and the risk to wildlife posed by the Project’s location near an active airfield, the FEA provides the following mitigation measures, for example:

- Decorative lighting will be coordinated with [Division of Forestry and Wildlife] guidelines to avoid disorienting seabirds.
- The project will consult with wildlife and endangered species lighting experts to design minimally attractant lighting fixtures. . . .
- The project will consult with wildlife and endangered species lighting experts to design minimally attractant underwater lighting fixtures and

colors. Underwater lights will be monitored and minimized for potential seabird impacts if necessary.

- Honokea will evaluate the option of closed trash enclosures along with potentially posting signage to inform guests not to feed birds in the park.
- In addition, usage of landscaping that is highly desirable to birds will be avoided.

Sec. Final Env't Assessment 3-84.

46. The Court finds these mitigation measures do not constitute an adequate buffer to a reasonable degree, primarily because such measures do not rely on or even reference any supporting analytical data. See Makua, 163 F. Supp. 2d at 1217–18. Thus, this point requires a revised FEA.

47. Turning to noise concerns, the FEA provides proposed mitigation measures for both the impact of noise created by the nearby airport on the Project and its future users, Sec. Final Env't Assessment 3-79, as well as the Project's contribution to noise and its impact on neighboring properties. Id. at 3-80.

48. In regard to the former, the Court finds the FEA bases its mitigation strategies on supporting analytical data, namely, a noise exposure map created as part of the Kalaeloa Airport Master Plan of 2020 and a supplemental report measuring existing aircraft noise levels. Id. at 3-77; App. H. In regard to the latter, the Court finds the FEA offers *reasonable* mitigation measures that will render any potential negative noise-related impacts “so minor so as not to warrant an EIS.” See Makua, 163 F. Supp. 2d at 1217–18.

49. Thus, the Court determines no additional analysis is needed as to noise in the required revised FEA.

50. Lastly, in assessing the potential impact of the Project on roads and bike paths, the FEA provides the following mitigation measures that will overall benefit both vehicular and non-motorized transportation near the site:

- Strategies encouraging public transportation, carpooling, and ride-share travel options for both guests and employees will be considered by Honokea and HCDA.
- [T]he project team will coordinate with the Department of Transportation Services . . . to discuss the need for potential bus stop locations, or if any buses would need to be accommodated on site with a turnaround.
- The driveways along Coral Sea Road have been designed so that the path crossing locations of each driveway provide adequate sight distance for drivers and pedestrians and bicyclists.
- Signage such as monument signage, fencing, and other potential impediments to visibility will be added near the driveways to inform drivers, pedestrians, and bicyclists.
- Bicycle parking will be provided on-site to encourage the use of non-automobile travel for both employees and guests.

Sec. Final Env't Assessment 3-66.

51. These recommendations rely on an extensive Mobility Analysis Report produced by a well-respected transportation planning consultancy. See id. at App. G.

52. Thus, the Court holds that the road and bike path issues have been sufficiently considered in light of the proposed mitigation, and further analysis is not needed.

F. Constitutional Protections

53. Article XI, § 9 of the Hawai'i State Constitution affords each person a right to a "clean and healthful environment." Haw. Const. art. XI, § 9.

54. Sections 1 and 7 of the same Article protect and preserve public trust resources such as land, water, water resources, air, minerals, and energy sources. Id. §§ 1, 7.

55. The Court finds insufficient legal and factual basis, here, to find that the HDCA violated its constitutional public trust obligations due to an inadequate environmental review process.

G. Injunctive Relief

56. “Generally, the granting or denying of injunctive relief rests *with the sound discretion of the trial court* and the trial court’s decision will be sustained absent a showing of a manifest abuse of discretion.” Sierra Club v. Dep’t of Transp. (Superferry II), 120 Haw. 181, 197 (2009) (emphasis added).

57. Injunctive relief is appropriate when: 1) Plaintiff is likely to prevail on the merits; 2) balance of irreparable damage favors the issuance of a temporary injunction; and 3) the public interest supports granting an injunction. Life of the Land v. Ariyoshi, 59 Haw. 156, 158 (1978).

58. Here, the Court finds that Plaintiffs are likely to prevail on the merits, namely, that a revised FEA is needed as to certain subject matter.

59. The Court finds insufficient evidence for the HCDA to determine whether there is a likelihood of irrevocable commitment of natural resources and whether secondary and cumulative impacts of water use, injection, land use changes, and wildlife mitigation would likely lead to a significant impact, thereby favoring an injunction.

60. Given the potential for impact to the area and environment adjacent to and surrounding the proposed Project site, the Court finds it is in the public interest to grant a temporary injunction until a revised assessment is prepared.

61. “After applying the traditional balancing tests for injunctive relief, and utilizing this Court’s legal and equitable powers as they relate to the issuance of injunctive relief,

the Court concludes that injunctive relief *should and must* issue” until and only until a revised FEA is submitted and a new significance determination by HCDA is made.

See Superferry II, 120 Haw. at 192.

H. Order

62. The moving party is entitled to summary judgment “as a matter of law” if “there is no genuine issue as to any material fact.” Haw. R. Civ. Pro. 56.
63. In environmental cases, especially those “of public importance,” courts should grant a motion for summary judgment ‘*sparingly*, and never on limited and indefinite factual foundations.’” Kilakila, 138 Haw. at 376 (emphasis added).
64. Despite this, here, the Court finds “there is no genuine issue of material fact” as to Defendants’ lack of analysis regarding the impact of the Project’s water use and injectate salinity and required land use and zoning reclassification, especially in regard to the likelihood of irrevocable commitment of natural resources and such actions’ secondary and cumulative impacts. Additionally, the Court holds summary judgment is warranted regarding the FEA’s current analysis of wildlife mitigation measures related to the site’s proximity to an airport.
65. Thus, the Court hereby **GRANTS, IN PART**, the Motion and orders Defendants to prepare a revised FEA to cure the defects set forth herein, and thereby enable the agency to make a determination supported by substantial evidence.
66. Furthermore, the Court hereby **GRANTS** Plaintiffs’ request for injunctive relief until, and only until, a revised FEA is submitted and a new significance determination by HCDA is made.
67. All other requests for relief are hereby **DENIED**.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

DATED: HONOLULU, HAWAI'I, MAY 28, 2024.

/s/ Shirley M. Kawamura



HONORABLE SHIRLEY M. KAWAMURA
JUDGE OF THE ABOVE-ENTITLED COURT

NĀ KIA 'I O WAI HĀ et al. v. HAWAI'I COMMUNITY DEVELOPMENT AUTHORITY et al,
1CCV-23-0000517, Circuit Court of the First Circuit, State of Hawai'i, Order Granting In Part and
Denying In Part Plaintiffs' Motion For Summary Judgment, Filed January 3, 2024 [Dkt. 55]