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BOARD OF LAND AND NATURAL RESOURCES

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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H. CHING
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ELIZABETH DAILEY AND MICHAEL DAILEY,)	Civil No. 14-1-1541-07
)	(Agency Appeal)
)	
Appellants,)	APPELLEE BOARD OF LAND AND
)	NATURAL RESOURCES' ANSWER TO
vs.)	APPELLANTS ELIZABETH DAILEY'S
)	AND MICHAEL DAILEY'S STATEMENT
DEPARTMENT OF LAND AND)	OF THE CASE FILED JULY 11, 2014,
NATURAL RESOURCES; BOARD OF)	CERTIFICATE OF SERVICE
LAND AND NATURAL RESOURCES,)	
)	
Appellees.)	

APPELLEE BOARD OF LAND AND NATURAL RESOURCES' ANSWER TO APPELLANTS ELIZABETH DAILEY'S AND MICHAEL DAILEY'S STATEMENT OF THE CASE FILED JULY 11, 2014

Comes now Appellee BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("Appellee State"), by and through its attorneys, Attorney General DAVID M. LOUIE, and Deputy Attorney General COLIN J. LAU, and now submit its Answer to Appellants Elizabeth Dailey's and Michael Dailey's Statement of the Case filed on July 11, 2014 as follows:

FIRST DEFENSE (Fails to State a Claim)

The Appellants fail to state a claim against Appellee State upon which relief may be granted.

SECOND DEFENSE (Admissions and Denials)

1. Appellee State admits as the allegations in paragraphs 2, 10, 15, 16, 18, 19, 20, 21, and 22 of the Appellants' Statement of the Case ("Statement").

2. As to paragraph 1 of Appellants' Statement, Appellee State admits as to the allegations regarding the Findings of Fact, Conclusions of Law, Decision and Order regarding DLNR File No. OA-07-06 ("Decision and Order" or "Decision") as contained therein, which document speaks for itself; but as to specific allegations as to the intent of Appellants, Appellee State is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore, denies same.

3. As to paragraph 6 of Appellant's Statement, Appellee State admits to the allegation that Fred Dailey constructed the house on subject property of this appeal, as may be consistent with Findings of Fact no. 41 of the Decision and Order appealed from, but otherwise denies any specific allegations inconsistent with such finding. *oh*

4. As to paragraph 7 of the Statement, Appellee State admits to the allegations as they may be consistent with Findings of Fact nos. 43 and 44 of the Decision and Order appealed from, but otherwise denies any specific allegations inconsistent with such findings. *oh*

5. As to paragraph 9 of the Statement, Appellee State admits to the allegations as they may be consistent with Findings of Fact no. 1 of the Decision and Order appealed from, but otherwise denies the allegations to the extent they are inconsistent with such findings. *oh*

6. As to paragraph 11 of the Statement, Appellee State admits to the allegation to the extent it is consistent with portions of Findings of Fact nos. 8 and 9 of the Decision and *oh*

Order appealed from, but otherwise denies the allegations contained therein to the extent the conclusion made is incomplete.

7. As to paragraph 12 of the Statement, Appellee State admits that Appellants submitted an application for a land use in the conservation district (i.e., a CDUA) which was not approved, but avers that the nature of the application was for an Emergency CDUA, which purpose was to repair but otherwise remove encroaching portions of the structure.

8. As to paragraph 17 of the Statement, Appellee State admits hearings were conducted with regard to motions on October 11, 2007, August 19, 2013, October 8, 2013, and particularly the contested case hearing commencing on October 15, 2013, but avers that the remaining dates involved status conferences, and to that extent, denies same.

9. As to paragraph 3 of the Statement, Appellee State states that the cited statute and administrative rule sections speak for themselves. Appellee State is otherwise without sufficient information to form a belief as to the truth or falsity of the remaining allegations, and therefore, denies same.

10. As to paragraph 4 of the Statement, Appellee State states that the cited administrative rule section speaks for itself, but otherwise denies the provisions to the extent they may have been inadvertently misquoted.

11. As to paragraph 5 of the Statement, Appellee State states that the indicated statutory and rule provisions speak for themselves, although the quotation section regarding “Any final order of the department” may have inadvertently been attributed to Haw. Rev. Stat. chapter 183 rather than chapter 183C.

12. As to paragraphs 8, 13, and 14, of the Statement, Appellee State denies the without sufficient information to form a belief as to the truth or falsity of the allegations or conclusions contained therein, and therefore denies the same.

13. As to Count I, paragraph 23, Appellee State incorporates by reference all of its prior responses to paragraphs 1 through 22 of the Appellants' Statement.

14. As to Count I, paragraphs 24 and 25 of the Statement, Appellee State denies the legal conclusions as they are set forth therein.

15. All allegations of Appellants' Statement not specifically admitted are denied.

THIRD DEFENSE (No subject matter jurisdiction)

16. This court lacks jurisdiction over the subject matter of Appellants' appeal.

FOURTH DEFENSE (Sovereign immunity)

17. Appellants claims against Appellee State are barred by the doctrine of sovereign immunity.


WHEREFORE, Appellee State prays that:

This Court rules that the Decision and Order of the Contested Case in DLNR File No. OA-07-06 is affirmed over the allegations made in Count I of this appeal;

The Court enters judgment for Appellees and all claims are dismissed;

The Court awards such attorney's fees and costs to Appellees and such other relief as it deems proper and just.

DATED: Honolulu, Hawaii, July 31, 2014.



COLIN J. LAU
Deputy Attorney General
Attorney for Appellee
Board of Land and Natural Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document was duly served upon the person(s) listed below by depositing the same in the United States Mail, postage prepaid, on July 31, 2014:


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DATED: Honolulu, Hawaii, July 31, 2014 .



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