No. 11-0000625

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

SIERRA CLUB, Petitioner-Appellant-Appellee, vs. CASTLE & COOKE HOMES HAWAII, INC.; THE LAND USE COMMISSION OF THE STATE OF HAWAI‘I; OFFICE OF PLANNING, STATE OF HAWAI‘I; DEPARTMENT OF PLANNING AND PERMITTING; and NEIGHBORHOOD BOARD NO. 25, Respondents-Appellees-Appellants.	Civil No. 10-1-2424-11 KKS (Agency Appeal) APPLICATION FOR WRIT OF CERTIORARI FROM THE JUDGMENT ON APPEAL BY FOLEY, J. ENTERED ON SEPTEMBER 25, 2012 INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I HONORABLE DANIEL R. FOLEY Presiding Judge HONORABLE ALEXA D.M. FUJISE Associate Judge HONORABLE KATHERINE G. LEONARD Associate Judge

APPLICATION FOR WRIT OF CERTIORARI

APPENDICES A & B

CERTIFICATE OF SERVICE

Counsel:
ROBERT D. HARRIS, #7769
P.O. Box 2577
Honolulu, Hawaii 96803
Telephone: (808) 538-6616
Email: robert.harris@sierraclub.org

Attorney for Petitioner-Appellant-Appellee
SIERRA CLUB

No. 11-0000625

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

SIERRA CLUB, Petitioner-Appellant-Appellee, vs. CASTLE & COOKE HOMES HAWAII, INC.; THE LAND USE COMMISSION OF THE STATE OF HAWAI‘I; OFFICE OF PLANNING, STATE OF HAWAI‘I; DEPARTMENT OF PLANNING AND PERMITTING; and NEIGHBORHOOD BOARD NO. 25, Respondents-Appellees-Appellants.	Civil No. 10-1-2424-11 KKS (Agency Appeal) APPLICATION FOR WRIT OF CERTIORARI FROM THE JUDGMENT ON APPEAL BY FOLEY, J. ENTERED ON SEPTEMBER 25, 2012 INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I HONORABLE DANIEL R. FOLEY Presiding Judge HONORABLE ALEXA D.M. FUJISE Associate Judge HONORABLE KATHERINE G. LEONARD Associate Judge

APPLICATION FOR WRIT OF CERTIORARI

Petitioner-Appellant-Appellee, the Sierra Club Hawai`i Chapter (“Sierra Club”) respectfully applies to this Court pursuant to Haw. R. App. P. 40.1 and Haw. Rev. Stat § 602-59 for a Writ of Certiorari to review the Intermediate Court of Appeals’ ("ICA") opinion. This case addresses whether a commissioner, whose appointment for a second term was rejected by the State Senate in a full-floor vote, could continue to serve and make decisions years after his first term expired.

This Court has jurisdiction to entertain the application under Haw. Rev. Stat. § 602-5.[1] "In deciding whether to accept an application, this court reviews the decisions of the ICA for (1) grave errors of law or of fact or (2) obvious inconsistencies in the decision of the ICA with that of the supreme court, federal decisions, or its own decisions and whether the magnitude of such errors or inconsistencies dictate the need for further appeal." *State v. Wheeler*, 219 P.3d 1170, 1177 (Haw. 2009) (citing Haw. Rev. Stat. § 602-59(b)). The Supreme Court reviews a lower court's interpretation of a statute *de novo*. *Id.*

I. QUESTION PRESENTED

> Whether a member of a government board or commission is "disqualified" under Haw. Rev. Stat. § 26-34 and the Hawai'i State Constitution once his initial term expires and the Senate expressly rejects his reappointment to a second term after duly considering his background, experience, and performance.

II. STATEMENT OF PRIOR PROCEEDINGS

On October 15, 2010, the Land Use Commission ("LUC") filed Findings of Fact, Conclusions of Law, and the Decision and Order ("Order") in Petition Number A07-775 ("petition"). The Order reclassified the land use designation for two parcels of land owned by Castle & Cooke Homes Hawai`i ("Castle & Cooke"), known as Koa Ridge Makai and Wai`wa Project, from State Land Use Agricultural District to State Land Use Urban District. This reclassification paved the way for thousands of new homes to be developed despite numerous objections about already high traffic congestion and the loss of prime agricultural land. *See, e.g.,* Record on Appeal ("RA") at 310-14, 3946-4095, 6637-6666.

---

[1] "The supreme court shall have jurisdiction . . . to hear and determine all questions of law, or of mixed law and fact, which are properly brought before it by application for a writ of certiorari to the intermediate appellate court. . ." Haw. Rev. Stat. § 602-5.

Agency-intervener, the Sierra Club, appealed the LUC's decision to the circuit court pursuant to Haw. Rev. Stat. § 91–14,[2] Haw. Rev. Stat. § 205–4(a),[3] Haw. Admin. R. § 15–15–93, and Haw. R. Civ. P. 72.

After briefing and oral argument, the circuit court reversed the LUC's Order. The circuit court held that Castle & Cooke's petition did not receive the necessary number of affirmative votes to the reclassify the parcels because LUC commissioner Duane Kanuha was statutorily disqualified from voting on the reclassification.[4] Transcript at 20. The circuit court explained:

> Under [Haw. Rev. Stat. §] 26-34(b), a board member may continue in office as a holdover member as long as that member is not disqualified from membership under subsection A. Under 26-34(a), a board member is appointed only after the advice and consent of the senate. In this particular case, the Senate expressly rejected Mr. Kanuha's appointment for a second term on the LUC. Accordingly,

---

[2] Haw. Rev. Stat. § 91–14 provides: "Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review under this chapter."

[3] Haw. Rev. Stat. § 205-4(a) provides in relevant part: "any person with a property interest in land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section applies to [*inter alia*] . . . lands greater than fifteen acres in the agricultural, rural, or urban districts. . . ."

[4] At oral argument, the LUC raised an untimely argument challenging the Sierra Club's standing to bring an action in the circuit court to disqualify Kanuha. Transcript of Proceedings at 15, *Sierra Club v. Castle & Cooke Homes Hawaii, Inc.*, No. 10-1-2424 (Haw. Cir. Ct. filed Nov. 10, 2010) ("Transcript"). The LUC argued that a *quo warranto* proceeding, provided for under Haw. Rev. Stat. § 659–1, was the sole method to challenge a public officer's right to office and that the Sierra Club did not have standing to purse this action. *Id.* at 13–15 ("We would submit that the Sierra Club does not have standing to bring that action"). The circuit court initially entertained this untimely argument because the LUC claimed that it was jurisdictional. *Id.* at 16 (requesting supplemental briefing on the issue). However, the circuit court ultimately considered this argument untimely, waived, and unpersuasive. Furthermore, Haw. Rev. Stat. § 659-10 provides that "[n]othing in this chapter [pertaining to *quo warranto* proceedings] shall preclude the obtaining of relief available by *quo warranto* by other appropriate action."

> Mr. Kanuha could not be a board member pursuant to 26-34(a), and thus, was disqualified as a holdover member under 26-34(b).

Id.

Castle & Cooke and the LUC appealed the circuit court's decision to the ICA. The ICA reversed and held that Kanuha was not disqualified from voting on the reclassification —even though he had failed to receive the Senate's advice and consent for a second term as a LUC commissioner. *Sierra Club v. Castle & Cooke Homes Hawaii, Inc.*, No. 10-1-2424, slip op. at 5–6 (Haw. Ct. App. Aug. 24, 2012) (Appendix A).

The ICA entered its final judgment on appeal on September 25, 2012. *See* Appendix B. The Sierra Club timely requested an extension of time to file this application—within thirty days after entry of the ICA's final judgment on appeal—on September 17, 2012. This Court granted the extension on September 19, 2012.

III. STATEMENT OF THE CASE

On July 3, 2007, Castle & Cooke filed a petition with the LUC to reclassify 766.327 acres of prime agricultural land located near Mililani to State Land Use Urban District. [5] RA at 2980–3126. Castle & Cooke's petition sought to convert active farmland and open space into thousands

---

[5] Castle & Cooke's Petition was controversial, with hundreds of oral and written testimonies submitted to the LUC in opposition to the project, including the Hawai`i Department of Agriculture. *See, e.g.*, RA at 310-14, 3946-4095, 6637-6666. The Chair of the Hawai`i Department of Agriculture cautioned that:

> There has been a steady decline in the number of acres in the Agricultural District statewide and on Oahu. More importantly, since 1991, approximately 3,297 acres of "A" and "B" rated lands have been lost on Oahu alone. This petition, if approved, would result in a loss of productive, high quality agricultural land on Oahu equal to 16 percent of the amount lost over the last eighteen years.

RA at 310.

of houses, commercial centers, light industrial sites, a hotel, a health care facility, school sites, and a park and ride facility. RA at 4283–98. Approximately 600 acres of the parcels are rated "A" or "B" under the Land Study Bureau system. *Id.* Castle & Cooke proposed housing approximately 15,590 people at full completion. RA at 4344.

The Sierra Club sought permission to intervene in the proceeding. On December 14, 2009, the LUC granted the Sierra Club's petition. RA at 496–504.

On March 3, 2010, Governor Lingle submitted LUC commissioner Duane Kanuha's name to the Hawai`i State Senate for reappointment to a second term. RA at 1480. On March 24, 2010, the Water, Land, and Hawaiian Affairs Committee ("Committee") recommended consenting to Kanuha's reappointment to the full Senate. RA at 1483. However, the Committee noted that Haw. Rev. Stat. § 205-1—enacted subsequent to Kanuha's initial appointment—required one LUC commissioner to "have substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices." RA at 1481. The Committee Report indicated that Kanuha was the designated member with substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural practices.[6] *Id.* The Committee also cautioned that Kanuha admittedly had "limited experience with traditional Hawaiian land usage and knowledge." RA at

---

[6] During deliberations, numerous senators expressed their concerns about Kanuha's *admitted* failure to fulfill this requirement. For example, Senator Hemmings said:

> [O]ne clear factor cannot be denied: We passed a law requiring a cultural practitioner. The Governor has not followed it. This nominee, *by his own admission*, is not a cultural practitioner. We have no choice but to vote 'no' in order to stay compliant with the law as it is written and, more importantly, with the moral integrity of this body to stay consistent with what we voted for.

Remarks on SSCR No. 3208/GM No. 338 (Nomination of Duane Kanuha to the Land Use Commission) (emphasis added).

1482. Presumably because Kanuha failed to meet the statutory requirements under § 205–1, the Senate rejected Kanuha's reappointment in a 14-to-9 vote. RA at 1485.

On August 18, September 9, September 23, and October 15 of 2010, Kanuha continued to improperly participate in the LUC proceedings. RA at 7357, 7459, 7653, 7684, 7160–7698. After becoming aware that Kanuha was continuing to act on the LUC—despite the Senate's express rejection of his reappointment—the Sierra Club moved to disqualify him from the reclassification proceeding on September 8, 2010. RA at 1472–86. The LUC rejected this motion on October 11, 2010. RA at 1925–32, 1935.

On September 23, 2010, the LUC considered approving Castle & Cooke's petition. A brief discussion ensued and a vote was taken, but the LUC expressly put off issuing a decision, findings of fact, and conclusions of law. RA at 7634–7682. Then, on October, 15, 2010, the LUC considered and approved findings of fact, conclusions of law, and the conditions imposed in detail. RA at 7683-7698. Only five commissioners and Kanuha signed the Order, which approved Castle & Cooke's petition. RA at 1799-1921. Because the petition only received five affirmative votes from active LUC commissioners, the Order should have been denied pursuant to Haw. Rev. Stat. § 205-1 and Haw. Admin. R. § 15-15-13(b).[7]

IV. ARGUMENT

A. Mr. Kanuha was statutorily disqualified from voting on the proposed land use reclassification under Haw. Rev. Stat. § 26-34 because he failed to receive the advice and consent of the Senate.

[7] Under Haw. Rev. Stat. 205-1, "[s]ix affirmative votes shall be necessary for any boundary amendment." If a petition for boundary amendments fails to obtain six affirmative votes, "findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the commission." Haw. Admin. R. § 15-15-13(b).

The ICA's crabbed interpretation of Haw. Rev. Stat. §. 26-34(a) reasons that the word "disqualified" is limited solely to preventing a member of a board or commission from serving for two terms or more than eight consecutive years. *Sierra Club*, slip op. at 5–6 (Appendix A). This narrow interpretation fails to utilize the plain and ordinary meaning of the term "disqualify."

Section 26-34 allows for a candidate to hold over after expiration of his term unless otherwise disqualified.

> **(a)** The members of each board and commission established by law shall be nominated and, **by and with the advice and consent of the senate**, appointed by the governor. Unless otherwise provided by this chapter or by law hereafter enacted, the terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year for each board and commission. Unless otherwise provided by law, each term shall commence on July 1 and expire on June 30, except that the terms of the chairpersons of the board of agriculture, the board of land and natural resources, and the Hawaiian homes commission shall commence on January 1 and expire on December 31. No person shall be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission shall not exceed eight consecutive years.
>
> **(b)** Any member of a board or commission whose term has expired and **who is not disqualified for membership under subsection (a)** may continue in office as a holdover member until a successor is nominated and appointed; provided that a holdover member shall not hold office beyond the end of the second regular legislative session following the expiration of the member's term of office.

Haw. Rev. Stat. §. 26-34 (emphases added).

As this Court has repeatedly explained, "the fundamental starting point for statutory interpretation is the language of the statute itself and where the statutory language is plain and unambiguous, [this Court's] sole duty is to give effect to its plain and obvious meaning." *Nat'l Union Fire Ins. Co. v. Ferreira*, 790 P.2d 910, 913 (Haw. 1990). To give effect to the legislature's written intent, these simple rules require a court to reject an interpretation that renders any part of

the statutory language a nullity. *Pioneer Mill*, 497 P.2d at 555. "Courts are bound to give effect to all parts of a statute, and . . . no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." *Blair v. Harris*, 45 P.3d 798, 801 (Haw. 2002).

According to common legal usage, the ordinary meaning of disqualify means "something that makes one ineligible." Black's Law Dictionary 485 (7th ed. 1999).[8] When read within the entire framework of § 26-43, the disqualifying criteria logically include other means that a candidate could be found ineligible under subsection (a), such as failing to receive the Senate's advice and consent for reappointment. Such a conclusion is reenforced by the fact that the Legislature specifically chose the broad term "disqualified" in subsection (b), rather then a more narrow phrase such as "Any member of a board or commission whose term has expired and who has served more then eight consecutive years . . . ."

In *Hanabusa v. Lingle*, this Court highlighted the importance of the Senate's obligation to advise and consent to executive appointments. 198 P.3d 604, 611 (Haw. 2008). In that case, this Court recognized that state legislators suffered an injury-in-fact when denied their constitutional and statutory right to advise and consent on executive appointments. *Id. See also Life of Land v. Burns*, 580 P.2d 405, 410 (Haw. 1978) ("According to *HRS § 26-34*, it is *necessary* for the governor to submit the name of the person nominated to the senate for confirmation . . . the subject of

---

[8] When a statute fails to expressly define a term, this Court frequently relies on Black's Law Dictionary to provide the plain and ordinary meaning. *See, e.g.*, *Office of Hawaiian Affairs v. Cayetano*, 6 P.3d 799, 805 n.10 (Haw. 2000) (consulting Black's Law Dictionary exclusively to define the term "vacancy" according to its "ordinary and popular sense"); *Dejetley v. Kaho`Ohalahala*, 226 P.3d 421 (Haw. 2010) (citing Black's Law Dictionary for the plain meaning of five different terms essential to the interpretation of a statutory provision). A terms and connectors search on Lexis returns over 500 cases where this Court cited to Black's Law dictionary for the plain meaning of a statutory term.

appointment of members to boards and commissions *must necessarily* be considered to be the joint responsibility of the governor and senate") (emphasis added). However, in contrast to this Court's admonition that no statutory language "shall be construed as superfluous, void, or insignificant," the ICA's construction effectively rendered the advice and consent clause—an important check and balance on the power of the Executive—a nullity for purposes of § 26-34(b).[9]

The ICA's narrow construction of § 26-34(b) also produces the absurd result that a commissioner could continue to hold office after the Senate has failed to provide its advice and consent and determined a person was statutorily unqualified for reappointment. As noted previously, under § 26-34, it is "necessary" for the senate to advise and consent to an executive appointment. *Life of Land*, 380 P.2d at 410. Furthermore, in contrast to when Kanuha was originally appointed, Haw. Rev. Stat. § 205-1 now requires one commissioner to be an expert in traditional, Hawaiian land usage. Kanuha was designated as this commissioner, even though he publicly acknowledged that he did not possess such expertise, and therefore, was not statutorily eligible for the position. RA 1482. Thus, not only does the ICA's interpretation permit commissioners to holdover after the Senate has expressly rejected their reappointment, but under

[9] The Respondents rely heavily on a 1980 opinion of the state Attorney General, which concluded that a member of the Board of Reagents may continue to holdover after his initial term even if he fails to receive the advice and consent of the Senate. *See* Op. Att'y Gen. 80-4 (1980), 1980 Haw. AG LEXIS 4 at *4. However, this opinion was authored prior to when the Senate amended § 26-34(b) and added the term "disqualified" into the statutory section. Moreover, the Attorney General only relied on one case to draw this conclusion—an 1922 opinion from an Arizona court interpreting a different statute. *Id.* at *3–4. In any event, "Attorney General opinions are highly instructive but are *not binding on this court.*" *Dupree v. Hiraga*, 219 P.3d 1084, 1110 n.32 (Haw. 2009) (emphasis in original).

this interpretation commissioners may do so even in clear violation of other statutory requirements.[10]

B. Applying the plain meaning of the term "disqualify" would not harm the public or create vacancies in public office because Haw. Rev. Stat. § 26-34(c) provides for interim appointees.

Castle & Cooke and the LUC contend—and the ICA impliedly agreed—that the public would be harmed by a vacancy on the LUC, and therefore, "disqualify" must be construed so rigidly as to only describe commissioners who have already served two terms or for eight consecutive years. *See* Appelle-Appellant Castle & Cooke's Opening Brief at 25, *Sierra Club v. Castle & Cooke Homes Hawaii, Inc.*, No. 10-1-2424 (Nov. 10, 2010). However, a court must not "indulge in an exacerbated interpretation of a commonly used term" merely because the court concludes that the policy is unwise. *Pioneer Mill*, 497 P.2d at 552. The ICA clearly erred by being persuaded by this meritless argument because Haw. Rev. Stat. § 26-34(c) and the Hawai`i State

---

[10] The LUC argued below that Kanuha qualified as a valid *de jure* holdover LUC commissioner based on "well-established Hawaii common law." Appelle-Appellant LUC's Opening Brief at 1, *Sierra Club v. Castle & Cooke Homes Hawaii, Inc.*, No. 10-1-2424 (Nov. 10, 2010). However, this "well-established Hawaii common law" does not yet exist to explain the scope of § 26-34(b). Instead, the LUC directed the ICA to review the legislative history of § 26-34(b). *Id.* at 10. Not only is the legislative history not common law, this Court must instead apply the legislature's *written intent contained in the statute itself*, unless the Court determines that the term "disqualify" is ambiguous. *See Nat'l Union*, 790 P.2d at 913. The LUC also argued, in the alternative, that even if Kanuha was not a *de jure* commissioner—because he was disqualified from serving under § 26-34(b)—he was instead a *de facto* commissioner. Appelle-Appellant LUC's Opening Brief at 12, *Sierra Club v. Castle & Cooke Homes Hawaii, Inc.*, No. 10-1-2424 (Nov. 10, 2010). Interestingly, the LUC failed to outline this Court's test defining who qualifies as a *de facto* official, and Kanuha does not fit within any of the discreet categories defined by this Court in *Office of Hawaiian Affairs v. Cayetano*. 6 P.3d 799, 805 (Haw. 2000). First, Kanuha was not acting under "color of a known election or appointment" because the Senate had expressly rejected his reappointment. *See id.* And second, he was not executing his duties without inquiry from the public because the Sierra Club promptly challenged his right to public office. *See id.*

Constitution provide a clear process to appoint a new commissioner. Under § 26-34(c), "[a] vacancy occurring in the membership of any board or commission during a term *shall* be filled for the unexpired term thereof, subject to Article V, section 6 of the Constitution of the State." Haw. Rev. Stat. § 26-34(c) (emphasis added). "[I]t is a well-established tenet of [this Court's] statutory construction that the use of the word 'shall' generally indicates the legislature's intention to make a provision mandatory, as opposed to discretionary." *State v. Shannon*, 185 P.3d 200, 210 (Haw. 2008). Therefore, if a vacancy occurs on a government board or commission, the position must be filled by a new nominee or an interim appointee according to Article V, section 6. Instead, the executive branch had a mandatory statutory and constitutional obligation to appoint a new commissioner or an interim commissioner to Mr. Kanuha's position. *See Hanabusa*, 198 P.3d at 611.

C. The ICA's interpretation of § 26-34 undermines Article V, Section 6 of the Hawaii State Constitution and eliminates essential checks and balances on the Executive.

The ICA also erred by construing "disqualified" so narrowly as to only exempt commissioners who have served for two terms or eight consecutive years because this interpretation generates risks of constitutional infirmity. Under the doctrine of constitutional doubt —a well-established cannon of statutory construction— "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [this Court's] duty is to adopt the latter." *In re Jane Doe*, 26 P.3d 562, 570 (Haw. 2001) (citations omitted). Article V, Section 6 outlines the constitutional significance of a committee nominee receiving the Senate's advice and consent. Under this section, "The governor shall nominate and, **by and with the advice and consent of the senate**, appoint all officers for whose election or appointment provision is not otherwise provided for by this

constitution or by law." Further, "[n]o person who has been nominated for appointment to any office and whose appointment has not received the consent of the senate shall be eligible to an interim appointment thereafter to such office." Admittedly, Kanuha was not an interim appointee. However, this constitutional directive demonstrates the effect of failing to receive the senate's advice and consent in a closely analogous context. An interim appointee who fails to receive the senate's advice and consent is *disqualified* and constitutionally ineligible to continue serving in this position. Therefore, the ICA's conclusion contravenes the constitutional significance of the senate's duty to advise and consent to executive appointments. In essence, this interpretation eliminates the legislature's checks and balances over the executive regarding holdover committee members.

IV. CONCLUSION

The ICA's interpretation of § 26-34(b) fails to give effect to all of the requirements in § 26-34(a) and undermines Article V, Section 6 of the Hawai`i State Constitution. Based on the foregoing reasons, the Sierra Club respectfully requests that this Court grant the Writ of Certiorari and reverse the decision of the Intermediate Court of Appeals entered on August 24, 2012.

Dated: Honolulu, Hawai'i, November [day], 2012.

/s/ Robert D. Harris
ROBERT D. HARRIS
Attorney for Petitioner-Appellant-Appellee
SIERRA CLUB

No. 11-0000625

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

SIERRA CLUB, Petitioner-Appellant-Appellee, vs. CASTLE & COOKE HOMES HAWAII, INC.; THE LAND USE COMMISSION OF THE STATE OF HAWAI‘I; OFFICE OF PLANNING, STATE OF HAWAI‘I; DEPARTMENT OF PLANNING AND PERMITTING; and NEIGHBORHOOD BOARD NO. 25, Respondents-Appellees-Appellants.	Civil No. 10-1-2424-11 KKS (Agency Appeal) APPLICATION FOR WRIT OF CERTIORARI FROM THE JUDGMENT ON APPEAL BY FOLEY, J. ENTERED ON SEPTEMBER 25, 2012 INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I HONORABLE DANIEL R. FOLEY Presiding Judge HONORABLE ALEXA D.M. FUJISE Associate Judge HONORABLE KATHERINE G. LEONARD Associate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies on November [date], 2012, a copy of the foregoing Application for Writ of Certiorari, was electronically filed and served using JEFS or conventionally served by U.S. Mail postage prepaid upon the parties listed below:

BENJAMIN M. MATSUBARA, ESQ.
CURTIS T. TABATA, ESQ.
WYETH M. MATSUBARA, ESQ.
Matsubara-Kotake, A Law Corporation
888 Mililani Street, Eighth Floor
Honolulu, Hawaii 96813
Attorneys for Respondent-Appellee-Appellant
CASTLE & COOKE HOMES HAWAII, INC.

DAVID M. LOUIE, ESQ.
DIANE ERICKSON, ESQ.
SARAH R. HIRAKAMI, ESQ.
RUSSELL A. SUZUKI, ESQ.
MARISSA H.I. LUNING, ESQ.
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Attorneys for Respondent-Appellee-Appellant
LAND USE COMMISSION, STATE OF HAWAI'I

Dated: Honolulu, Hawai'i, November [date], 2012.

/s/ Robert D. Harris
ROBERT D. HARRIS
Attorney for Petitioner-Appellant-Appellee
SIERRA CLUB