

ANNE E. LOPEZ 7609  
Attorney General of Hawai'i

JULIE H. CHINA 6256  
MIRANDA C. STEED 11183  
Deputy Attorneys General  
Department of the Attorney  
General, State of Hawai'i  
465 S. King Street, Suite 300  
Honolulu, Hawai'i 96813  
Telephone: (808) 587-2992  
E-mail: [Miranda.C.Steed@hawaii.gov](mailto:Miranda.C.Steed@hawaii.gov)

Electronically Filed  
THIRD CIRCUIT  
3CCV-22-0000095  
21-MAR-2023  
09:25 AM  
Dkt. 114 FOF

Attorneys for Defendant  
BOARD OF LAND AND NATURAL RESOURCES,  
STATE OF HAWAI'I

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT**

**STATE OF HAWAI'I**

HILO BAY MARINA, LLC, and  
KEAUKAHA MINISTRY LLC,

Plaintiffs,

vs.

STATE OF HAWAII; BOARD AND  
NATURAL RESOURCES, STATE OF  
HAWAII; JOHN DOES 1-10; JANE  
DOES 1-10; DOE CORPORATIONS 1-  
10; DOE PARTNERSHIPS 1-10; and  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 3CCV-22-0000095

DEFENDANT STATE OF HAWAI'I'S  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT [Dkt. 57] AND  
DENYING PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT [Dkt. 89];  
CERTIFICATE OF SERVICE

Judge: Hon. Henry T. Nakamoto  
Hearing: Dec. 14, 2022 at 8:00 a.m.  
Trial Week: May 22, 2023

**DEFENDANT STATE OF HAWAII'S FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
[Dkt. 57] AND DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT [Dkt. 89]**

Defendant Board of Land and Natural Resources, State of Hawaii's (hereinafter "STATE") Motion for Summary Judgment filed under Dkt. No. 57, and Plaintiffs Hilo Bay Marina, LLC's and Keaukaha Ministry LLC's (hereinafter "Plaintiffs") Motion for Summary Judgment filed under Dkt. No. 89, having both come on for hearing with respective counsel, Deputy Attorney General Miranda C. Steed, and Kenneth R. Kupchak, Esq. and Clint K. Hamada, Esq. present on December 14, 2022 at 8:00 a.m., and the Honorable Henry T. Nakamoto having taken into consideration the pleadings, records and files in this case, and having heard and considered argument of counsel, and this Court HEREBY GRANTS Defendant State of Hawaii's Motion for Summary Judgment and DENIES Plaintiffs' Motion for Summary Judgment filed November 11, 2022, based upon the following.

## **I. INTRODUCTION**

This case involves an original complaint for declaratory relief filed in the Third Circuit, in which Plaintiffs request the Court declare void a deed restriction requiring property owned by Plaintiffs be used "for Church purposes only." Plaintiffs allege that the deed restriction is void because: a) Haw. Rev. Stat. ("HRS") § 515-6(b) voids certain conditions, restrictions, and prohibitions on real property that are based on religion; b) Article I, § 4 and Article VII, § 4 of the Hawai'i State Constitution requires the separation of church and state; and c) the First Amendment of the United States Constitution prohibits laws respecting the establishment of religion or the prohibition of the free exercise thereof.

Plaintiffs further allege they are entitled to summary judgment as a matter of law for these same reasons.

Defendant argues that summary judgment is appropriate as a matter of law because:

a) the exception clause in HRS § 515-6(b) allows for religious restrictive covenants as long as the property is held by a religious institution, such as the Plaintiffs; b) the First Amendment of the United States Constitution requires an inquiry into historical practices and understandings and the deed restriction, at the time it was imposed, was a valid exercise of zoning allowed under state police powers; and finally, c) Article I, § 4 of the Hawai'i Constitutional is co-extensive with the First Amendment of the United States Constitution.

If any statement denominated a conclusion of law ("COL") is more properly considered a finding of fact ("FOF"), then it should be treated as a FOF; and conversely, if any statement denominated as a FOF is more properly considered a COL, then it should be treated as a COL.

## II. FINDINGS OF FACT

1. In 1922, the Territory of Hawai'i sold the property (present-day TMK Nos. (3) 2-1-014:25, 29, 30, 31, 74, and 60) (hereinafter "subject property") to Heber J. Grant, a trustee for the Church of Jesus Christ of Latter-Day Saints (the "Church"), for \$20 with a restriction in the deed ("deed restriction") that required the property be used "for Church purposes only."

2. The deed restriction stated:

The land covered by this Grant is to be used for Church purposes only. In the event of its being used for other than Church purposes, this Grant shall become void and the land mentioned herein shall immediately revert and re-vest in the Territory of Hawaii; further, should any portion of the land herein mentioned be used for Cemetery purposes, same shall at all times be subject to all rules and regulations of the Territorial Board of Health as authorized by law for the interment of the dead, and respecting cemeteries and burying grounds.

3. The Territory of Hawai'i engaged in an early form of use-zoning through the sale of land with deed restrictions, including the sale of government lands to religious organizations.

4. In 1988, the Church conveyed the subject property to Deseret Title Holding Company purchased.

4. In 2000, Deseret Title Holding Company conveyed the subject property to Plaintiff Hilo Bay Marina, LLC.

5. In 2015, Plaintiff Hilo Bay Marina, LLC conveyed TMK No. (3) 2-1-014:25 to Plaintiff Keaukaha Ministry LLC.

6. Plaintiffs filed their Complaint for Declaratory Relief on April 5, 2022. JEFS Dkt. 1.

7. Plaintiffs filed their First Amended Complaint for Declaratory Relief on April 25, 2022. JEFS Dkt. 7.

8. Plaintiffs filed their Second Amended Complaint for Declaratory Relief on August 22, 2022. JEFS Dkt. 40.

## II. CONCLUSIONS OF LAW

9. Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Haw. Cmty. Fed. Credit Union v. Keka*, 94 Hawai‘i 213, 221, 11 P.3d 1, 9 (2000). A given fact is material “if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.” *Querubin v. Thronas*, 107 Hawai‘i 48, 56, 109 P.3d 689, 697 (2005) (citation omitted).

### HRS § 515-6(b)

10. HRS § 515-6(b) states:

Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection is void, except a limitation, on the basis of religion, on the use of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or

controlled by a religious institution or organization, and used for religious or charitable purposes.

*Id.*

11. HRS § 515-6(b) provides an exemption that permits any party to reserve a covenant for religious use when transacting with a religious organization.

12. The deed restriction “for Church purposes only” is included in the exemption clause of HRS § 515-6(b).

13. HRS § 515-6(b) does not void the deed restriction.

First Amendment of the United States Constitution

14. The Establishment Clause of the First Amendment of the United States Constitution does not “compel the government to purge from the public sphere’ anything an objective observer could reasonably infer endorses or ‘partakes of the religious.’” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2427 (2022) (internal citations omitted).

15. The Establishment Clause “must be interpreted by ‘reference to historical practices and understandings.’” *Id.* at 2428 (internal citations omitted).

16. The State’s police powers grant it broad discretion to zone unless a court finds that a policy is “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

17. The location of religious institutions is implicated in zoning practices.

18. The practice of selling government lands with deed restrictions was an early form of use-zoning and is interpreted as a historical practice of zoning. *Kennedy*, 142 S. Ct. at 2427.

19. The deed restriction does not violate the Establishment Clause of the First Amendment of the United States Constitution. *Id.*

Article I, § 4 of the Hawai'i Constitution

20. Article I, § 4 of the Hawaii Constitution is coextensive with the First Amendment of the United States Constitution.

21. The deed restriction does not violate Article I, § 4 of the Hawai'i Constitution for the same reasons that it does not violate the Establishment Clause of the First Amendment of the United States Constitution.

22. Because the deed restriction does not violate Article I, § 4 of the Hawai'i Constitution, it cannot be construed as a grant in violation of Article I, § 4; thus, there is no violation of Article VII, § 4.

23. Even if Article I, § 4 of the Hawai'i Constitution is not coextensive with the Establishment Clause of the First Amendment of the United States Constitution, the deed restriction passes Constitutional muster under *Lemon v. Kurtzman*, which requires that government policies (1) have a secular purpose; (2) do not endorse or approve of religion; and (3) do not create excessive entanglement with religion. 403 U.S. 602, 620 (1971).

24. The deed restriction had a secular purpose of zoning. *Id.*

25. The deed restriction allows for any religious organization to benefit from the property, so it does not endorse or approve one religion over another. *Id.*

26. Not every form of government surveillance and monitoring reaches this degree, and routine administrative or compliance activities do not constitute impermissible "interference of . . . secular authorities in religious affairs." *Cammack v. Waihee*, 932 F.2d 765, 780 (9th Cir. 1991).


27. The surveillance and monitoring required to enforce the deed restriction do not present excessive entanglement because they are no different than that of what is required to enforce any other zoning regulation.

**III. ORDER**

Plaintiffs have failed to demonstrate that this deed restriction violates any of the laws alleged therein in their Second Amended Complaint [40]. For this and the reasons stated above, the Court GRANTS the State's Motion for Summary Judgment and DENIES Plaintiff's Motion for Summary Judgment.

MAR 21 2023

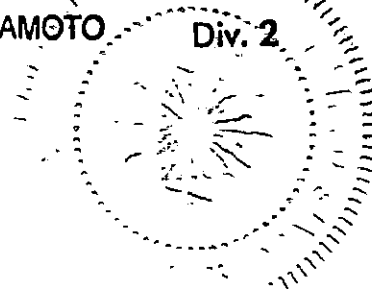
DATED: Honolulu, Hawai'i, 2023.



JUDGE OF THE ABOVE-ENTITLED COURT

HENRY T. NAKAMOTO

Div. 2



APPROVED AS TO FORM:

KENNETH R. KUPCHAK  
CLINT K. HAMADA  
DAMON KEY LEONG KUPCHAK HASTERT

Attorneys for Plaintiffs  
HILO BAY MARINA, LLC and  
KEAUKAHA MINISTRY LLC

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

HILO BAY MARINA, LLC, and KEAUKAHA  
MINISTRY LLC,

Plaintiffs,

vs.

STATE OF HAWAII; BOARD AND  
NATURAL RESOURCES, STATE OF  
HAWAII; JOHN DOES 1-10; JANE DOES 1-  
10; DOE CORPORATIONS 1-10; DOE  
PARTNERSHIPS 1-10; and DOE ENTITIES 1-  
10,

Defendants.

CIVIL NO. 3CCV-22-0000095

CERTIFICATE OF SERVICE

**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 electronic service via JEFS on March 6, 2023:

KENNETH R. KUPCHAK, ESQ.  
CLINT K. HAMADA, ESQ.  
DAMON KEY LEONG KUPCHAK HASTERT  
1003 Bishop Street, Suite 1600  
Honolulu, HI 96813

[krk@hawaiilawyer.com](mailto:krk@hawaiilawyer.com)  
[ckh@hawaiilawyer.com](mailto:ckh@hawaiilawyer.com)

Attorneys for Plaintiffs  
HILO BAY MARINA, LLC and  
KEAUKAHA MINISTRY LLC

DATED: Honolulu, Hawai'i, March 6, 2023.

/s/ Miranda C. Steed  
JULIE H. CHINA  
MIRANDA C. STEED  
Deputy Attorneys General

Attorneys for Defendant  
STATE OF HAWAI'I