

DEPARTMENT OF THE CORPORATION COUNSEL

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COUNTY OF MAUI

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
LANA'I RESORT PARTNERS

To consider further matters related to an Order To Show Cause as to whether certain land located at Manele, Lana'i, should revert to its former Agricultural and/or Rural land use classification due to Petitioner's failure to comply with Condition No. 10 of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order filed April 16, 1991, Tax Map Key No. 4-9-002:049 (por.), formerly Tax Map Key No. 4-9-002:001)por.)

DOCKET NO.: A89-649

RESPONDENT COUNTY OF MAUI'S
POSITION STATEMENT ON
INTERVENOR LANAIANS FOR
SENSIBLE GROWTH'S MOTION FOR
CLARIFICATION OF SCOPE OF
HEARING, OR IN THE ALTERNATIVE,
FOR AN ORDER TO SHOW CAUSE;
CERTIFICATE OF SERVICE

**RESPONDENT COUNTY OF MAUI'S POSITION STATEMENT ON INTERVENOR
LANAIANS FOR SENSIBLE GROWTH'S
MOTION FOR CLARIFICATION OF SCOPE
OF HEARING, OR IN THE ALTERNATIVE, FOR AN ORDER TO SHOW CAUSE**

COMES NOW, COUNTY OF MAUI, by and through its attorneys, Patrick K. Wong, Corporation Counsel, Caleb P. Rowe and Michael J. Hopper, Deputies Corporation Counsel, and hereby submits its position statement on Intervenor Lanaians for Sensible Growth's Motion for Clarification of Scope of Hearing, or in the Alternative, for an order showing cause as follows:

The County takes no position on whether or not the scope of the current contested case is limited to violations of Condition 10 prior to the 1996 Order to Show Cause or includes ongoing violations through the present, or whether potential violations of Condition 10 resulting from use of wells 14 and 15 are relevant to this contested case.

The County agrees with Lanainan's for Sensible Growth's ("LSG") position on the following issues:

1. Issue "c" contained in in Minute Order 2 is redundant;
2. That the hearings officer should consider and make a ruling based upon evidence adduced at the hearing as to whether leakage amounts to a "use" under Condition 10 as set forth in Minute Order 2;
3. That, per the Intermediate Court of Appeals' 2016 ruling, attempts to glean intent beyond what was expressly stated by the Commission in Condition 10 is beyond the scope of the remanded proceedings. Accordingly the issues raised in section (b) in minute order 4 are inappropriate; and
4. That the hearings officer need not specify the issue of whether pumping water for golf course irrigation negatively effects past, current or future uses of potable water from the high level aquifer as set forth in Minute Order 4

The County disagrees, however, with LSG's position on the following issues:

1. That issue "b" in Minute Order 2 should be stricken. While the County agrees that there is little dispute on this issue, it believes that it is incumbent upon the hearings officer to make a specific finding on it based upon relevant evidence presented at the hearing;
2. That the Supreme Court has "determined in this case that the term potable water is ordinarily defined as suitable for drinking," to the extent that LSG asserts that "suitable for

drinking” is the appropriate definition of potable as used in Condition 10. *Intervenor LSG’s Motion*, p. 6. The quoted language was taken from a footnote, which went on to recognize the existence of a dispute as to the meaning of the term potable. In fact, the Supreme Court explicitly mandated that the definition of potable water needed to be determined on remand, and accordingly any references to the meaning contained in the opinion are dicta and not controlling on this case; and

3. That the hearings office has the authority to issue additional orders to show cause if the current contested case hearing is limited to violations of Condition 10 prior to the 1996 Order to Show Cause. Under the plain language of Hawaii Administrative Rules 15-15-93, only the Commission has the authority to issue an Order to Show Cause, and the County is unaware of any document explicitly delegating that authority to the current hearings officer.

DATED: Wailuku, Maui, Hawaii, September 23, 2016.

PATRICK K. WONG
Corporation Counsel
Attorney for Intervenor
COUNTY OF MAUI
DEPARTMENT OF WATER SUPPLY

By



CALEB P. ROWE
MICHAEL J. HOPPER
Deputies Corporation Counsel

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of the Petition of
LANA'I RESORT PARTNERS

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CERTIFICATE OF SERVICE

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I hereby certify that on this date a true and correct copy of the foregoing document was served upon the following by depositing same via email and U.S. Mail, postage pre-paid on:

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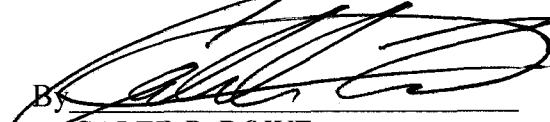
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DATED: Wailuku, Maui, Hawaii, September 23, 2016.

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