

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
PETITIONER LANA'I RESORTS, LLC'S
MOTION TO SET ISSUES ON REMAND
OF THE LAND USE COMMISSION'S
FINDING OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER
DATED MAY 17, 1996; CERTIFICATE OF
SERVICE

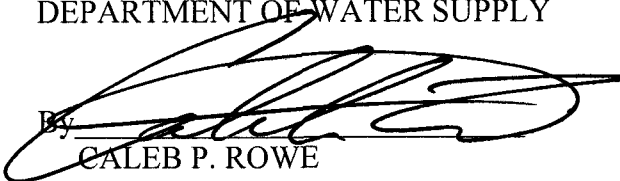
**RESPONDENT COUNTY OF MAUI'S POSITION STATEMENT
ON PETITIONER LANA'I RESORTS, LLC'S MOTION TO SET ISSUES ON REMAND
OF THE LAND USE COMMISSION'S FINDING OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED MAY 17, 1996**

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 Petitioner Lana'i Resorts, LLC's Motion to Set Issues on Remand of the Land Use Commission's Finding of Fact, Conclusions of Law, and Decision and Order Dated May 17, 1996 as follows:

The County agrees with the concerns raised by Petitioner Lana'i Resorts, LLC's ("LR") in its "Statement of Threshold Issues Re: Minute Order No. 4" regarding the additional issues raised in Minute Order 4. As to the concerns raised regarding the issues set forth in Minute Order 2, however, the County believes that the Supreme Court's decision in Lanai Co., Inc. v. Land Use Commission, et al., 105 Hawai'i 296, 97 P. 3d 372 (2004), requires the hearings officer to make broad findings to support any decision made as to whether or not LR violated Condition 10. Specifically, the Supreme Court mentioned that, while the Commission's findings "explain that there is leakage from the high level potable water area to the low level brackish water area," the 1996 Order "did not indicate whether such an effect would qualify as utilizing the potable water under Condition No. 10." Lanai Co., 105 Hawai'i at 316, 97 P.3d at 392. Because the issue was specifically raised by the Supreme Court, the County takes the position that a finding relative to this issue serves to minimize rather than engender the potential for reversible error. Accordingly, while the County substantively agrees with LR that leakage is not a "use" of potable water under Condition 10, it does not believe that the issue is outside the scope of the remanded proceedings, and instead believes it is incumbent upon the Hearings Office to make a specific finding to that effect after reviewing the evidence and arguments thereon.

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

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.)

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

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By 
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