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LAND USE COMMISSION
 STATE OF HAWAII
 2017 JAN -6 P 2: 06

BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII

| | | |
|--|---|--------------------------------------|
| In the Matter of the Petition of |) | DOCKET NO. A89-649 |
| |) | |
| LANAI RESORT PARTNERS |) | OFFICE OF PLANNING'S RESPONSE |
| |) | TO LĀNA'I RESORT, LLC'S |
| To consider an Order to Show Cause as to |) | PROPOSED FINDINGS OF FACT, |
| whether certain land located at Manele, |) | CONCLUSIONS OF LAW, AND |
| Lana'i, should revert to its former |) | DECISION AND ORDER; |
| Agricultural and/or Rural land use |) | CERTIFICATE OF SERVICE |
| classification or be changed to a more |) | |
| appropriate 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.: 4-9-02: Por. 49 Formerly Tax Map |) | |
| Key No. 4-9-02: Por. 1 |) | |
| |) | |

OFFICE OF PLANNING'S RESPONSE TO LĀNA'I RESORT, LLC'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

The Office of Planning ("OP") stipulates to Lāna'i Resort, LLC ("Petitioner") Proposed Findings of Fact, Conclusions of Law, and Decision and Order, except as follows:

I. FINDINGS OF FACT ("FoF")

With respect to the Findings of Fact, OP recommends that the following paragraphs be inserted in place of proposed FoF 53 in order to provide greater clarity by explaining the context in which the terms "potable" and "non-potable" are used.

FoF 53. Condition 10 prohibits Petitioner from using “potable water” to irrigate the Manele Golf Course, and requires Petitioner to use “alternative non-potable sources of water.” As used in Condition 10, “potable water” and “non-potable water” are mutually exclusive. 1991 Order, Condition No. 10, at p. 45.

FoF 53A. The 1991 Order does not define the term “potable.” Condition 10 does define “alternative non-potable sources of water” by way of example, as “e.g., brackish water, reclaimed sewage effluent.” 1991 Order, Condition No. 10, at p. 45.

With respect to FoF 62, OP recommends that an additional reason be inserted as to why it would be absurd and illogical for Petitioner to agree to a condition which would prohibit the Petitioner from engaging in the exact conduct it had proposed to the Commission.

FoF 62. Moreover, the above FOFs and entire exact language of Condition No. 10 originated from a “Stipulation for Proposed Findings of Fact, Conclusions of Law, and Decision and Order” by Petitioner and OP and filed by the Petitioner on February 20, 1991, meaning that Petitioner reviewed and agreed to the language of Condition No. 10. It would be absurd and illogical for Petitioner to propose or agree to a condition that would prohibit it from irrigating with the brackish water wells that it had already installed, tested, and in the case of Well 1, was already operating, or to propose or agree to a condition that would prohibit it from engaging in the exact conduct it had proposed to the Commission. 1991 Order, FoF 48, 89, and 91, at pp. 14-15, 27-28, and 28 respectively.

With respect to FoF 120 through 137, OP does not dispute or object to these findings. But these findings do not affect OP’s conclusions because even if there is some leakage from the drinking water wells into the irrigation wells, such leakage does not constitute the use of potable water. OP recommends the following additional FoF to reject Intervenor’s proposed leakage theory.

FoF 142A. The leakage theory is inconsistent with the language of Condition 10 and the findings of fact and oral testimony from the district boundary amendment proceeding in which brackish water was described as non-potable, and in which brackish water from Wells 1 and 9 were proposed for irrigation of the Manele Golf Course.

II. CONCLUSIONS OF LAW (“COL”)

With respect to the Conclusions of Law, OP notes that although all parties have argued that the Commission could rely upon the plain language of Condition 10, LSG completely disagrees with the other parties as to what the plain language means. Consequently, all parties have introduced evidence to support their understanding of the terms in Condition 10. OP, therefore, recommends the following additional Conclusions of Law to better explain the principles of statutory interpretation being followed.

COL __. The analogous principles of statutory interpretation are applicable in determining the meaning of Condition 10, including the following: “[The] fundamental starting point for statutory interpretation is the language of the statute itself. *Second*, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. *Third*, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention for the legislature, which is to be obtained primarily from the language contained in the statute itself. *Fourth*, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. And *fifth*, in construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.” *Hawaii Gov’t Emp. Ass’n, AFSCME Local 152, AFL-CIO v. Lingle*, 124 Hawaii 197, 202, 239 P.3d 1, 6 (2010) (quoting *Awakuni v. Awana*, 115 Hawaii 126, 133, 165 P.3d 1027, 1034 (2007) (citations omitted).

COL __. Section 1-15 (1), HRS, states as follows:

Where the words of a law are ambiguous:

- (1) The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.
- (2) The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.
- (3) Every construction which leads to an absurdity shall be rejected.


COL __. Section 1-15(1), HRS, is a statutory rephrasing of the statutory canon “noscitur a sociis”. *State v. Deleon*, 72 Haw. 241, 244 (1991).

III. CONCLUSION

Except as discussed herein, OP stipulates to and agrees with Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order

DATED: Honolulu, Hawai'i, January 6, 2017.

OFFICE OF PLANNING
STATE OF HAWAI'I



LEO ASUNCION
Director

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OF THE STATE OF HAWAI'I

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CERTIFICATE OF SERVICE

I hereby certify that on the date below a true and correct copy of the foregoing **OFFICE OF PLANNING'S RESPONSE TO LĀNA'I RESORT, LLC'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER** was duly served on the following parties at their last known addresses via United States mail, postage prepaid:


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DATED: Honolulu, Hawai'i, January 6, 2017.



LEO ASUNCION
Director of the Office of Planning