

DEPARTMENT OF THE CORPORATION COUNSEL

LAND USE COMMISSION  
STATE OF HAWAII

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COUNTY OF MAUI, DEPARTMENT OF PLANNING

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

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

DOCKET NO.: A89-649

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.)

RESPONDENT COUNTY OF MAUI,  
DEPARTMENT OF PLANNING'S  
RESPONSES AND OBJECTIONS TO  
INTERVENOR LANA'IANS FOR  
SENSIBLE GROWTH'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER  
DATED DECEMBER 29, 2016;  
CERTIFICATE OF SERVICE

**RESPONDENT COUNTY OF MAUI, DEPARTMENT OF PLANNING'S  
RESPONSES AND OBJECTIONS TO INTERVENOR LANA'IANS  
FOR SENSIBLE GROWTH'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION  
AND ORDER DATED DECEMBER 29, 2016**

COMES NOW, Respondent COUNTY OF MAUI, by and through its attorneys, Patrick K. Wong, Corporation Counsel, Caleb P. Rowe and Michael J. Hopper, Deputies Corporation Counsel, and pursuant to Minute order 9 in this Docket, hereby provides its Responses and

Objections to Intervenor LANA'IANS FOR SENSIBLE GROWTH's proposed Findings of Fact, Conclusions of Law and Decision and Order filed on December 29, 2016.

**I. General Responses and Objections**

The County of Maui generally objects to the proposed findings of fact, conclusions of law and decision and order as it is not supported by the evidence in this docket which is insufficient to find a violation of condition 10. While providing the specific responses and objections listed herein, the County maintains its objections to the Intervenor's proposal in its entirety and reserves its right to argue additional specific objections in the future.

**II. Responses and Objections to Proposed Findings of Fact**

Proposed finding of fact 80: Intervenor states that the term "potable" in the 1991 Order "is not used in a way which indicates that it is to be given a special interpretation different from its common and general meaning...". However, condition 10 of the order, after stating that potable water shall not be used, goes on to require the petitioner to "instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course irrigation requirements." This clarifies that, however else "potable" may be defined, it does not include brackish water, which is described as "non-potable" in the order.

Additionally, the 1991 Order states that the water in wells 1 and 9 is "brackish" (See findings of fact 15 and 16). Read along with the rest of the 1991 Order, the Commission was aware that wells 1 and 9 were brackish, and that brackish water could be used for golf course irrigation.

Proposed finding of fact 92: While this appears to correctly state the definition contained in Maui County Code ("MCC") section 14.08.020, it fails to recognize that this definition, and in fact, all of chapter 14.08 of the code, only applies to "new golf courses" which begin operations

after 2009. Section 14.08.030(B) prohibits the granting of a grading, grubbing or building permit for any “new golf course” if potable water as defined in that chapter will be used for irrigation or other nondomestic uses, but contains no restrictions on golf courses in operation prior to its effective date of 2009.

Proposed finding of fact 183: Intervenor argues that David Taylor’s testimony regarding section 14.01.040, MCC “is not credible” because that section only applies to County systems. It is unclear why this would have any bearing on the credibility of Mr. Taylor’s testimony. Mr. Taylor provided testimony to clarify both the meaning and applicability of section 14.01.040, MCC and chapter 14.08, MCC. Mr. Taylor further provided credible testimony that under both portions of the code, water must be disinfected before it is considered potable, either under chapter 14.08 or section 14.01.040. Neither of these provisions apply to the Manele golf course, and Mr. Taylor has never stated otherwise.

### **III. Responses and Objections to Proposed Conclusions of Law**

Proposed conclusion of law 31: Intervenor requests that the Commission adopt this conclusion and use the definition of “potable” in chapter 14.08, MCC in determining whether the water used to irrigate the Manele golf course is potable under condition 10. As discussed, this definition does not apply to the Manele golf course. In proposed finding 183, Intervenor takes the position that David Taylor’s testimony regarding section 14.01.040, MCC is “not credible” because that section is inapplicable to a private system like the Manele system. However, Intervenor then argues that the Commission should rely on the definition of “potable” in section 14.08.020, MCC despite the fact it is similarly inapplicable to the Manele golf course. Intervenor cannot have it both ways.

The Commission should not apply the County definition of “potable” in chapter 14.08, MCC to the Manele golf course because that chapter is expressly inapplicable to golf courses operating prior to 2009. Additionally, Mr. Taylor testified that under both chapter 14.08 and section 14.01.040, MCC, water must be disinfected before it is considered potable. Thus, the water from wells 1 and 9 would not be considered potable under the MCC in stet case.

Proposed conclusion of law 62: There is no basis for the Commission to limit evidence of whether the water in wells 1 and 9 is brackish to DOH and EPA drinking water standards. The Commission in its 1991 order did not impose such limitations, and in fact, the order states in multiple places that wells 1 and 9 contain brackish water (see FOF 15, 16).

**IV. Conclusion**

The County of Maui, Department of Planning respectfully requests that the Hearings Officer reject Intervenor’s proposed Findings of Fact, Conclusions of Law and Decision and Order filed on December 29, 2016.

DATED: Wailuku, Maui, Hawaii, January 6, 2017.

PATRICK K. WONG  
Corporation Counsel  
Attorney for Respondent  
COUNTY OF MAUI  
DEPARTMENT OF PLANNING

By   
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CALEB P. ROWE  
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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

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, January 6, 2017.

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