

LANAI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Applications of

PULAMA LANAI

To Obtain a State Land Use Commission Special Use Permit and Project District Phase II Approval for a proposed reverse osmosis desalination facility and distribution system located in the Manele Project District on Approximately 14.95 acres of Land at Maui Tax Map Key No. (2) 4-9-002:001 (por.), (2) 4-9-017:009 (por.) and 010 (por.), Manele, Lanai, Hawaii

DOCKET NO. SUP2 2013/0028
PH2 2013/0001

Pulama Lanai, Reverse Osmosis
Desalination Facility and Distribution Facility

Findings of Fact, Conclusions of Law and
Decision and Order Granting a State Land
Use Commission Special Use Permit and a
Project District Phase II Approval for a
Reverse Osmosis Desalination Facility and
Distribution System; Certificate of Service

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER GRANTING A STATE LAND USE COMMISSION
SPECIAL USE PERMIT AND A PROJECT DISTRICT PHASE II APPROVAL FOR
A REVERSE OSMOSIS DESALINATION FACILITY AND DISTRIBUTION SYSTEM**

I. PROCEDURAL HISTORY

1. The Lanai Planning Commission ("Commission") conducted a public hearing on April 16, 2014, and subsequently held public meetings on May 21, June 18, and July 16, 2014, pursuant to Section ("§") 205-6 of the Hawaii Revised Statutes ("HRS"), Section 15-15-95, Hawaii Administrative Rules ("HAR"), Rule 12-401-34 of the Lanai Planning Commission Rules, and Chapter 19.45, Maui County Code ("MCC"), regarding applications for a State Land Use Commission Special Use Permit No. SUP2 2013/0028 ("SUP Application," Exhibit 1) and Project District Phase II Approval Permit No. PH2 2013/0001 ("Project District Application," Exhibit 2) submitted by Munekiyo & Hiraga, Inc. on behalf of Pulama Lanai. Minutes of the meetings referenced herein are attached as Exhibits 3, 4, 5, and 6, respectively.

Exhibit "6"

2. No person filed a petition to intervene.

3. The effective date of the Commission's final action on the Project District Application and SUP Application is June 18, 2014.

4. On July 8, 2014, the Applicant submitted a request that the Commission amend its decision concerning one of the conditions placed on the SUP permit, which was placed on the July 16, 2014 Commission agenda (Exhibit 7). It was moved, seconded, and approved to file Applicant's request without taking action (Exhibit 6, Pg. 12).

5. The Commission makes the following Findings of Fact and Conclusions of Law, based on the record in this case, including all documents submitted and testimony provided to the Commission, as well as all other items of record properly brought before the Commission:

II. FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Commission adopts it as such.

2. Portions of Parcel 9 and Parcel 10 are located within the Residential PD-L/1 sub-district of the Lanai Project District 1 (Manele) (hereafter "Manele Project District"), which was established by Chapter 19.70, Maui County Code ("MCC"). The Project District Application proposed Reverse Osmosis ("RO") Well No. 3 (source well), water transmission lines, and access roads. The Commission finds that the uses proposed in the Project District Application are "accessory uses" as defined in MCC § 19.04.04, being incidental and subordinate to the principal uses of the land, which is single-family residential, multifamily residential, hotel, commercial, park, golf course, open space, and public. The Commission further finds that the proposed uses are located on the same zoning lots as the principal uses.

3. The SUP Application proposed a reverse osmosis desalination water treatment facility located on property described as Tax Map Key (TMK) (2) 4-9-002:001 (por.) Attendant facility components of the water treatment facility are located within portions of two (2) other lots designated as TMK (2) 4-9-017:009 and (2) 4-9-017:010, within a total area of 14.95 acres

within the State Agricultural District. (Exhibit 1, Pg. 21; Exhibit 3, Pg. 7-8)

4. The proposed desalination water treatment facility is intended to provide 2.5 million gallons per day of water for potable use, golf course irrigation, and landscape irrigation at the Manele Project District and additionally provide irrigation to support agriculture in the Palawai Basin, located at a higher elevation. (Exhibit 1, Pg. 69; Exhibit 2; Exhibit 3, Pg. 7; Exhibit 8, Pg. 3)

5. The project includes water source wells, saline brine disposal wells, utility lines, and roadways, all of which are permissible uses in the State Agricultural district that do not require a special use permit pursuant to HRS § 205-6. (Exhibit 9, Pg. 2)

6. The proposed water treatment facility, attendant administration building, and power plant facility improvements are not outright permitted uses in the State Agricultural district as set forth in HRS §§205-2(d) and 205-4,. The Commission found that the uses proposed in the SUP application are "unusual and reasonable," and therefore may be authorized under a special permit pursuant to HRS §205-6 and HAR §15-15-95(b).

7. The requested uses are not contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Hawaii Land Use Commission, pursuant to HAR §15-15-95(b)(1). The project is not located within the Special Management Area. (Exhibit 8, Pg. 8)

8. The Four Seasons Resort Lanai at Manele Bay is located approximately seven (7) miles from both the Lanai Airport and Lanai City. The Resort facilities are neighbored by the Challenge at Manele Golf Course to the west and north, single and multi-family residential units to the west and north, single and multi-family residential units to the west, and Hulopoe Beach Park to the east and south. Beyond that, a broad expanse of vacant, undeveloped lands typify the major land uses in the general vicinity of the resort area. Hulopoe Bay and Manele Bay have

been designated by the State Department of Land and Natural Resources as a Marine Life Conservation District ("MLCD"). MLCD's are designated to conserve and replenish marine resources by limited or prohibiting consumptive uses. The Manele-Hulopoe MLCD encompasses 309 acres and was established in 1976. (Exhibit 8, Pgs. 8-9)

9. The Manele Wastewater Treatment Facility, which provides wastewater treatment and disposal capacity for the area, is located to the north of the resort. The wastewater plant is located in the State Agricultural district and is permitted via State Special Use Permit. The proposed water treatment facility site and its attendant facility components are located at an elevation of approximately 700 feet above mean sea level to the west of the existing Manele Wastewater Treatment Facility (Exhibit 8, Pg. 4). Pursuant to HAR §15-15-95(b)(2), the Commission found that the proposed uses would not adversely affect surrounding property.

10. Pursuant to HAR §15-15-95(b)(3), the uses proposed by the SUP Application involve no additional burden to the state or county related to provision of roads and streets, sewers, water drainage and school improvements, and police and fire protection. Access and infrastructure to the project site are privately owned and maintained by the Applicant. (Exhibit 1, Pg. 123; Exhibit 8, Pgs. 24-25 and sub-exhibits A-2, A-5, A-8, A-11)

11. Unusual conditions, trends, and needs have arisen since the state district boundaries were established, pursuant to HAR §15-15-95(b)(4), in that there is a need for additional sources of water on the island of Lanai for human consumption and non-potable uses, including irrigation and agriculture, which do not rely on the High Level Aquifer as a source. The 2011 Lanai Water Use and Development Plan determined that planned future development in the Manele Project District as well as in other areas of the island of Lanai presents an overall increase in the demand for water, potentially resulting in well pumpage exceeding the sustainable yield of the High Level Aquifer. The proposed project could prove to be a dependable alternative water supply that reduces the island's reliance on the High Level

Aquifer, and could positively contribute to the availability of potable and non-potable water on the island and meeting the anticipated long-term water demand. The project could have a beneficial impact on agricultural production and land in that a portion of the water produced by the project will be used for irrigation and agriculture in the Palawai Basin (Exhibit 1, Pgs. 72, 93, 115, 119, 123; Exhibit 8, Pgs. 3, 21, and sub-exhibits A-4, A-9; Exhibit 11)

12. Groundwater on Lanai occurs in two (2) different modes: high level and basal. The island of Lanai's primary current water source is a High Level Aquifer located in the central section of the island and extending across the Palawai Basin. The total sustainable yield from the High Level Aquifer is 6 million gallons per day. Basal groundwater exists in the areas between the High Level Aquifer and the shoreline. Basal groundwater is a lens of brackish water floating on denser saline groundwater beneath it. The proposed project's source wells draw water from below the basal groundwater lens at a depth of 50-145 feet below sea level. The proposed desalination water treatment facility's groundwater supply wells are located approximately six-tenths (.6) of a mile from the coastline. The project will not draw water from the High Level Aquifer and is not anticipated to have an adverse impact on hydrogeologic conditions and features. (Exhibit 1, Pgs. 69, 72, 93-94, and Appendix C; Exhibit 3, Pgs. 9, 15; Exhibit 4, Pg. 3-5; Exhibit 8, Pgs. 3-4 and sub-exhibit A-4; Exhibit 10)

13. Disposal of the hypersaline concentrate ("brine") from the reverse osmosis process occurs in two deep disposal wells, at a depth of 160 to 300 feet below sea level. The brine, being 1.8 times saltier than sea water, is denser than the receiving saline groundwater and will sink deeper as it travels seaward and is anticipated to discharge approximately 2 miles offshore at an ocean floor depth of approximately 650 feet. At the point that the brine comeslingles with the open ocean water, it will be approximately the same salinity level as the receiving water. The Applicant consulted with the U.S. Fish and Wildlife Service, which determined that

the hypersaline discharge is not anticipated to affect the near-shore environment. (Exhibit 1, Pgs. 72, 97, Appendix E; Exhibit 4, Pgs. 3-4; Exhibit 8, sub-exhibit A-14; Exhibits 10, 11)

14. The project site, as reflected by the Agricultural Lands of Importance to the State of Hawaii ("ALISH") map, is located on lands designated as "Unclassified" agricultural lands. The University of Hawaii Land Study Bureau ("LSB") developed by Overall Productivity rating, which classified soils according to five (5) levels, with "A" representing the class of highest productivity soils and "E" representing the lowest. These letters are followed by numbers which further classify the soil types by conveying such information as texture, drainage, and stoniness. The proposed project lies on lands with an overall productivity rating of "E". The LSB classification for the proposed project area is "E19" with some utility transmission lines located on lands classified as "E20". The "E19" classification reflects an Overall Productivity Rating of E, the lowest rating of agricultural productivity. The soils are characterized as rocky, with shallow soil depths featuring exposed bedrock, and with an average slope of 0 to 35 percent. The soil is of coarse to fine grain, and is well to excessively-drained. This land is typically found at an elevation of 0 to 1000 feet, and experiences a mean annual rainfall of 15-25 inches. The "E20" classification also reflects an Overall Productivity rating of E. The soils are characterized as stony to rocky, with shallow soil depths featuring exposed substratum, and with an average slope of 0 to 35 percent. The soil is of coarse grain and is well-drained. This land is typically found at an elevation of 0 to 2000 feet, and experiences a mean annual rainfall of 15 to 35 inches. Based upon the foregoing, the Commission found that the land upon which the proposed use is sought is unsuited for the uses permitted within the Agricultural district, pursuant to HAR §15-15-95(b)(5). (Exhibit 1, Pgs. 89-93; Exhibit 8, Pg. 19)

15. The Planning Department recommended approval of the Project District Application and recommended approval of the SUP Application, subject to 22 conditions as described in the April 16, 2014, Staff Report (Exhibit 8). Said recommended conditions were revised and provided to the Commission for consideration on June 18, 2014. (Exhibit 9)

16. The Planning Department recommended a 30 year Special Use Permit time limit based on the anticipated useful life of the desalination plant, and stated that this was consistent with other long-term projects granted extended permit time limits although no other 30-year permit was identified. The Applicant testified that the 30 year limit was necessary due to the significant financial cost of the project, and that any shorter time period would render the project unfeasible. The project was designed to meet long-term needs for potable and non-potable water on the island of Lanai, as identified in the 2011 Lanai Water Use and Development Plan. (Exhibit 5, Pgs. 25-26, 28, 51; Exhibits 8, Pg. 3; Exhibit 9, Pg. 5)

17. The Commission found that the SUP 30-year time limit recommended by the Department and proposed by the Applicant was too long and further that the Commission should review requests for time extensions beyond the initial permit term. The Commission found that the Special Use Permit should not be 30 years due to the Commission's desire to review the project's operational status and the island's economy, after the project had been in operation for a period of time and prior to any extension of the SUP. (Exhibit 5, Pgs. 26-28, 51-52)

18. Members of the public testified as to their concerns that the project may affect the ocean. Testifiers questioned whether the project could affect the High Level Aquifer. The Applicant stated that safeguards include monitoring the supply water for salinity, to ensure that the supply wells only draw salt water. A permit condition recommended by the Department and agreed to by the Applicant included quarterly assessments of groundwater input to the near shore ocean waters and offshore water quality monitoring and reporting, which was adopted by the Commission without modification (Exhibit 4, Pgs. 4-5, 10; Exhibit 5, Pgs. 5, 24; Exhibit 9, Condition 10)

19. On July 8, 2014, the Applicant submitted a request that the Commission rescind

or amend its June 18, 2014, decision, stating that one of the conditions, Condition 23, impermissibly restricted use of water from the High Level Aquifer by properties located within the Manele Project District. The Applicant submitted that the Commission did not have the authority to restrict the Manele Project District's use of High Level Aquifer water, as that authority rests with the Hawaii Commission on Water Resources Management. Further, the Applicant submitted that Condition 23 had no nexus with the SUP application. At the Commission's July 16, 2014, meeting, the Applicant provided oral and written testimony in support of its request that the Commission amend its prior decision by eliminating Condition 23. (Exhibits 6, Pgs. 1-3, 7-12; Exhibits 7, 12)

20. It was moved, seconded, and approved to file the Applicant's communication as is with no action. (Exhibit 6, Pgs. 11-12)

III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission hereby enters the following Conclusions of Law:

1. To the extent that any conclusion of law is more properly characterized as a finding of fact, the Commission adopts it as such.
2. The Commission has jurisdiction regarding the approval of the Applicant's preliminary site plan pursuant to MCC §19.45.050(B).
3. Based on the record before it, evidence presented, and the findings set forth above, the Commission concludes that the Project District Application and preliminary site plan conform to the project district ordinance, which is Lanai Project District (Manele), Chapter 19.70, MCC, and include the criteria set forth in MCC §19.45.050(B). The uses proposed in the Project District Application are approved as "accessory uses" as defined in MCC §19.04.04.
4. Pursuant to HRS §205-6 and HAR §15-15-95(a), the Commission has jurisdiction regarding the SUP Application and may permit certain unusual and reasonable uses within the

Agricultural and Rural districts other than those for which the district is classified.

5. HAR §15-15-95(b) establishes the following guidelines in determining an "unusual and reasonable use."

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection;
- (4) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established; and,
- (5) The land upon which the proposed use is sought is unsuitable for the uses permitted within the district.

6. Based on the record before it, evidence presented, and the findings set forth above, the Commission concludes that the uses requested in the SUP Application constitute an "unusual and reasonable" use in the Agricultural district.

DECISION AND ORDER

Pursuant to the authority of the Commission as set forth in MCC §19.45.050(B), the Project District Application and preliminary site plan are APPROVED without modification.

Pursuant to HRS §205-6 and HAR §15-15-95, the SUP Application is hereby GRANTED, subject to the following conditions:

1. That the State Land Use Commission Special Use Permit shall be valid until June 17, 2029, subject to further extension by the Commission upon a timely request for extension

filed at least 90 days prior to its expiration. The Commission may require a public hearing on the time extension.

2. That the conditions of this State Special Use Permit shall be enforced pursuant to HRS §§205-12 and 205-13. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000 per violation; that a civil fine not to exceed \$5,000 shall be issued if violations not cured within six months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the planning department within said thirty (30) days. Upon receipt of a request for a hearing, the planning department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the planning director or the director's designee in accordance with the provisions of Chapter 91, HRS, as amended.

3. That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Lanai Planning Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

4. That Pulama Lanai and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall

maintain during the entire period of this Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui as an additional insured, insuring and defending Pulama Lanai and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable Tax Map Key and permit numbers.

5. That full compliance with all applicable governmental requirements shall be rendered.

6. That the Applicant shall submit to the Commission five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Land Use Commission Special Use Permit. A preliminary compliance report shall be reviewed and approved by the Commission prior to issuance of the building permit. Plans regarding the location of any construction related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase shall be submitted to the Department for review and approval prior to or along with the preliminary compliance report. The preliminary compliance report shall also include evidence that final construction plans are in substantial compliance with preliminary architectural plans dated

September 27, 2013. A final compliance report shall be submitted to the Department for review and approval prior to issuance of a final certificate of occupancy.

7. That the Applicant shall develop the property in substantial compliance with the representations made to the Lanai Planning Commission in obtaining the Special Use Permit. Failure to so develop the property may result in the revocation of the permit.

8. That Best Management Practices be used in the implementation of the proposed work. Appropriate measures to minimize dirt and water runoff, noise, and dust must be used.

9. That in the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity shall cease immediately, and the Applicant shall contact DLNR-SHPD at (808) 243-1285 on Maui, and shall notify the Lanai Archaeological Committee.

10. That the Applicant shall provide quarterly assessments of the groundwater input to the near shore ocean waters, outside and inside Hulopoe Bay and inside Manele Bay, Lanai, Hawaii. This assessment shall compare the current testing results with the testing that was done by Marine Research Consultants, Inc. in March 2014 to assess existing marine water chemistry within the coastal ocean waters downslope of the desalination facilities. Testing shall include six (6) transects that cover the ocean area below the source wells and disposal wells, and future testing shall include two (2) transects that are in areas that would not be affected by desalination facilities. The transects shall cover different depths and distances from the shoreline. The quarterly assessments shall begin upon initiation of construction of the project and may cease if this condition is modified by the Lanai Planning Commission. Quarterly reports shall be sent to the Lanai Planning Commission and Maui County Planning Department.

11. That the Applicant shall provide an Annual Report that includes: desalination facility capacity (mgd), water utilization, any emergency(ies) and corrective action(s) that have taken place, alternative energy components, value added product opportunities (such as disposal well alternatives), and archeological issues. This report shall be sent to the

Commission and Maui County Planning Department, and shall be posted on a Pulama Lanai website. The Annual Reports shall begin upon operation of the facility.

12. That the Applicant shall require all contractors, subcontractors, and employees to receive an orientation on the social culture of Lanai and to comply with all applicable county, state, and federal rules and laws, including those relating to alcohol, drugs and personal conduct. The Applicant shall provide a "hotline" telephone number for the public to report any emergency relating to the Applicant, contractor, subcontractor, or employee. The hotline shall be operational 24/7 and its telephone number shall be printed on notices that shall be sent to every post office box on Lanai and posted on a Pulama Lanai website. The 24/7 hotline may be discontinued after the facility is operational.

13. That the Applicant shall design the RO Desal Facility to ensure containment and treatment of any hazardous materials on-site and submit the plans for review and approval to the Fire Prevention and Public Safety to comply with their comment letter dated December 23, 2013, during the building permit review process prior to commencement of construction; and the Applicant shall prepare a Storm Water Best Management Practices Plan, to prevent any potential water pollution related practices, in compliance with the County's grading and erosion control ordinances prior to commencement of construction, to the satisfaction of the Department of Public Works, with evidence in the preliminary compliance report.

14. That the Applicant shall submit a parking analysis, parking plan and site plan including flood zone limits and designation prior to commencement of construction, to the satisfaction of Planning staff, with evidence in the preliminary compliance report.

15. That the Applicant shall contact the Department of Health, Clean Water Branch to determine whether a National Pollution Discharge Elimination System (NPDES) permit is required, prior to commencement of construction, to the satisfaction of the Department of

Health, to comply with their comment letter dated January 14, 2014, with evidence in the preliminary compliance report. Copies of the preliminary compliance report shall be sent to the Lanai Planning Commission.

16. That the Applicant shall obtain all proper permits issued through the Department of Health including, but not limited to air and noise. The Applicant shall provide in the Engineering Report an emergency plan for contamination and equipment failure, prior to commencement of construction, to the satisfaction of the Department of Health, to comply with their comment letter dated January 14, 2014, with evidence in the preliminary compliance report.

17. That the Applicant shall coordinate with the Department of Defense, to comply with their comment letter dated January 14, 2014, to ensure the installation of one (1) omnidirectional 121 db(c) solar powered, satellite/cellular controlled siren mounted on a 45-foot composite pole be installed for coverage of the proposed development, prior to commencement of construction, to the satisfaction of the Department of Defense, with evidence in the final compliance report.

18. That the Applicant shall coordinate with Maui County Department of Fire and Public Safety on the proposed project during the building permit review process for fire access, water supply for fire protection, fire and life safety requirements and the storage of hazardous materials, prior to commencement of construction, to the satisfaction of the Fire Department in compliance with their comment letter dated December 10, 2013, with evidence in the final compliance report.

19. That the Applicant shall coordinate with the State Department of Transportation with regard to obtaining a permit from the DOT Highways Division, Maui District Office, for the transport of oversized and/or overweight materials and equipment on State highway facilities, prior to commencement of construction, to the satisfaction of the Department of Transportation to comply with their comment letter dated December 4, 2013, with evidence in the final

compliance report.

20. That the Applicant shall coordinate with the U.S. Department of Fish and Wildlife Service to comply with their comments transmitted by email on December 27, 2013 with regard to the protection of native hoary bat and endangered or protected seabirds through Best Management Practices, prior to commencement of construction, to the satisfaction of the U.S. Department of Fish and Wildlife Service based on the December 27, 2013 comments, with evidence in the preliminary compliance report.

21. That the Applicant shall contact the Department of Health, Safe Drinking Water Branch, to comply with the Department of Health comments in their letter dated January 14, 2014, which will need to approve the quality of the Reverse Osmosis product of the Water Treatment Facility to ensure that it meets all potable water standards, prior to commencement of construction, to the satisfaction of the Department of Health, Safe Drinking Water Branch with evidence in the preliminary compliance report.

22. That the Applicant shall coordinate with the State Department of Historic Preservation Division with regard to ground disturbing activities should any archaeological resources or human burials be encountered during ground-altering activities, all work in the vicinity of the find will cease, and SHPD will be notified as required by HRS §6E-43.6 and Chapter 13-300, HAR, to the satisfaction of the State Department of Historic Preservation Division to comply with their comment letter dated January 22, 2014, with evidence in the final compliance report.

23. Once the desalination plant is operational no High Level Aquifer water will be pumped to or used in the Manele Project District except in the event of an emergency as determined by the Lanai Water Company and the Lanai Water Advisory Committee, and then only for human consumption.

24. The Applicant shall install a berm around the project's liquefied natural gas storage tanks, at a height greater than the height of the tanks, and the entry to that berm shall face toward the mountain or to Miki Basin, away from Lanai's electrical plant.


25. The land must be restored to its original state if the project does not move forward.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.]


The parties are advised of their right to appeal this Decision and Order pursuant to HRS §91-14, and Rule 12-401-32, Rules of Practice and Procedure for the Lanai Planning Commission.

Dated this 21 day of January, 2015, Lanai City, Lanai, Hawaii.

IN AGREEMENT



JOHN ORNELLAS
Chair
Lanai Planning Commissioner



STACIE LEE KOANUI NEFALAR
Vice Chair
Lanai Planning Commissioner



KELLI GIMA
Lanai Planning Commissioner



BEVERLY ZIGMOND
Lanai Planning Commissioner



BRADLEY OSHIRO
Lanai Planning Commissioner

NOT IN AGREEMENT

SHELLY BARFIELD
Lanai Planning Commissioner

STUART MARLOWE
Lanai Planning Commissioner

NOT PRESENT/EXCUSED ABSENCE

JOELLE AOKI
Lanai Planning Commissioner

CERTIFICATE OF SERVICE

In The Matter of The Application of

PULAMA LANAI

DOCKET NO.
SUP2 2013/0028 and PH2 2013/0001

To Obtain a State Land Use Commission Special Use Permit and Project District Phase II Approval for a proposed reverse osmosis desalination facility and distribution system located in the Manele Project District on Approximately 14.95 acres of Land at Maui Tax Map Key No. (2) 4-9-002:001 (por.), (2) 4-9-017:009 (por.) and 010 (por.), Manele, Lanai, Hawaii

Findings of Fact, Conclusions of Law and Decision and Order Granting a State Land Use Commission Special Use Permit and a Project District Phase II Approval for a Reverse Osmosis Desalination Facility and Distribution System

CERTIFICATE OF SERVICE

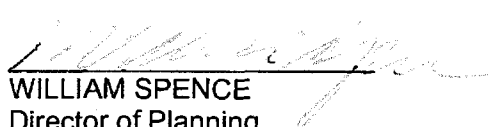
I hereby certify that a copy of the foregoing was duly served today, in the manner indicated below, upon the following parties by depositing the same with the U.S. mail, postage prepaid, addressed as follows:

KURT MATSUMOTO
Pulama Lanai
733 Bishop Street, Suite 2000
Honolulu, HI 96813

By Certified Mail No. _____
(Return Receipt Requested)

CRAIG NAKAMURA
Carlsmith Ball LLP
2200 Main Street, Suite 400
Wailuku, HI 96793

Dated: Wailuku, Maui, Hawaii, _____, 2015


WILLIAM SPENCE
Director of Planning
Department of Planning
County of Maui

(SUP2 2012/0032) (PH2 2013/0012)
(K:\WP_DOCS\PLANNING\SUP2\2013\0028_Manele_Desalination_Plant\Legal_Docs\Decision_&_Order_.doc)

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

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 email and by depositing same via U.S.

Mail, postage prepaid on:

DANIEL E. ORODENKER
Executive Director
Land Use Commission
P.O. Box 2359
Honolulu, Hawaii 96804

(daniel.e.orođenker@hawaii.gov)

BENJAMIN A. KUDO, ESQ.
CONNIE C. CHOW, ESQ.
Attorneys for Petitioner
Ashford & Wriston LLP
999 Bishop Street, Suite 1400
Honolulu, Hawaii 96813

(bkudo@awlaw.com)

DAVID KAUILA KOPPER, ESQ.
LI'ULA NAKAMA, ESQ.
Attorneys for Intervenor
Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1205
Honolulu, Hawaii 96813

(david.kopper@nhlchi.org)
(liula.nakama@nhlchi.org)

LEO R. ASUNCION, JR., AICP
Director
Office of Planning
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

(leo.r.asuncion@hawaii.gov)

BRYAN C. YEE, ESQ.
DAWN TAKEUCHI- APANA, ESQ.
Deputy Attorneys General
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

(bryan.c.yee@hawaii.gov)

WILLIAM SPENCE
Director
Department of Planning
County of Maui
2200 Main Street, Suite 315
Wailuku, Hawaii 96813

(william.spence@co.maui.hi.us)

This Affidavit is provided in compliance with §15-15-50(c)(5)(C), HAR.

DATED: Wailuku, Hawaii, OCT 10 2016, 2016.



GALEB P. ROWE, ESQ.
MICHAEL J. HOPPER, ESQ.
Deputies Corporation Counsel
Department of the Corporation Counsel