

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
LANAI RESORT PARTNERS)
To consider an Order to Show Cause)
as to whether certain land located)
at Manele, Lanai, should revert to)
its former Agricultural and/or)
Rural land use 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))

DOCKET NO. A89-649
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

MAY 17 1996 by [Signature]
Date Executive Officer

MAY 17 10 39 AM '96
LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

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FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

On October 13, 1993, the Land Use Commission ("Commission") issued its Order to Show Cause commanding Lanai Resort Partners, predecessor entity of Lanai Company, Inc. ("Petitioner"), to appear before the Commission to show cause why that certain parcel of land consisting of approximately 138.577 acres situate at Manele, Lanai, Hawai'i, identified as Tax Map Key No.: 4-9-02: portion of 49 (formerly Tax Map Key No.: 4-9-02: portion of 1) ("Property"), currently within the State Land Use Urban District, should not revert to its former land use classification or be changed to a more appropriate classification upon the Commission having reason to believe that Petitioner has failed to substantially comply with Condition No. 10 of the

Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated April 16, 1991.

The Commission, having heard and examined all testimonies, evidence, and arguments presented by the Petitioner, the County of Maui Planning Department ("County"), the Office of State Planning ("OSP") and the Lanaians For Sensible Growth ("Intervenor"), and having reviewed and considered the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the Petitioner, the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the County, the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the Intervenor, the Petitioner's Response to the County's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the Petitioner's Response to the Intervenor's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the OSP's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the Intervenor's Response to Petitioner's and County's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the entire record herein, does hereby make the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

Procedural Matters

1. On October 13, 1993, the Commission issued an Order to Show Cause ("OSC") commanding Petitioner to appear before the Commission to show cause why the Property should not

revert back to its former land use classification or be changed to a more appropriate classification.

The OSC was issued due to the Commission's reason to believe that the Petitioner has failed to perform according to Condition No. 10 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on April 16, 1991 for the subject docket, and has failed to develop and utilize only alternative non-potable water sources for golf course irrigation requirements.

2. On November 8, 1993, a Prehearing Conference was conducted at Conference Room 238, Old Federal Building, 335 Merchant Street, Honolulu, Oahu. At the Prehearing Conference, the list of exhibits and list of witnesses of the parties were exchanged between and among the parties.

3. The Commission conducted hearings on this OSC on December 14 and 15, 1994, pursuant to a Notice of Hearing published on November 1, 1993, in the Maui News and in the Honolulu Advertiser.

4. The Commission issued a Notice of Consolidated Hearing on this OSC (dated October 13, 1993) and its Order to Show Cause issued on August 3, 1994 in Docket No. A89-649. The Commission conducted consolidated hearings on the two orders to show cause on October 6 and 7, 1994, December 15 and 16, 1994, March 8 and 9, 1995, and continued hearings on this OSC on February 1 and 2, 1996, pursuant to the Notice of Consolidated Hearing published on August 12, 1994, in the Maui News and in the Honolulu Advertiser.

5. On December 5, 1995, a prehearing conference was held at the Department of Business, Economic Development, and Tourism Conference Room, 11th Floor, Central Pacific Plaza, Honolulu, Oahu, to clarify issues for the continued hearings for this OSC proceeding.

6. There were no requests for intervention received by the Commission.

Property Description

7. The subject Property is located at Manele, Lanai, and is identified as Tax Map Key No.: 4-9-02: portion of 49 (formerly Tax Map Key No.: 4-9-02: portion of 1).

8. The Property was reclassified from the Rural and Agricultural Districts to the Urban District pursuant to Findings of Fact, Conclusions of Law, and Decision and Order issued April 16, 1991 ("Decision and Order"). Said Decision and Order reclassified approximately 110.243 acres of land from the Rural District to the Urban District, and approximately 28.334 acres of land from the Agricultural District to the Urban District for development of an eighteen hole golf course, and related uses.

9. The Property is adjacent to the Manele Bay Hotel, and is located in the southern portion of the island of Lanai, approximately seven miles from Lanai City.

10. The Property is currently being utilized for the golf course, and other related uses, including a clubhouse.

Condition No. 10

11. Condition No. 10 of the Decision and Order reads as follows:

"10. Petitioner shall not utilize the potable water from the high-level groundwater aquifer for the golf course irrigation use, and shall instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course irrigation requirements.

In addition, Petitioner shall comply with the requirements imposed upon the Petitioner by the State Commission on Water Resource Management as outlined in the State Commission on Water Resource Management's Resubmittal - Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990.

12. The Water Resources Development Plan for the Island of Lanai defined alternative sources as water resources that are outside of the high-level aquifer, particularly low-level fresh and brackish waters that underlie Palawai Basin and beyond, and reclaimed sewage effluent.

13. Petitioner represented that its intent was to utilize alternative sources and it did not expect to use potable water for irrigation. Petitioner also stated that it would not use water from the high-level aquifer for irrigation of the golf course, believing that use of such resource would be inappropriate.

14. Throughout the original proceedings on the subject docket, Petitioner used the term "high level aquifer" to be synonymous with potable water. Petitioner defined alternative sources of water as water sources outside of the high level aquifer. Petitioner's definition also included water reclamation and effluent. Petitioner noted that alternate sources were "everything outside of the high level aquifer or outside of the influence of or external factors that would influence the high-level aquifer."

Petitioner's Current Water Source Development

15. Irrigation for the Property is currently being supplied primarily from brackish Wells No. 1 and 9, located in the Palawai Basin, which are within the high level aquifer. Treated wastewater effluent and brackish Well No. 12 provide minor amounts of the irrigation supply.

16. Petitioner has completed an extended pump test of Wells No. 1 and 9, which are within the high level aquifer and provide non-potable, brackish water. The extended pump test found no anomalous behavior in the wells, and no deterioration of the quality of the wells. Petitioner found no evidence of impact upon the quality or water level of the potable water wells located at a higher elevation within the high level aquifer.

17. Petitioner represents that the extended pump test of Wells 1 and 9, which lasted eighteen days, may not be sufficient. The test is dependent on the number of dikes or other types of boundaries of the high-level aquifer.

18. Historical data indicates that between 1971 and 1987, there have been declines in water levels of approximately 155 feet. Historical data also indicates that pumping during this period ranged from 100,000 gallons per day to 400,000 gallons per day.

19. Petitioner's water consultant believes that there should not be any concern regarding the amount that is pumped from the wells, unless water levels continue to drop while pumping at a constant rate.

20. Petitioner's water consultant acknowledges that leveling off of water level in the historical data is due to a decrease in the rate of pumping.

21. Petitioner's water consultant agrees that the high level aquifer consists of smaller aquifers that are hydrologically connected, and must be treated as a single unit to establish a sustainable yield for the high level aquifer.

22. Petitioner's water consultant also agrees that the small aquifers are interconnected, and there is leakage from the high level potable water area to the low level brackish water area.

23. Petitioner's water consultant states that a drop in salinity from 800 milligrams per liter to 300 milligrams per liter corresponds to a mixture of fresh water and seawater of approximately 90 percent/10 percent (equal to 800 milligram per liter) to 96 percent/4 percent (equal to 300 milligram per liter).

24. Petitioner utilizes a definition for potable water found in Maui County Code, to determine potability of water being drawn from Wells No. 1 and 9. Section 20.24.020 of the Maui County Code pertains to restrictions on use of potable water for golf courses. Said section of the Maui County code defines potable water as water containing less than 250 milligram per liter of chlorides.

25. The groundwater beneath the Palawai Basin is over an ancient volcanic caldera, which still has a thermal source. This feature causes the salinity in the groundwater to be

slightly elevated above the U.S. Environmental Protection Agency's (EPA) aesthetic guidelines for chlorides, 250 parts per million.

26. The potability of any water source does not depend on any particular level of chloride concentration.

27. The EPA has primary standards involving certain chemical constituents that may be found in water that may have been polluted. The EPA also has a guideline of 250 parts per million for chlorides, which is a secondary standard that can be exceeded without affecting potability.

28. Primary, not secondary, standards determine whether water is potable or not. The secondary standards, including chloride, would never be used to determine whether water is potable or not.

29. Petitioner has not performed a comprehensive test to determine the potability of water from Wells No. 1 and 9.

30. As more water is pumped from Wells No. 1 and 9, it is likely that the salinity will drop as more potable water leaks into the dike compartments in the secondary recharge zone to replace the water being pumped.

31. Petitioner has spent approximately 2.5 million dollars to develop the brackish water system, and to ensure that only brackish water from the high level aquifer is being utilized.

32. Petitioner acknowledges that Condition No. 10 could be interpreted to restrict use of any water from the high level aquifer.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Section 15-15-93, Hawai'i Administrative Rules reads in relevant part as follows:

- (a) Whenever the commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, the commission shall issue and serve upon the party bound by the conditions an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.

Pursuant to section 15-15-93, Hawai'i Administrative Rules, the Commission finds upon a preponderance of the evidence that the Petitioner has failed to perform according to Condition No. 10 of the Decision and Order dated April 16, 1991.

ORDER

IT IS HEREBY ORDERED that Petitioner shall comply with Condition No. 10 of the Commission's Decision and Order dated April 16, 1991 and shall immediately cease and desist any use of

water from the high level aquifer for golf course irrigation requirements.

IT IS FURTHER ORDERED that Petitioner shall file a detailed plan with the Commission within 60 days, specifying how it will comply with this Order requiring water use from alternative non-potable water sources outside of the high level aquifer for golf course irrigation requirements.

DOCKET NO. A89-649 - LANAI RESORT PARTNERS

Done at Honolulu, Hawaii, this 17th day of May 1996,
per motion on May 16, 1996.

LAND USE COMMISSION
STATE OF HAWAII

By *Allen K. Hoe*
ALLEN K. HOE
Chairperson and Commissioner

By *Trudy K. Senda*
TRUDY K. SENDA
Vice Chairperson and Commissioner

By *Rupert K. Chun*
RUPERT K. CHUN
Commissioner

By *M. Casey Jarman*
M. CASEY JARMAN
Commissioner

By *Lloyd F. Kawakami*
LLOYD F. KAWAKAMI
Commissioner

By *Merle A. K. Kelai*
MERLE A. K. KELAI
Commissioner

By *Eusebio Lapenia, Jr.*
EUSEBIO LAPENIA, JR.
Commissioner

By *Joann N. Mattson*
JOANN N. MATTSON
Commissioner

By *Elton Wada*
ELTON WADA
Commissioner

Filed and effective on
May 17, 1996

Certified by:
Esther Lund
Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A89-649
LANAI RESORT PARTNERS) CERTIFICATE OF SERVICE
To consider an Order to Show Cause)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. GREGORY G.Y. PAI, PH.D., Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. DAVID W. BLANE, Director of Planning
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JEFFREY SCHMIDT, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. JAMES T. FUNAKI, ESQ., Attorney for Petitioner
Takushi Funaki Wong & Stone
Suite 1400, Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813

CERT. ALAN T. MURAKAMI, ESQ., Attorney for Intervenors
Lanaians For Sensible Growth
Office of Hawaiian Affairs
c/o Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1205
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 17th day of May 1996.



ESTHER UEDA
Executive Officer