Pūlama Lānaʻi

LAND USE COMMISSION
STATE OF HAWAII

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March 5, 2021

State of Hawaii Land Use Commission
Department of Business and Economic Development and Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359
Attention: Daniel E. Orodenker, Executive Officer
By Federal Express and e-mail

Re: 2020 Annual Report to the Land Use Commission
Docket No. A89-649 (Mānele Golf Course)
Lāna'i Resorts, LLC (dba Pūlama Lāna'i)

To Chairperson and Members of the Land Use Commission:

As required by Condition No. 21 of the Finding of Fact, Conclusion of Law, and Decision and Order, dated April 16, 1991 ("D&O"), in the above described docket, Lāna'i Resorts, LLC (dba Pūlama Lāna'i) hereby submits this annual report to the Land Use Commission ("Commission") "...in connection with the status of the project and the Petitioner's progress in complying with the conditions imposed." Pūlama Lāna'i submits this report as the successor entity to Castle & Cooke Resorts, LLC (collectively Petitioner).

GENERAL PROGRESS OF THE PROJECT

The *"Property,"* as defined in the D&O, includes certain land at Mānele, Lāna'i, Hawai'i, Tax Map Key No.(2) 4-9-0 01: portion of 1, covering an aggregate area of approximately 138.577 acres. Petitioner has completed an 18-hole Golf Course, of which most of the holes and related uses are located on the Property, with a few holes located on the adjoining land within the existing urban Mānele Project District. The Challenge at Mānele Golf Course ("Golf Course") has been open for play since December 22, 1993 and the Challenge at Mānele Clubhouse has been open for operation and use since July, 1994.

HONOLULU OFFICE 733 Bishop Street, Suite 1500, Honolulu, Hawaii 96813 • TEL 808.237.2001 • FAX 808.566.6927
LĀNA'I OFFICE 1311 Fraser Avenue, PO Box 630310, Lāna'i City, Hawaii 96763 • TEL 808.565.3000 • FAX 808.565.3881

PROGRESS IN COMPLYING WITH CONDITIONS IMPOSED

As described below, Petitioner is in compliance with all actions required by the conditions imposed by the Commission:

Number	Condition	Status
1	See condition below	In Compliance, see update below
2	"Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lanai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui."	In Compliance and **Complete** Refer to the 2018 Annual report[1]
3	See condition below	In Compliance, see update below
4	"The Petitioner shall work with the State Department of Land and Natural Resources and the County of Maui to incorporate mauka pathways which may be tied to the golf course and residential area pathways which will provide alternate access routes to the accessible cliff coastline area."	In Compliance and **Complete** Refer to the 2018 Annual report[1]
5a	See condition below	In Compliance, see update below
5 b, c, d	See condition below	In Compliance, see update below
5 e	"e. Petitioner shall work with Lanaians for Sensible Growth to incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible cliff coastline area."	In Compliance and **Complete** Refer to the 2018 Annual report[1]
5 f	See condition below	In Compliance, see update below
5 g	"g. Petitioner shall provide Lanaians for Sensible Growth with plans for the golf course layout, location of holes, access pathways, and signage in advance of any final approval of such plans by the appropriate governmental agencies."	In Compliance and **Complete** Refer to the 2018 Annual report[1]
5 h	"h. Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purposes of this paragraph."	In Compliance and **Complete** Refer to the 2018 Annual report[1]
6	See condition below	In Compliance, see update below
7	See condition below	In Compliance, see update below
8	See condition below	In Compliance, see update below

[1] https://luc.hawaii.gov/completed-dockets/decision-and-orders-for-boundary-amendments/completed-dba-maui-county/completed-dba-maui-1980s/completed-dba-maui-1987-to-1989/a89-649-lanai-resorts/

9	"Petitioner shall comply with "The Eight (8) Conditions Applicable to Golf Course Development", prepared by the State Department of Health dated April 7, 1989, introduced as the Office of State Planning's Exhibit Number 2."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
10	See condition below	In Compliance, see update below
11	"Petitioner shall fund the design and construction of all necessary water facility improvements, including source development and transmission, to provide adequate quantities of potable and non-potable water to service the subject property."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
12	See condition below	In Compliance, see update below
13	"Petitioner shall fund the design and construction of all transportation improvements necessitated by the proposed development identified by and to the satisfaction of the Department of Transportation."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
14	See condition below	In Compliance, see update below
15	"Petitioner shall fund the design and construction of the appropriate wastewater treatment and disposal methods to the satisfaction of the State Department of Health and the County of Maui."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
16	See condition below	In Compliance, see update below
17	"Appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind, rain, and ambient noise levels."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
18	"Non-potable water sources shall be used towards all non-consumptive uses during construction of the project."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
19	See condition below	In Compliance, see update below
20	"Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining reclassification of the property. Failure to so develop may result in reclassification of the property to its former land use classification."	In Compliance and **Complete** Refer to the 2018 Annual report[1] for the most recent update.
21	See condition below	In Compliance, see update below
22	See condition below	In Compliance, see update below
23	See condition below	In Compliance, see update below

CONDITION 1

"Petitioner shall make available to the State at no cost, on a fee simple basis, 25 acres of land with no restrictions, Of these 25 acres, 10 acres shall be in the vicinity of Lanai City and 15 acres may be located at another site both agreeable to the Office of State Planning. Development on these sites shall be at a density comparable to existing developments in Lanai City. Prior to development of any improvement on the land, the State shall gain approval of Petitioner as to the conformity and harmony of the exterior design of the proposed improvements, with neighboring sites and development of Lanai by Petitioner pursuant to its master plan. Should Petitioner withhold approval, the State may submit the matter to binding arbitration. If the land or so much thereof is not utilized within a ten-year period, the unutilized portion shall revert back to Petitioner."

Compliance: Petitioner has complied with Condition 1 in that it did "...make available to the State" the real property described in this condition, under the terms stated in this condition. In an Agreement to Convey, dated June 28, 1994, by and between Dole Food Company, Inc. (Dole) and the State of Hawaii, Dole (on behalf of Petitioner) agreed to convey to the State of Hawaii's Board of Land and Natural Resources (BLNR) a 15-acre "Proposed Industrial Parcel" and a 10-acre "Proposed Commercial Parcel" (as defined and identified therein) for the purpose of satisfying Condition 1. This agreement was amended by an Amendment to Agreement to Convey, dated June 29, 1994.

Both the BLNR and the Office of Planning have approved the final terms of the conveyance, as evidenced by that certain submittal to BLNR to Michael Otake, State Land Planning and Development Manager (with BLNR stamp of approval, dated December 15, 2000) and a letter agreement, dated February 13, 2001, addressed to Mr. David Blane, Director of Office of State Planning, from Martin Luna, Esq., as counsel to Petitioner. Petitioner has since awaited notice from the State of its election to proceed with the development of one or both of these parcels and its completion/obtainment of necessary survey work and approvals, upon which the subject parcels would be subdivided and conveyed to the State of Hawaii.

By letter dated September 27, 2010, the State Department of Land and Natural Resources (DLNR) notified Petitioner that (1) the State of Hawaii has not secured the necessary appropriation to fund processing of approvals required to complete the conveyance, (2) the State of Hawaii still desires to accept the sites, and (3) the Department of Hawaiian Home Lands (DHHL) recently expressed to the State Office of Planning and DLNR that DHHL is interested in accepting the lands from Petitioner on behalf of the State of Hawaii, subject to proper credit to the settlement pursuant to Act 14, Special Session Laws of Hawaii 1995, as well as DLNR and Hawaiian Homes Commission approvals.

As of 2020, the transfer of the lands and subsequent subdivision has not been completed by DHHL, however they are actively pursuing final subdivision approval at the County.

CONDITION 3

"Petitioner shall make the golf course on the Property available to Hawaii residents at percentage discounts comparable to percentage discounts available at other private courses open to the general public in the State as reviewed and approved by the Office of State Planning."

Compliance: Petitioner has complied with Condition 3 and a similar condition incorporated in County of Maui Ordinance 2133 relating to zoning of the property. Petitioner makes the Golf Course available for play to Lāna'i residents at a rate of 50% or less of the standard rate and to State of Hawai'i residents at 60% of the standard rate. Petitioner will continue to adhere to this schedule of rates and, by virtue of County Ordinance 2133, will be bound to maintain this schedule of rates. The Office of Planning approved this rate structure in a letter dated December 17, 1996.

Petitioner has confirmed with Four Seasons Mānele Golf Course that Petitioner has continued to adhere to this rate schedule through 2020.

CONDITION 5a

"In developing and operating the golf course and any future residential development in the Manele project district, petitioner shall protect public access along the accessible cliff coastline."

"a. Petitioner shall dedicate a public easement along the accessible cliff coastline from Hulopo`e Bay to the intersection of the coastline with the westernmost boundary of the project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such use, subject to reasonable rules and regulations for public safety, provided that access shall be maintained."

Compliance: Petitioner has complied with this condition. In a Memorandum of Agreement dated October 19, 1994 and filed in the Land Court as Document No. 2200658, Petitioner and DLNR (Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program) agreed to a public access trail along the shoreline lands between Hulopo`e and Huawai Bay, Lana`i, Hawai`i. Pursuant to Condition 5 of the Decision and Order and the Memorandum of Agreement, Petitioner executed a Grant of Easement dated March 9, 1995 and filed in the Land Court as Document No. 2236005, covering Petitioner's dedication of a public easement from Hulopo`e Bay to the intersection of the coastline with the westernmost boundary of the project area, as prescribed by Condition 5. Further pursuant to the Memorandum of Agreement, Petitioner continues to be responsible for cleaning and performing periodic maintenance of the trail.

Petitioner has confirmed that through 2020 the trail has been maintained. The trail is free of debris and invasive species and is accessible to the public.

CONDITIONS 5b, c, d

"b. Petitioner shall cause to be established a setback zone of 50 feet from the edge of the cliff along the accessible cliff coastline from Hulopo`e Bay to the intersection of the coastline with the westernmost boundary of the project area within which there shall be no improvements of any kind, other than improvements which may be reasonably necessary for purposes of public safety, and where the property will be left in its natural state; provided that the setback for the proposed 16th hole may have a setback of less than 50 feet subject to mutual agreement between the petitioner and LSG."

"c. Petitioner shall cause the area within 75 feet of the edge of the cliff along the accessible cliff coastline from Hulopo`e Bay to the intersection of the coastline with the westernmost boundary of

the property area to remain in its natural state without improvements, except with respect to the three proposed signature holes of the golf course."

"d. Petitioner shall prohibit any vertical improvements, other than landscaping and improvements allowed by county variances, to be constructed or erected within 150 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area."

Compliance: Petitioner has complied with these conditions. Petitioner has complied with Condition 5b's requirement of a "setback zone" by granting to the State of Hawaii (through the DLNR) an easement for public pedestrian access in perpetuity "without obstruction or interference with such use, subject to reasonable rules and regulations regarding public safety". Petitioner has complied with each 5b, 5c and 5d by developing the Property in compliance with each of the limitations stated in these conditions.

Petitioner has confirmed that in 2020 that Petitioner has continued to observe these limitations.

CONDITION 5f

"f. Petitioner shall adopt golf course rules and provide mutually agreeable and appropriate signage which will protect the access along the public access areas and pathways."

Compliance: As described with respect to Condition 4 above, Petitioner has complied with this condition. The matter of signage was a subject of the meeting and trail walk of June 24, 1994 and the agreement regarding signage is contained in the transcript of that meeting. Pursuant to the agreement, Petitioner installed the agreed upon signage, as confirmed by a memorandum by Richard Albrecht to Ed Sowers. These include directional signs, shoreline access signs, signs designating Fisherman's Trail, signs with area map (with "You Are Here" designation) and a sign warning golfers to watch for hikers.

Petitioner has also adopted the United States Golf Association Rules (USGA) for the Golf Course. Section 1 of the USGA Rules requires golfers to take care with respect to all persons on or near the course and provides, in pertinent part:

> ***Safety***
> *Prior to playing a stroke or making a practice swing, the player should ensure that no one is standing close by or in a position to be hit by the club, the ball or any stones, pebbles, twigs or the like that may be moved by the stroke or swing.*

The Golf Course's score card specifically states:

> *"Please exercise care and enjoy the course safely and responsibly. The course contains archaeological sites that should not be disturbed. Please join with all of us on Lāna'i respecting Lanai's natural environment and its cultural and historical treasures."*

Petitioner confirmed that the appropriate signage and scorecard messaging has been maintained through 2020.

CONDITION 6

"Petitioner shall archaeologically data recover the significant historic sites identified as 3, 4, 5, 8, 9, 11 and CS1, and shall preserve the significant historic sites identified as 1, 6, portion of 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,27 and at least a portion of CS2. Petitioner shall submit a revised mitigation plan to the State Historic Preservation Division for review and approval. Full execution of the mitigation plan shall be verified by the State Historic Preservation Division prior to the start of any ground-disturbing activities. Petitioner shall preserve the historic sites identified for preservation, in perpetuity, by establishing historical sites preserve area(s), with appropriate buffer zones as approved by the State Historic Preservation Division protected by a conservation easement pursuant to Chapter 198, HRS, as amended, or such other means as shall be reviewed and approved by the State Historic Preservation Division."

"In addition, Petitioner shall immediately stop work and contact the State Historic Preservation Division should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development."

Compliance: Petitioner's contractor, Cultural Surveys Hawaii, Inc. (CSHI), submitted a Data Recovery Report to the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources in 1994. SHPD, by letter dated August 26, 1994, accepted this report as satisfactory documentation of the data recovery work and verification of the successful execution of the data recovery plan. CSHI also completed an interim preservation plan that SHPD deemed acceptable, as documented in SHPD's letter, dated September 27, 1995, to David Blane, Director, County of Maui Planning Department from Don Hibbard, SHPD Administrator. CSHI has also prepared a revised and updated version of an interpretative and preservation plan in April 2009. This plan was submitted to Hawaii State Historic Preservation (SHPD) of DLNR in October 2013 and has been accepted. A subsequent Preservation Plan for sites 1510, 1565, 1569-71, 1573, 1574A, and 1575-1578 was completed in 2016 and was accepted by SHPD in 2017.

In 2020, Petitioner confirmed that sites were periodically observed, ensuring the interpretive trail, signs, and historic properties were in good condition.

CONDITION 7

"Petitioner shall preserve the colony of *Canavalia pubescens,* which occur near the of historic sites to be preserved, if deemed necessary by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR, DOFAW). Petitioner shall submit a mitigation plan (which shall include measures to ensure that these native species arc not physically impacted, or their microclimate altered, including the incorporation of appropriate buffer zones) to DLNR, DOFAW for review and approval. Full execution of the mitigation plan shall be verified by DLNR, DOFA W prior to the start of any ground-disturbing activities."

Compliance: The colony of *Canavalia pubescens* is located within the western makai portion of the undeveloped archeological preserve area and, as such, is not impacted by the Golf Course development. Petitioner's consultant, Char & Associates, completed a new survey verifying plant colony locations, and submitted a mitigation plan to DOFAW. By letter to Petitioner dated July 9, 2002, Vicky Caraway of DOFAW approved this mitigation plan.

As stated in the mitigation plan, "the number of *Canavalia pubescens* plants on the site varies from year to year depending on the amount of rain received, competition from other plants, and amount of seeds produced from previous years." Due to the amount of rain received, the colony of *Canavalia pubescens* located within the archeological preserve area has been declining since 1988. The mitigation plan recommends that "[a]nother population or two should be established on the preserve site." Pūlama Lāna'i is working with the Plant Extinction Prevention Program (PEPP) to protect the *Canavalia pubescens* in the preserve area, or given the sensitivity of this species to available rainfall, Pūlama Lāna'i and PEPP are investigating the alternative of supporting a population of this species in other locations on the island that can be fenced. Additional plants were placed at the preservation site in 2016 after the opening of the Mānele Hotel in an area which receives irrigation water. These plants have died, likely due to the result of deer coming into the area and rodent damage to the stems. As the area is not ungulate-free, it is not possbile to replant at the preservation site. Pūlama Lāna'i botany staff continue to survey for wild 'āwikiwiki inside the Mānele Golf Course project area.

Since 2015, we have maintained a permit from DLNR-DOFAW for rare plant work on Lāna'i including work with the federally endangered *Canavalia pubescens* ('āwikiwiki). Under the direction of our staff botanist, we have propagated plants at our Native Plant Nursery from four wild founders. Pūlama Lāna'i's Conservation Department propagated over 70 'āwikiwiki plants in 2020. The majority of those plants have been outplanted at four protected rare plant enclosures on island. The remaining 'āwikiwiki plants at the nursery will be outplanted at protected sites on island or kept at the nursery for seed production. There are currently fifty-five (55) outplanted 'āwikiwiki in four fenced exclosures on Lāna'i (not in the Mānele Project District). Pūlama Lāna'i also participated in extensive rare plant surveys with DLNR-DOFAW and other state partners over the northwest side of Lāna'i in 2018-2019. As a result of those surveys, four more wild plants were discovered in the Cooperative Game Management Area. Pūlama Lāna'i Conservation staff periodically monitor the health of wild plants and outplanted individuals and collect seeds from the wild founders. Those seeds are propagated at Pūlama Lāna'i's Native Nursery or sent to Lyon Arboretum for long-term storage.

CONDITION 8

"Petitioner shall only develop, construct, operate, and maintain the proposed golf course and any subsequent residential development in the Manele Project District and take appropriate preventative measures so that it will not cause any deterioration in the Class AA water quality standards currently in existence for Hulopo`e Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course, or any comparable standards as may be established by law in the future, taking into account, temporary perturbations from natural occurrences.

"a. The petitioner shall fully mitigate any condition caused by its development activities which results in deterioration of the standards referred to in paragraph 8.

b. The petitioner shall retain an environmental monitor, as may be mutually agreed between it and Lanaians for Sensible Growth for the purpose of monitoring the water quality standards referred to in paragraph 8. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the

opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii."

Compliance: Petitioner has complied with this condition. From 1989 – 2017, Petitioner's consultant, Richard E. Brock, Ph.D., doing business as Environmental Assessment LLC, had conducted ongoing monitoring with required reports. Starting in 2018, Marine Research Consultants, Inc. have taken over the ocean monitoring at the same sites as Dr. Brock.

The reports, which have been submitted on a quarterly basis to the Lanai Planning Commission, Maui County Council Member G. Riki Hokama, Maui County Council, Department Of Health-Clean Water Branch, Hawaii Department of Land & Natural Resources, Maui Department of Planning, Lanaians for Sensible Growth, Hulopo'e Beach Park Council, and the Lanai Public Library, demonstrate that development activities have not resulted in deterioration of the standards referenced in this Condition 8.

Petitioner has filed four quarterly reports in 2020. Each quarterly report concluded that there were no substantial changes to the composition of marine habitats that could be attributed to landside development in the vicinity of Hulopo'e Bay.

CONDITION 10

"Petitioner shall not utilize the potable water from the high-level groundwater aquifer for 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."

Compliance: The subparts of this condition are discussed in the following order: (1) development and utilization of alternative non-potable water sources, (2) the State Commission on Water Resource Management's (CWRM) Resubmittal-Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990; and (3) non-utilization of potable water from the high-level groundwater aquifer.

With respect to the development and utilization of alternative non-potable water sources (brackish water and reclaimed sewage effluent), Petitioner has developed a high capacity system for Golf Course irrigation. Petitioner has developed a non-potable water system for irrigation purposes that utilizes brackish well-water and stores this non-potable water in a 15 million gallon open reservoir. Petitioner also utilizes reclaimed water from the Manele Wastewater Treatment Plant for Golf Course irrigation, which provides "R-1" quality water and produces between 60,000 and 120,000 gallons per day (approximate) of reclaimed water (with an expanded capacity of 140,000 gallons per day).

The County of Maui concluded that Petitioner has developed an adequate brackish and non-potable water system for the Golf Course. The County of Maui Planning Commission approved Petitioner's request for Manele Project Phase II Development Approval, Special Management Area

Use Permit and Planned Development Step I approval subject to 32 conditions, including the following condition number 24:

> "That Phase III approval shall not be granted until a complete report substantiating that non-potable water for the irrigation of the Golf Course is available and sustainable; and that the brackish water system will be constructed and operational at the time of the issuance of the building permits. Non-potable water shall be hauled to the site for dust control and the development of the Golf Course in the meantime."

This county condition is stated in a letter dated November 30, 1992, addressed to B. Martin Luna on behalf of Petitioner from Brian Miskae, Maui County Director of Planning.

Petitioner's compliance with this relevant County of Maui condition is evidenced by the County of Maui's grant of Manele Project Phase III approval. In addition, Ordinance No. 2408 Bill No. 13 (1995) which amended Chapter 19.70 of the Maui County Code, pertaining to irrigation in Lanai Project District I Manele, that states:

> "....Effective January 1, 1995, no potable water drawn from the high level aquifer may be used for irrigation of the Golf Course, driving range and other associated landscaping, The total amount of non-potable water drawn from the high level aquifer that may be used for the irrigation of the Golf Course, driving range, and associated landscaping shall not exceed an average of 650,000 gallons per day expressed as a moving annualized average using 13-28 day periods rather that 12 calendar months or such other reasonable withdrawal as may be determined by the Maui County Council upon advice from its standing committee on water use."

<u>State Commission on Water Resource Management</u>

With respect to the State Commission on Water Resource Management's (CWRM) Resubmittal-Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990, the CWRM's final decision did not designate the island of Lanai as a Water Management Area, but did require Petitioner to comply with certain conditions of non-designation. The March 29, 1990 CWRM Non-Designation Decision Conditions for Petitioner are as follows (CWRM condition in bold, compliance in italics; language herein below is taken from January 18, 2001 CWRM presentation to the Lanai Public Informational Meeting):

> Require Lanai Company to immediately commence monthly reporting of water use to the (CWRM, under the authority of Chapter 174C-83, HRS, which would include pumpage, water level, temperature, and chloride measurements from all wells and shafts. Petitioner reports every 4 weeks which results in a 13-period reporting frequency in compliance with this condition.
>
> In addition to monthly water use reporting and pursuant to Secs. 174C- 43 & 44, HRS, require Lāna'i Company to monitor the hydrologic situation so that if and when ground-water withdrawals reach the 80-percent-of-sustainable-yield rate, the Company can expeditiously institute public informational meetings in collaboration with the Commission to discuss mitigated measures. Monthly water use reports provide the means for monitoring hydrologic conditions. Condition was mainly to notify the public of 174C-

43 & 44 concerning the requirement of public involvement for mitigated actions when 80 percent sustainable yield actual use is occurring. Copies of these reports are provided to CWRM and the County Department of Water Supply.
Require Lanai Company to formulate a water shortage plan that would outline actions to be taken by the Company in the event a water shortage situation occurs. This plan shall be approved by the CWRM and shall be used in regulating water use on Lanai if CWRM should exercise its declaratory powers of a water emergency pursuant to Section

174C-62(g) of the State Water Code. A draft of this plan should be available for public and CWRM review no later than the beginning of October 1990 and shall be approved by the CWRM no later than January 1991. Petitioner's water shortage plan was approved by CWRM on January 17, 1991 in compliance with this condition.

That the Commission shall hold annual public informational meetings on Lanai during the month of October to furnish and receive information regarding the island's water conditions. The public shall be duly notified of such meetings. Public informational meetings have been held every October since 1990. The Lanai Water Advisory Committee (LWAC) was a participant in addition to the CWRM and Petitioner.

Non-utilization of Potable Water from the High-level Groundwater Aquifer: Petitioner's compliance with Condition 10's requirement that Petitioner "shall not utilize potable water from the high-level groundwater aquifer" was the subject of the Commission's Order to Show Cause, dated October 13, 1993. On May 17, 1996, the Commission issued its Findings of Fact, Conclusions of Law and Decision and Order that found Petitioner to be in violation of Condition 10 and ordered Petitioner to cease and desist of any use of high-level aquifer water for Golf Course irrigation (1996 Order).

Thereafter, Petitioner appealed the 1996 Order to the Second Circuit Court, which reversed the decision of the Commission that the Petitioner's use of any water from the high-level aquifer for Golf Course irrigation violated Condition No. 10. This decision was subsequently appealed by the Commission and the Lanaians for Sensible Growth (LSG) to the Hawaii Supreme Court.

On September 17, 2004, the Hawaii Supreme Court affirmed the Circuit Court's order reversing the Commission's 1996 Order. In doing so, the Supreme Court agreed with the Circuit Court that the Commission's finding that Petitioner had violated Condition 10 was "clearly erroneous", and determined that Condition No. 10 only prohibits use of potable water (not non-potable water) from the high level aquifer. However, the Court took the position that it could not determine from the Commission's decision whether potable water from the high level aquifer was in fact used to irrigate the Golf Course (reversing the trial court's ruling in favor of Petitioner) and the Court has remanded this issue to the Commission to make a clearer finding concerning the use of potable water. On March 17, 2005, the Hawaii Supreme Court entered its judgment on appeal, remanding the case to Second Circuit Court, with instructions to remand the issue to the Commission.

In 2006, the Commission commenced evidentiary hearings pursuant the Hawai'i Supreme Court's remand order. These hearings were held in abeyance pending settlement discussions

between Petitioner, LSG, the County of Maui and the State Office of Planning. On June 15, 2007, the Office of Planning filed a motion to modify Condition 10 consistent with its proposals in settlement negotiations. At a June 21, 2007 meeting, the LUC decided to hold in abeyance any evidentiary hearings before the Hearing Officer pending the hearings on potentially dispositive motions, such as the motion filed by the Office of Planning. Petitioner and LSG filed separate oppositions to this motion, and Petitioner filed a motion to modify Condition 10 and to dissolve the cease and desist order. The motions came on for hearing before the Commission on August 23, 2007. However, the Commission deferred deciding the motions pending consultation with its counsel as to whether granting the motions would end this litigation. On September 24, 2007 all parties submitted briefs on the issue of whether granting the motions would end the remand proceedings ordered by the Hawaii Supreme Court. The Office of Planning submitted a revised motion to amend Condition No. 10 which would adopt a 250 mg/l of chlorides but require the Petitioner to perform certain water studies within two years and allow the parties to propose amendments thereafter.

On January 8, 2010, the Commission met and voted to amend Condition No. 10 and to dissolve the 1996 Cease and Desist Order. The Commission's related Decision and Order also provides that (a) if chloride levels of non-potable water from the high level aquifer falls below 250 mg/l, use must cease until the level goes above 250 mg/l; (b) total use must be in accordance with Maui County Code Section 19.70.85 (i.e., under 650,000 per day); (c) ground water is as defined in HRS Section 175 C-3; and (d) nothing in the Decision affects other restrictions imposed by the County or State.

On February 24, 2010, LSG filed a notice of appeal from the Commission decision in the First Circuit Court, State of Hawaii. On March 30, Castle & Cooke filed a motion to dismiss the appeal on the grounds that LSG was administratively dissolved in 2004 and is statutorily prohibited from pursuing the appeal.

On May 25, 2010 First Circuit Court Judge Karl S. Sakamoto denied the motion to dismiss the appeal. At the hearing on LSG's appeal from the Commission's decision modifying Condition 10 and vacating the 1996 Cease and Desist order, the First Circuit Court dismissed LSG 's appeal for lack of jurisdiction.

LSG subsequently filed an appeal from the First Circuit Court's dismissal of the appeal of the Commission decision modifying Condition No. 10.

On August 24, 2012, the Intermediate Court of Appeals reversed Judge Sakamoto's May 25, 2010 Order, and remanded the matter back to the Circuit Court ruling that the Circuit Court did have jurisdiction to hear LSG's agency appeal. Without further briefing or argument, the Circuit Court then issued an Order on November 8, 2012 vacating the Commission's January 25, 2010 Order and remanding the matter back to the Commission for further evidentiary hearings.

Petitioner filed a Notice of Appeal of this Order on December 7, 2012. The Circuit Court issued a Final Judgment on March 19, 2013. Petitioner filed a second Notice of Appeal on March 28, 2013.

On April 5, 2013, Petitioner filed a Motion to Consolidate Appellate Court Case Numbers CAAP-12-0001065 and CAAP-13-0000314. On April 29, 2013, the Intermediate Court of Appeals issued an

Order Consolidating Appellate Court Case Numbers CAAP-12-0001065 and CAAP-13-0000314 under Appellate Court Case Number CAAP-13-0000314. Petitioner filed its Opening Brief on August 29, 2013. On October 21, 2013, the case was ordered into the Appellate Court Mediation Program. LSG filed its Answering Brief on November 27, 2013. Mediation was unsuccessful, and it was returned to the regular appellate docket on April 20, 2015. The Intermediate Court of Appeals filed its opinion on March 21, 2016 to send this back to the Land Use Commission to address only the issue remanded from the Hawaii Supreme Court.

On June 24, 2016, the Land Use Commission appointed a Hearings Officer to address the issue remanded from the Hawaii Supreme Court. The hearings were conducted on November 9 – 10, 2016, on Lāna'i and on November 15 – 16, 2016, on Maui. The Hearings Officer heard testimony from the parties' witnesses, as well as public testimony.

On April 4, 2017, a Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Decision and Order was filed at the Land Use Commission. The Hearings Officer found that the Petitioner had proved its compliance with Condition 10 by a preponderance of the evidence, and therefore the 1996 Order to Show Cause was vacated and the Commission's 1993 Order to Show Cause was resolved. The Hearings Officer also found that the Petitioner provided substantial evidence that the water being used to irrigate the Manele Golf Course was and is brackish under the specific meaning of the language of Condition 10 in the 1991 Order, and therefore an allowable alternate source of water.

On April 26 – 27, 2017, the Land Use Commission held an action meeting on Lāna'i to hear arguments on exceptions to the April 4, 2017 Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Decision and Order. Oral arguments were heard and thereafter a motion was made to adopt the Commission's Proposed Decision as its final decision with amendments. The motion received five aye votes, one nay, and one excused and therefore passed.

On June 1, 2017, the Land Use Commission's Final Findings of Fact, Conclusions of Law and Decision and Order was filed. The Commission adopted the Hearings Officer's proposed decision and order as it was filed on April 4th with amendments to other sections of the document.

LSG filed a notice of appeal at the Hawaii Supreme Court on June 30, 2017, and oral arguments were heard on July 12, 2018.

On May 15, 2020, the Hawaii Supreme Court affirmed the 2017 Land Use Commission Order, in that the Resort did not violate Condition 10 in a 4-1 ruling.[2]

CONDITION 12

"Petitioner shall fund the design and construction of all necessary drainage improvements to the satisfaction of the State Department of Transportation and the County of Maui."

Compliance: Petitioner has completed appropriate measures to control storm water and pollutants from storm water runoff, including (a) construction of a permanent storm water collection scheme, including seepage pits and a storm water collection system, (b) construction of

[2] SCOT-17-0000526.pdf (state.hi.us)

the Golf Course as a target style course leaving some areas in a natural, undisturbed state and thereby reducing the environmental impacts, and (c) construction of a subsurface water collection system that intercepts infiltrated irrigation water and rain water from the greens and conveys such water to seepage pits or an area of the rough, as evidenced by the Engineer's Statement of Completion, dated January 21, 1994, by Kenneth 0. Nagai of Belt Collins & Associates. Additionally, Petitioner is planning to install additional drainage infrastructure throughout the Manele Project District, including the Golf Course area, to enhance the capacity of the existing drainage systems as other areas within the Project District are developed. A final master drainage plan showing these additional drainage improvements was prepared by R.M. Towill Corporation and submitted to the County of Maui, Department of Public Works & Environmental Management and Department of Planning on February 27, 2004. This plan was accepted by the County of Maui.

There were no development activities in 2020 that warranted drainage improvements.

CONDITION 14

"Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the project's development period as required by the State Department of Transportation."

Compliance: Petitioner's contractor, Pacific Planning and Engineering, Inc., completed an updated and revised traffic study, dated May 1993, in compliance with this condition.

Research into the DOT traffic counts for the years 1993 through 2014 found that the vehicle counts had reached 31% of the maximum capacity for Federal Highway Administration Policy for Highway Capacity of Rural Two-Lane roads, at the peak volumes.

There has not been any significant change in the traffic volume through 2020.

CONDITION 16

None of the land area reclassified may be utilized for anything but a Golf Course and improvements directly related to Golf Course operations."

Compliance: Petitioner has complied with this condition and completed the Golf Course. The Golf Course clubhouse, an amenity to the Golf Course, was completed in June 1994 and has been in operation and use since that time. A County Conditional Use Permit was obtained in 2016 to allow special events to be held on the Driving Range and Twelfth Hole Tee Box. The permit is for 5 years.

CONDITION 19

"The Property shall be included in the Lanai Community Plan as part of the Manele Project District."

Compliance: Petitioner has complied with this condition. The Property is included in the Lanai Community Plan as part of the Manele Project District, as evidenced by Section 19.70 the Maui County Code (Lanai Project District- Manele) and Maui County Ordinance 2133 (1992). The 2016 Lāna'i Community Plan (Ordinance 4343) continues to show this property as part of the Manele Project District.

CONDITION 21

"Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed."

Compliance: Petitioner has complied with this condition. Petitioner has submitted annual reports for each calendar year since the Commission's approval of the project and this letter constitutes Petitioner's 2020 Annual Report.

CONDITION 22

"Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest or development interest in the Property covered by the approved Petition prior to visible commencement of construction on the Property."

Compliance: Petitioner has complied with this condition. No alteration of ownership or development interest in the Property occurred prior to the "visible commencement of construction on the Property". As noted above, Petitioner has subsequently undertaken reorganizations in which Lanai Company, Inc. became the successor entity to Lanai Resort Partners and Castle & Cooke Resorts, LLC became the successor entity to Lanai Company, Inc., as evidenced by letter, dated December 28, 2000, addressed to the Esther Ueda (on behalf of the LUC) from Martin Luna and a letter, dated January 16, 2001, addressed to Mr. Luna from Bert Saruwatari (on behalf of the LUC), acknowledging the merger of Lanai Company, Inc. into Castle & Cooke Resorts, LLC. Articles of Amendment to Change Limited Liability Company Name filed on September 14, 2012, at the Department of Commerce and Consumer Affairs, State of Hawaii, further evidences the name change of Castle & Cooke Resorts, LLC, to Lanai Resorts, LLC. Effective May 22, 2013 Lāna'i Resorts has been doing business under the trade name Pūlama Lāna'i.

CONDITION 23

"The Commission may fully or partially release these conditions as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner. Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of State Planning will certify for itself and all state departments and agencies, and the County of Maui Planning Department will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction."

> **Status**: To date, none of the conditions have been fully or partially released. However, given Petitioner's compliance with nearly all of the conditions of the Commission's approval (as described above), Petitioner may seek at least a partial release of these conditions and file an appropriate Motion for Order to Release and Delete Conditions in the future.

Should you have any questions or desire any additional information concerning the foregoing, please contact the undersigned at (808) 237-2205.

Very truly yours,

Kurt Matsumoto

Kurt Matsumoto
Chief Operating Officer

cc: Ms. Mary Alice Evans, Director, Office of Planning, State of Hawai'i,
cc: Ms. Michele Chouteau McLean, Director, County of Maui Planning Department