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BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of)	SWUPA-E (NA WAI EHA, MAUI)
)	NO. 2186
Na Wai Eha Surface Water Use Permit)	
Application of MMK MAUI, LP)	MMK MAUI, LP'S RESPONSE TO
)	COMMENTS AND OBJECTIONS
)	OF HUI O NA WAI EHA AND MAUI
)	TOMORROW FOUNDATION, INC.
)	TO SWUPA-E (NA WAI EHA, MAUI)
)	NO. 2186

MMK MAUI LP'S RESPONSE TO COMMENTS AND OBJECTIONS OF HUI O
NA WAI EHA AND MAUI TOMORROW FOUNDATION, INC. TO SWUPA-E (NA
WAI EHA, MAUI) NO. 2186

MMK Maui, LP ("MMK") owns and operates two golf courses, The King Kamehameha Golf Club and the Kahili Golf Course (the "Golf Courses"), located in Waikapu, Wailuku, Maui. MMK is an existing user of water from Na Wai Eha, which is comprised of the Waihee, Waiehu, Iao, and Waikapu streams, all of which are located in Wailuku, Maui.

On April 22, 2009, MMK submitted an Application for Surface Water Use Permit for Existing Use in the Na Wai Eha, Maui, Surface Water Management Areas

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("MMK's Application"). On May 26, 2009, Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. (collectively "MTF") filed comments and objections to various surface water use permit applications for Na Wai Eha, including comments and objections to MMK's Application (the "Objection Letter"). In accordance with Section 13-171-18 of the Hawaii Administrative Rules, MMK hereby submits this response in support of its Application and in opposition to MTF's comments and objections that are specific to MMK's Application.

A. MMK's Request for Water is Representative of its Actual Need.

In its Objection Letter, MTF claims that "MMK's requested allocation of 1,292,704 gallons per day ("GPD") exceeds its actual need." See Objection Letter, p. 7. MTF is mistaken. In accordance with the Application's instructions, MMK reported its 12-month average daily use of water during the months of May 2007 through April 2008. Its metered water usage for each month during this period is listed in the Application, as required, and the average daily use calculated in accordance with the Application is 1,292,704 GPD. It is irrelevant whether MMK's water usage may have been more or less than 1,292,704 GPD during other periods of time over the years, and it is not surprising that MMK's water use has varied over time¹. However, for the period from May 2007 through April 2008, MMK's water usage was 1,292,704 GPD as correctly reported by MMK and as requested in the Application, and 1,292,704 GPD represents MMK's actual need for water to irrigate

¹ Note that MMK's average daily water use was estimated at 1.6 to 2.2 million GPD as of September 2007 (Declaration of B. Russell Dooge dated September 14, 2007, ¶ 12) and at 1.2 million GPD for all of 2006 (Transcript of Oral Testimony of B. Russell Dooge from Interim Instream Flow Standards Contested Case Hearing, p. 159, l. 25 to p. 161, l. 22). MMK's request for water is 1,292,704 GPD, which is only slightly higher than the lowest estimation of use cited by MTF of 1.2 million GPD for 2006.

its two Golf Courses.

B. MMK Does Not Have Access to Reasonable Alternate Water Sources.

MTF argues in its Objection letter that MMK has failed to show the lack of practicable mitigation and alternatives. See Objection Letter, p. 8. MTF specifically mentions ground water and reclaimed water as potential alternatives. However, Section 20.24.010 of the Maui County Code specifically prohibits the use of potable water² for irrigation and golf course use. Therefore, potable groundwater is not a viable alternative for MMK and would be, in fact, an illegal use of potable water. Regarding reclaimed water, there are no existing transmission lines to transport the needed water from either the Kahului Wastewater Treatment Plant or the Kihei Treatment Plant to MMK's Golf Courses. Both treatment plants are located a straight line distance of approximately 8 to 10 miles from the Golf Courses, and transmissions lines would likely be considerably longer in light of the actual route for the lines due to topography, natural elements, landmarks and similar considerations. Establishing the necessary infrastructure to bring a distribution line from the treatment plants to the Golf Courses is not feasible. The ability to obtain rights of way and/or easements and construct the necessary infrastructure has prevented even the County of Maui from advancing such a project. Given that a private party does not have the eminent domain capabilities as does the County, it would be near impossible for MMK to succeed with such a project.

C. Existing Vegetation is Drought-Tolerant.

MTF also argues that MMK fails to address the feasibility of conserving water

²"Potable water" is defined as ground water meeting certain standards and treated surface water. Maui County Code § 20.24.020.

by using less water-intensive landscaping and turf grass. See Objection Letter, p. 8.

MMK utilizes Bermuda grass, which is commonly known as a drought-resistant species of grass, as its turf grass. Further, MMK utilizes landscaping that is likewise drought-tolerant though still tropical in nature. Nonetheless, a reasonable amount of water is still required in order for MMK to properly maintain the Bermuda grass and landscaping, no matter how drought-resistant the vegetation may be. Contrary to MTF's assertions, MMK has explored all reasonably available alternatives and has mitigated its water needs to the extent practicable.

D. MMK's Use Will Not Divert Stream Water From the Water Management Area.

MTF objects to MMK's Application for golf course and landscaping irrigation because it fails to meet the "heavy burden" MTF believes MMK bears under the law to show why stream water should be diverted out of its watershed of origin for such purposes. See Objection Letter, p. 7, citing Waiahole I, 94 Haw. 97, 168, 9 P.3d 409, 480, citing the Commission on Water Resource Management (the "Commission"). In Waiahole I, stream water was being diverted out of its watershed of origin from the Windward side of Oahu to irrigate golf courses in the arid Leeward side of Oahu, and the Commission concluded that ground water and/or reclaimed water were available, thereby creating the "heavy burden" to show why stream water should be utilized³. However, in MMK's case, its Golf Courses are located in Waikapu, Wailuku, Maui, the same water management area from which Na Wai Eha flows. Thus, surface water is not being transported from one side of Maui to another as was the case in Waiahole I. Further, while the Commission concluded in

³Waiahole I also involved dike-impounded ground water.

Waiahole I that ground water and/or reclaimed water were available to the golf courses in that case, alternative water sources are not available to MMK. Thus, MMK respectfully submits that the "heavy burden" noted by MTF does not apply to MMK.

E. Conclusion.

For the reasons noted above, MMK requests that the Commission disregard MTF's comments and objections to MMK's Application and approve MMK's request for continued use of water in the amount of 1,292,700 GPD.

DATED: Honolulu, Hawaii, June 8, 2009



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CERTIFICATE OF SERVICE

I hereby certify that I have on the date noted below served a copy of the foregoing upon the following parties by depositing the same in the United States mail, postage prepaid, to the following at their last known address:

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DATED: Honolulu, Hawaii, June 8, 2009.



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