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BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the Matter of the Petition of

LĀNA'I RESORT PARTNERS

To consider further matters relating to an Order To Show Cause as to whether certain land located at Mānele, Lāna'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

ORDER VACATING 1996 CEASE AND DESIST ORDER; DENYING OFFICE OF PLANNING'S REVISED MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FILED APRIL 16, 1991; AND GRANTING PETITIONER'S MOTION FOR MODIFICATION OF CONDITION NO. 10, WITH MODIFICATIONS; CERTIFICATE OF SERVICE

LAND USE COMMISSION  
STATE OF HAWAII  
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THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE COMMISSION, HONOLULU, HAWAII.

1/25/2010

BY

Date

Executive Officer



BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

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LĀNA'I RESORT PARTNERS

To consider further matters relating to an Order To Show Cause as to whether certain land located at Mānele, Lāna'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.).

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The Land Use Commission ("Commission") on January 8, 2010, on the island of Lānaʻi, held a continued hearing to consider two Motions that each proposed to amend Condition No. 10 of the 1991 Decision and Order in this Docket as a result of a remand from the Hawaiʻi Supreme Court.

On June 15, 2007, the State Office of Planning ("OP") filed a Motion To Amend Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") Filed April 16, 1991. Said Motion requests that the Commission amend Condition 10 to clarify the definition of "ground water," require compliance with all applicable Maui County ordinances regulating golf course irrigation, and to include a Condition 10A providing for interim water conditions until a Water Use and Development Plan is adopted by the Maui County Council and the State Commission on Water Resource Management ("CWRM").

On July 2, 2007, Castle & Cooke Resorts, LLC filed Petitioner's Memorandum in Response to Office of Planning's Motion To Amend Findings of Fact, Conclusions of Law, and Decision and Order Filed April 16, 1991. Also on July 2, 2007, Intervenor Lanaians for Sensible Growth ("LSG") filed a Memorandum in Opposition to OP's Motion. On July 11, 2007, the County of Maui, Department of Planning, filed a Joinder in OP's Motion.

On July 16, 2007, Castle & Cooke Resorts, LLC, filed a Motion For Modification Of Condition No. 10 And Dissolution Of 1996 Cease And Desist Order. Said Motion requests that the Commission amend Condition No. 10 to clarify the definition of "ground water," set specific maximum amounts of nonpotable water that may be used for irrigation

purposes as may be determined by the Maui County Council. Petitioner argues that the proposed amendment combines the relevant portions of Sections 19.70.083 and 20.24.020 of the Maui County Code governing the use of potable water for golf course irrigation. On July 23, 2007, OP filed a Response to Castle & Cooke Resorts, LLC's Motion For Modification Of Condition No. 10 And Dissolution Of 1996 Cease And Desist Order. On July 25, 2007, LSG filed a Memorandum In Opposition to Castle & Cooke Resorts, LLC's Motion For Modification Of Condition No. 10 And Dissolution Of 1996 Cease And Desist Order.

The Commission heard argument on the Motions on August 23, 2007 on Lāna`i, and deferred action on the Motions.

On September 24, 2007, OP filed a Memorandum of Law Regarding the Supreme Court's Remand. On the same date, LSG filed a Submission On the Question of Whether Modification of Condition Ten of the LUC's 1991 Order Is In Compliance With the Supreme Court's Remand in *Lanai Company Inc., v. Land Use Commission*. On September 25, 2007, Castle & Cooke Resorts, LLC filed a Memorandum Re Effect of Granting Motion For Modification of Conditions No. 10 and Dissolution of 1996 Cease and Desist Order Upon Remand Proceedings. Also on September 25, 2007, the County of Maui, Department of Planning, filed a Memorandum of Law Regarding the Scope of the Supreme Court's Remand; and Certificate of Service.

On December 15, 2009, the Office of Planning filed a Revised Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order Dated April 16, 1991. Said Revised Motion was based on actions taken on September 21, 2009, by the Maui

County Council to amend sections of the Maui County Code which eliminated the definition of "potable water" applicable to the Mānele Golf Course. OP's proposed revision would, among other things, insert an interim chloride standard of 250 mg/l, add a requirement that Petitioner update CWRM's Report No. CWRM-1 ("A Numerical Ground-Water Model of the Island of Lānaʻi, Hawaiʻi"), change the deadlines and simplify some requirements. On December 22, 2009, LSG filed a Supplemental Memorandum in Opposition to Petitioner Castle & Cooke Resorts, LLC's Motion for Modification of Condition 10 and Dissolution of 1996 Cease and Desist Order. On December 23, 2009, LSG filed a Supplemental Memorandum in Opposition to State of Hawaiʻi, Office of Planning's Revised Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Filed April 16, 1991. On January 6, 2010, Castle & Cooke Resorts, LLC filed a Supplemental Memorandum in Support of Motion for Modification of Condition No. 10 and Dissolution of 1996 Cease and Desist Order.

The Commission scheduled this matter for deliberation and action but allowed the parties to provide argument on January 8, 2010 on Lānaʻi.

The Commission, having reviewed OP's Motion and Revised Motion, Petitioner's Motion, the various pleadings filed by the parties and the record in this proceeding, and having heard public testimony and arguments of counsel for OP, Castle & Cooke Resorts, LLC, Maui County, and counsel for LSG, a motion having been duly made and seconded, and there being a vote tally of 6 ayes, with 3 absent; the following motion was passed:

1. The Commission finds there was insufficient evidence to support the Commission's 1996 Order finding a violation by Petitioner of Condition No. 10 and the 1996 Order be vacated.
2. The Commission denies OP's motion to amend Condition No. 10 and its Revised Motion to Amend Condition No. 10.
3. The Commission grants Castle & Cooke Resorts, LLC's Motion to Amend Condition No. 10 with modifications, so that Condition No. 10 is modified to read as follows:
  - a. Petitioner shall not use ground water to irrigate the Mānele Golf Course, driving range and other associated landscaping if the chloride concentration measured at the well head is 250 milligrams per liter (250 mg/l) or less.
  - b. In the event the chloride concentration measurement of ground water to irrigate the Mānele Golf Course, driving range and associated landscaping falls below 250 mg/l, Petitioner shall cease use of the affected well(s) producing such ground water for irrigation purposes until such time as the chloride concentration measurement of the water drawn from such wells rises above 250 mg/l.
  - c. The total amount of ground water used to irrigate the Mānele Golf Course, driving range, and other associated landscaping shall be consistent with Maui County Code Chapter 19.70.85(c) Mānele Project District I.

- d. As used herein, the term “ground water” shall have the meaning as set forth in section 174C-3 Hawai‘i Revised Statutes (State Water Code).
- e. Nothing in this condition shall limit the imposition of other restrictions by appropriate governmental agencies having jurisdiction, or affect the interpretation or enforcement of any private agreements between Petitioner and Intervenor Lanaians for Sensible Growth.

The foregoing motion having received the necessary votes required by §15-15-13, Hawai‘i Administrative Rules,

IT IS HEREBY ORDERED that (1) there was insufficient evidence to support the Commission’s 1996 Order finding a violation of Condition No. 10 and therefore the 1996 Order is hereby VACATED, (2) OP’s Motion to amend Condition No. 10 and its Revised Motion to amend Condition No. 10 are hereby DENIED, and (3) grants Castle & Cooke Resorts, LLC's Motion to Amend Condition No. 10 is GRANTED with modifications, so that Condition No. 10 reads as follows:

- a. Petitioner shall not use ground water to irrigate the Mānele Golf Course, driving range and other associated landscaping if the chloride concentration measured at the well head is 250 milligrams per liter (250 mg/l) or less.
- b. In the event the chloride concentration measurement of ground water to irrigate the Mānele Golf Course, driving range and associated landscaping falls below 250 mg/l, Petitioner shall cease use of the affected well(s) producing such ground water for irrigation purposes

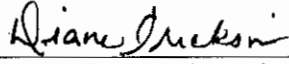
until such time as the chloride concentration measurement of the water drawn from such wells rises above 250 mg/l.

- c. The total amount of ground water used to irrigate the Mānele Golf Course, driving range, and other associated landscaping shall be consistent with Maui County Code Chapter 19.70.85(c) Mānele Project District I.
- d. As used herein, the term "ground water" shall have the meaning as set forth in section 174C-3 Hawai'i Revised Statutes (State Water Code).
- e. Nothing in this condition shall limit the imposition of other restrictions by appropriate governmental agencies having jurisdiction, or affect the interpretation or enforcement of any private agreements between Petitioner and Intervenor Lanaians for Sensible Growth.

This Order may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same document.

DATED: Honolulu, Hawai'i, this 25<sup>th</sup> day of January, 2010, per motion on January 8, 2010.

APPROVED AS TO FORM:


  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

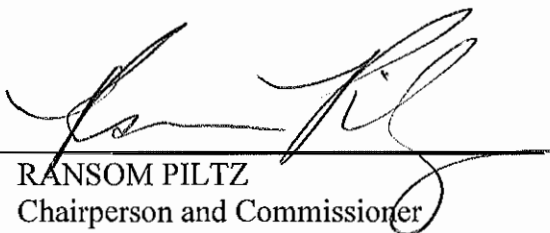
By   
RANSOM PILTZ  
Chairperson


Filed and effective on  
1/25/10

Certified by:

  
Orlando Davidson  
Executive Officer



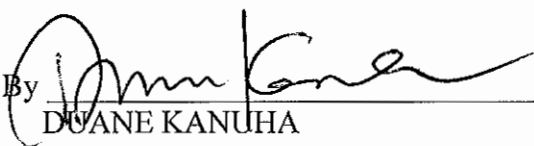
By   
RANSOM PILTZ  
Chairperson and Commissioner

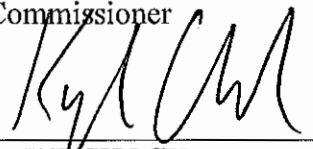
By   
REUBEN S.F. WONG  
Vice-Chairperson and Commissioner

By excused  
VLADIMIR PAUL DEVENS  
Vice-Chairperson and Commissioner

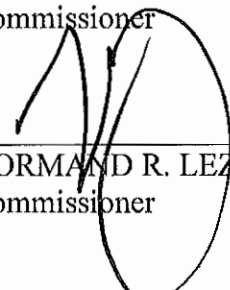
By excused  
NICHOLAS W. TEVES, JR.  
Commissioner

By excused  
THOMAS CONTRADES  
Commissioner

By   
DUANE KANUHA  
Commissioner

By   
KYLE CHOCK  
Commissioner

By   
LISA M. JUDGE  
Commissioner

By   
NORMAN R. LEZY  
Commissioner



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CERTIFICATE OF SERVICE

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I hereby certify that a certified copy of the ORDER VACATING 1996 CEASE AND DESIST ORDER; DENYING OFFICE OF PLANNING'S REVISED MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FILED APRIL 16, 1991; AND GRANTING PETITIONER'S MOTION FOR MODIFICATION OF CONDITION NO. 10, WITH MODIFICATIONS, was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL.            ABBEY SETH MAYER, Director  
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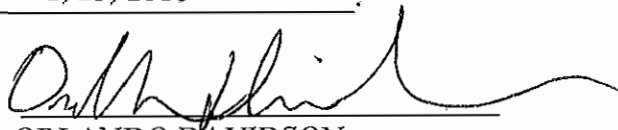
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Attorney for Intervenor  
LANAIANS FOR SENSIBLE GROWTH

Dated: Honolulu, Hawai'i, 1/25/2010.

  
\_\_\_\_\_  
ORLANDO DAVIDSON  
Executive Officer