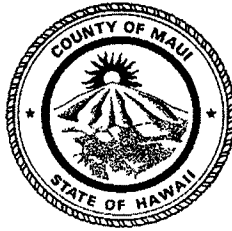


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel


EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

February 21, 2019

MEMO TO: Mike Molina, Chair
Governance, Ethics, and Transparency Committee

FROM: Caleb P. Rowe, Deputy Corporation Counsel 

SUBJECT: LITIGATION MATTERS
County of Maui vs. KUALAPU'U RANCH 4, LLC, et al.
Civil No.: 18-1-0321 (3) [GET-11(47)]

2019 FEB 21 AM 10:07
OFFICE OF THE
COUNTY COUNCIL

RECEIVED

Pursuant to Section 3.16.020B of the Maui County Code, our department respectfully requests authorization to discuss settlement of the aforementioned claim. It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. There is no immediate deadline to this matter.

Copies of the Complaint for Declaratory and Injunctive Relief and Counterclaim are enclosed. We request that a representative from the Department of Water Supply be in attendance during discussion of this matter. If you have any questions, or concerns, please do not hesitate to contact me.

Thank you for your attention to this matter.

cc: Jeffrey Pearson, Acting Director of Water Supply

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
COUNTY OF MAUI VS. KUALAPU’U RANCH 4, LLC, ET AL.,
CIVIL NO. 18-1-0321(3)

WHEREAS, Plaintiff County of Maui filed a lawsuit in the Circuit Court of the Second Circuit in the State of Hawaii on August 1, 2018, Civil No. 18-1-0321(3), against Kualapu’u Ranch 4, LLC and Molokai Properties Limited, claiming declaratory and injunctive relief regarding a well operated by the Department of Water Supply and situated on property leased by Kualapu’u Ranch 4, LLC; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a

Resolution No. _____

negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

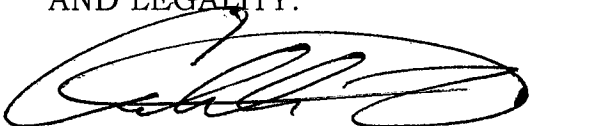
1. That it hereby authorizes the Department of the Corporation Counsel to negotiate settlement in this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Water Supply, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line.

CALEB P. ROWE
Deputy Corporation Counsel
County of Maui

FILED

DEPARTMENT OF THE
CORPORATION COUNSEL 205

2018 AUG -1 PM 4: 08

PATRICK K. WONG 5878

Corporation Counsel

CALEB P. ROWE 9520

MOANA M. LUTEY 6385

Deputies Corporation Counsel

County of Maui

200 South High Street

Wailuku, Hawaii 96793

Telephone No.: (808)270-7740

Facsimile No.: (808)270-7152

Email: caleb.rowe@co.maui.hi.us

Email: kristin.tarnstrom@co.maui.hi.us

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Plaintiff
COUNTY OF MAUI

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-10;
JANE DOES 1-10; DOE COMPANIES 1-10;
DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 18-1-0321 (3)
(Environmental Court)

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; DECLARATION OF
CALEB P. ROWE; EXHIBITS "A" – "B";
DEMAND FOR JURY TRIAL; SUMMONS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff COUNTY OF MAUI, by and through its attorneys, PATRICK K. WONG, Corporation Counsel, and CALEB P. ROWE and KRISTIN K. TARNSTROM, Deputies Corporation Counsel, and brings this Complaint for Declaratory and Injunctive Relief against Defendants, for claims alleged as follows:

I. PARTIES

1. Plaintiff COUNTY OF MAUI ("County") is a municipal corporation and a political subdivision of the State of Hawaii.

2. Defendant KUALAPU'U RANCH 4, LLC ("KR4") at all times relevant hereto is a business registered to do business in the State of Hawaii.

3. Defendant KR4 is the long term lessee of TMK (2)5-2-012-029.

4. Defendant MOLOKAI PROPERTIES LIMITED ("Molokai Properties") at all times relevant hereto is a business registered to do business in the State of Hawaii.

5. Defendant Molokai Properties was previously named Molokai Ranch, Limited, and changed its name to Molokai Properties in, approximately, 2002.

6. Defendant Molokai Properties is the fee owner of the property identified by Tax Map Key ("TMK") (2)5-2-012-029.

7. JOHN DOES 1-10; JANE DOES 1-10; DOE COMPANIES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; AND/OR OTHER DOE ENTITIES 1-10, are unidentified persons or entities who have an involvement in these proceedings or who may claim an interest in the subject matter of this action (as described below), and whose true names, identities, and interests are presently unknown to Plaintiff County's attorney. Plaintiff County has performed a diligent investigation to ascertain the identities of said DOE Defendants but has thus far failed to find any other defendants.

II. JURISDICTION

8. Plaintiff County brings this action for declaratory and injunctive relief pursuant to Hawaii Revised Statutes (HRS) §§ 174C-87, 603-1, 603-21.5, 603-21.9, 603-23, 603-36(5), 604A-2 and 632-1 and Hawaii Administrative Rules ("HAR") § 13-168-16.

9. Jurisdiction is properly before the Environmental Court pursuant to HRS § 604A-2 by virtue of allegations related to HRS Title 12 in general and HRS § 174C-87 in particular.

10. Venue is appropriate in the Second Circuit pursuant to HRS §§ 603-1(2) and 603-36(5) as the property giving rise to the claims for relief, and the actions creating the claims herein, occurred on the Island of Molokai in the State of Hawaii.

III. FACTS GIVING RISE TO THE CAUSES OF ACTION

A. THE COUNTY OF MAUI WATER SYSTEM ON TMK (2)5-2-012-029

11. Plaintiff County operates State Well No. 0801-03 (also known as Kualapuu Mauka Well), a water tank, a pumping station, water transmission lines, and other infrastructure related to municipal water distribution on a portion of TMK (2)5-2-012-029 (hereinafter known collectively as “Kualapuu Mauka Well Site”).

12. The specific locations of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site are located within Easements 151, 152 and 153 as set forth on Map 36, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 132987. See Exhibit “A.”

13. Easements 151, 152 and 153 are also identified on Map 39, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 157892 (“easements 151, 152 and 153”). See Exhibit “B.”

B. THE ORIGINAL RIGHT OF ENTRY

14. On or about November 21, 1986, Plaintiff County entered into a Right of Entry Agreement for the Development of Subsurface Water and Agreement for Acquisition of Well Site, recorded with the Bureau of Conveyances of the State of Hawaii as Document Number 86-164780

(“ROE 1”) with Defendant Molokai Properties, then known as Molokai Ranch, Limited, the fee owner of TMK (2)5-2-012-029.

15. Under the terms of ROE 1, Plaintiff County was given “the right, power and privilege, for a period of two (2) years from the date hereof, to enter upon, occupy, and use for the purpose of drilling an exploratory well, installing a well casing, a pump and other equipment necessary or desirable for the testing and development of the exploratory well, conveying away of water therefrom, and the storage of all machinery, materials, and equipment incidental thereto, and permit access to, that portion of a parcel of land owned by the Owner.”

16. The property subject to ROE 1, was described as “an area approximately 100 feet times 300 feet (30,000 square feet more or less) being a portion of Parcel 24 of Tax Map Key 5-2-12, situate at Kualapuu Molokai including the access easement thereto.”

17. ROE 1 contained a further provision providing Plaintiff County “an option to acquire the premises at a fixed mutually agreed upon price” within the two year right of entry.

C. THE SECOND RIGHT OF ENTRY

18. Another Right of Entry Agreement entered between Plaintiff County, and Defendant Molokai Properties, then operating as Molokai Ranch, Limited, was recorded with the Bureau of Conveyances as Document Number 87-182428 (“ROE 2”) on December 4, 1987.

19. ROE 2 expanded the usable area allowed by ROE 1 to include “the parcel of land situate at Kahanui, Molokai, identified by Tax Map Key 5-2-12: Parcel 22, 24, and 29.” A map of the area applicable to the right of entry was attached to ROE 2.

20. The purpose of ROE 2 was for “surveying and obtaining engineering information, construction of pumping assembly, controls, buildings, pipelines, and the maintenance and operation of the water system.”

21. ROE 2 was to terminate after a period of two years from the date of execution.
22. ROE 2 contained no provisions relative to purchase of the property.

D. THE INCOMPLETE THIRD RIGHT OF ENTRY

23. Plaintiff County sent an Amendment to Right of Entry Agreement to Defendant Molokai Properties, then operating as Molokai Ranch, Limited, for execution on November 15, 1989 ("Amendment"), with the intent of expanding the term of the right of entry.

24. This Amendment was never executed by Molokai Ranch, Limited and never filed with the Bureau of Conveyances.

E. SUBDIVISION AND LAND COURT FILINGS

25. The property bearing TMK (2)5-2-012-029 has undergone significant subdivision over the course of the last 50 years.

26. One such subdivision was approved and entered on approximately September 24, 1998 pursuant to Land Court Order No. 132987. This subdivision was set forth on Map 36, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861.

27. This subdivision subdivided what was then "Lot 33" into Lots 262 to 271, inclusive of several easements. The lot newly designated as "Lot 262" contained three easements which were referred to as easements 151, 152, and 153. These easements correspond directly with the location of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site.

28. Further subdivision was approved and entered on approximately September 1, 2004 pursuant to Land Court Order No. 157892. This subdivision was set forth on Map 39, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861.

29. This subdivision consolidated what were then lots 263-A, 262, and 24-B, and resubdivided them into lots 272, 273, and 274. The newly designated "Lot 274" contained the three easements that had previously encumbered Lot 262, namely easements 151, 152, and 153. As on Map 36, the easements shown on Map 39 correspond directly with the location of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site.

F. OTHER RELEVANT EVENTS

30. On approximately November 1, 2002, Molokai Ranch, Limited changed its name to Molokai Properties Limited, one of the Defendant in this action.

31. On approximately October 22, 2009, Defendant Molokai Properties entered into a 99 year lease of the property bearing TMK No. (2)5-2-012-029 with Defendant KR4. This property was described in attachment "A" to the Lease as "Lot 274, area 91.536 acres, more or less, as shown on Map 39, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 of Molokai Ranch, Limited." Attachment "A" to the lease further described the lease as subject to a series of easements, inclusive of easements 151, 152 and 153.

32. Defendant KR4 was contacted by Plaintiff County regarding the possibility of building a backup well on the Kualapuu Mauka Well Site on approximately November 17, 2014. Plaintiff County is unaware of any communication between Plaintiff County and Defendant KR4 prior to this date regarding the Kualapuu Mauka Well Site.

33. Defendant KR4 did not object or contest Plaintiff County's continued use of the Kualapuu Mauka Well Site until approximately January 20, 2016. On that date, Defendant KR4 demanded a meeting with officials employed by Plaintiff County to discuss its proposal to sell power to the Plaintiff County in exchange for Plaintiff County's continued use of the Kualapuu

Mauka Well Site.

34. Since 2016, Defendant KR4 has repeatedly insisted on entering into an agreement whereby Plaintiff County would purchase electricity directly from Defendant KR4's proposed solar electricity system in exchange for Plaintiff County being allowed access to the Kualapuu Mauka Well Site. Defendant KR4 has continually insisted on this arrangement despite Plaintiff County's repeated Statements that the Kualapuu Mauka Well Site needed a consistent and reliable source of power.

35. In fact, Defendant KR4 had indicated that it would present Plaintiff County with a more detailed proposal as to how to mitigate reliability issues with usage of solar power for well operation, but to date Defendant KR4 has never presented Plaintiff County with a detailed proposal that could be properly analyzed.

36. Defendant KR4's threats in attempting to force Plaintiff County into an untested, unproven, and unspecified power agreement or lose access to the Kualapuu Mauka Well Site escalated over time, culminating with Defendant KR4's July 19, 2018 letter demanding that "DWS cease operation of the well and vacate KR4's property" no later than August 10, 2018.

37. On July 25, 2018, Plaintiff County responded to Defendant KR4 informing them of the potential detrimental and injurious effect of their demand on the residents of Molokai, and asking Defendant KR4 to reconsider the August 10, 2018 cessation demand.

38. As of the date of this filing, Defendant KR4 has not rescinded its demand, thus prompting initiation of this lawsuit.

IV. CLAIMS FOR RELIEF

COUNT I: DECLARATORY RELIEF REGARDING IMPLIED DEDICATION

39. Plaintiff County hereby realleges and incorporates by reference the allegations

contained in paragraphs 1-38 of this Complaint.

40. Plaintiff County holds an easement over the Kualapuu Mauka Well Site through easements 151, 152 and 153 by operation of the common law doctrine of implied dedication.

41. Defendant Molokai Properties continued to allow Plaintiff County to operate its wells, as indicated on various Land Court Documents recording easements 151, 152 and 153. These easements correspond with the location of the Kualapuu Mauka Well Site. This uninterrupted allowance is of such a nature so as to imply an offer of dedication.

42. The nature of Plaintiff County's use in operating Kualapuu Mauka Well Site has been and continues to be for the public trust purposes of providing drinking water and water for domestic uses to approximately 1,183¹ customers² in the communities of Kaunakakai, Kamiloloa and Kawela on the Island of Molokai.

43. Further, Plaintiff County's continued public use of the Kualapuu Mauka Well Site has been uninterrupted, undisputed, unceasing and notorious since approximately 1986 for the well, and since 1987 for other system components, a period of nearly thirty years.

44. The nature of the public use as described in ¶¶ 38 and 39 *supra* imply acceptance of the dedication for public use.

45. An actual controversy exists by way of disagreements between Plaintiff County and Defendant KR4 that Plaintiff County is entitled to continued access to the Kualapuu Mauka Well Site through easements 151, 152, and 153.

46. Plaintiff County is entitled to declaratory relief in the form of a judgment declaring

¹ This number reflects the number of water service customers. The number of residents using the system would be significantly higher considering multiple persons within a household or business would be using the same water connection.

² While the public is charged for water delivery service by Plaintiff County, those costs are directly related to the operations of the Department of Water Supply. Plaintiff County does not retain any profit from the delivery of water to customers.

that Plaintiff County has an easement to the Kualapuu Mauka Well Site through easements 151, 152 and 153 by implied dedication and that Defendants KR4 and Molokai Properties are estopped from denying continued public use because the property owners have allowed and permitted continued uninterrupted and unimpeded public use for over thirty years.

COUNT II: DECLARATORY RELIEF REGARDING PRESCRIPTIVE EASEMENT

47. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-46 of this Complaint.

48. In the alternative, Plaintiff County holds a prescriptive easement of the Kualapuu Mauka Well Site.

49. Plaintiff County's use of the Kualapuu Mauka Well Site through easements 151, 152, and 153 has been uninterrupted, undisputed, and unceasing since approximately 1986 for the well, and since 1987 for other system components.

50. Plaintiff County's use of the Kualapuu Mauka Well site through easements 151, 152 and 153 has been adverse to the interests of Defendant Molokai Ranch, as Plaintiff County's right of entry expired on or around October 21, 1989 and no subsequent right of entry or easement specifically dedicated to Plaintiff County was ever recorded.

51. Both the uninterrupted use and the adverse use of the Kualapuu Mauka Well sites through easements 151, 152 and 153 have continued for more than the twenty year prescriptive period under law.

52. Plaintiff County's use of the Kualapuu Mauka Well sites through easements 151, 152 and 153 was exclusive. Defendant Molokai Properties or Defendant KR4, and members of the public at large did not occupy the property or appurtenances while Plaintiff County was occupying the premises.

53. Defendant Molokai Properties had knowledge of Plaintiff County's continued use

of the Kualapuu Mauka Well Site for the entire prescriptive period under law, acquiesced to Plaintiff County's continued use of the property, and never sought to enjoin or otherwise interrupt Plaintiff County's continued use of the property.

54. Plaintiff County's use of the Kualapuu Mauka Well Site was notorious, in that water derived therefrom continued to be received by residents of Molokai. Furthermore, reference to the source of that water from the Kualapuu Mauka Well Site was mentioned in several government records and documents, including but not limited to the Maui County Budget, the Maui County Water Use and Development Plan, the County of Maui Department of Water Supply Drinking Water Quality Report, etc.

55. An actual controversy exists by way of disagreements between Plaintiff County and Defendant KR4 that Plaintiff County is entitled to continued access to the Kualapuu Mauka Well Site through easements 151, 152, and 153.

56. Plaintiff County is entitled to declaratory relief in the form of a judgment declaring that Plaintiff County has a prescriptive easement to the Kualapuu Mauka Well Site through easements 151, 152 and 153, and that Defendants KR4 and Molokai Properties are estopped from denying continued use by Plaintiff County.

COUNT III: DECLARATORY RELIEF REGARDING WELL ABANDONMENT

57. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-56.

58. Pursuant to HRS § 174C-87:

When a well is abandoned, the owner shall fill and seal the well in a manner approved by the commission. Before abandonment, the owner shall file with the commission a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a

description of the work to be performed to effect the abandonment;
and such other information as the commission may require.

HRS § 174C-87.

59. Pursuant to HAR § 13-168-16, “the owner or operator of such abandoned well **shall not commence the required remedial work until an application has been made and a well construction permit has been obtained**” from the Commission of Water Resources Management.” *HAR § 13-168-16* (emphasis added).

60. Plaintiff County has not filed “a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment; and such other information as the commission may require” with the Commission on Water Resources Management.

61. Plaintiff County has not filed an application for nor received a well construction permit from the Commission on Water Resources Management relative to State Well No. 0801-03.

62. Accordingly, compliance with KR4’s demand to remove all property by August 10, 2018, would require Plaintiff County to act in a manner contrary to law.

63. An actual controversy exists between Plaintiff County and Defendants concerning compliance with the State Water Code in the Hawaii Revised statutes and with the Administrative Rules of the Commission on Water Resources Management.

64. Plaintiff County is entitled to Declaratory Relief that any potential removal of State Well No. 0801-03 must comply with HRS § 174C-87 and HAR § 13-168-16 and accordingly, any arbitrary deadlines for removal such as those contained in Defendant KR4’s July 19, 2018 letter that do not first allow for compliance therewith are improper.

COUNT IV: INJUNCTIVE RELIEF REGARDING EASEMENTS

65. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-64 of this Complaint.

66. Plaintiff County has a prescriptive easement and/or an easement by implied dedication of State Well No. No. 0801-03 and the Kualapuu Mauka Well Site through easements 151, 152, and 153.

67. Defendant KR4's threats of legal action, and the potential that Defendant KR4 may take extra-judicial remedies against Plaintiff County's right to access State Well No. 0801-03 and the Kualapuu Mauka Well Site, are a direct threat not only to Plaintiff County's ability to manage its water system, but also to the health, safety and welfare of the people of Kaunakakai, Kamiloloa and Kawela.

68. Plaintiff County is without adequate remedy at law if Defendants KR4 and Molokai Properties preclude Plaintiff County's continued use of State Well No. 0801-03 and the rest of the Kualapuu Mauka Well Site to the detriment of the health, safety and welfare of the people of Kaunakakai, Kamiloloa and Kawela.

69. Plaintiff County is entitled to injunctive relief prohibiting Defendants and their respective agents, servants, employees, attorneys, representatives, and all other persons acting in concert or participation with any of them, from denying or otherwise blocking Plaintiff County's access to the Kualapuu Mauka Well Site through easements 151, 152 and 153 unless and until Plaintiff County takes fee ownership of said property.

COUNT IV: INJUNCTIVE RELIEF REGARDING WELL ABANDONMENT

70. Plaintiff County hereby realleges and incorporates by reference the allegations contained in paragraphs 1-69 of this Complaint.

71. Defendant KR4's threats of legal action, and the potential that Defendant KR4 may

take extra-judicial remedies against Plaintiff County's right to access the Kualapuu Mauka Well Site could force the effective abandonment of State Well No. 0801-03.

72. Plaintiff County is without adequate remedy at law if Defendants KR4 and Molokai Properties force Plaintiff County to act in direct contradiction of the State Water Code and the Administrative Rules of the Commission on Water Resources Management.

73. Plaintiff County is entitled to Injunctive Relief to prevent Defendant KR4 from placing arbitrary deadlines on well abandonment, and from interfering with Plaintiff County's ability to comply with the Hawaii Revised Statutes and Hawaii Administrative Rules as they relate to any potential well removal.

WHEREFORE, Plaintiff prays:

A. The Court enter declaratory judgment that Plaintiff County has an easement to access, occupy and use the Kualapuu Mauka Well Site through easements 151, 152, and 153 by virtue of the doctrine of implied dedication.

B. The Court enter declaratory judgment that Plaintiff County has a prescriptive easement to access, occupy and use the Kualapuu Mauka Well Site through easements 151, 152, and 153.

C. The Court enter declaratory judgment that the demands of Defendant KR4 that Plaintiff County remove State Well No. 0801-03 by August 10, 2018 are contrary to law as they would require Plaintiff County to act in a manner contrary to the State Water Code and the Administrative Rules of the Commission on Water Resources Management.

D. The Court enter an injunction enjoining Defendants KR4 and Molokai Properties from interfering with Plaintiff County's lawful use and quiet enjoyment of the Kualapuu Mauka Well Site.

E. That the Court enter an injunction enjoining Defendant KR4 from attempting to remove, ordering Plaintiff County to remove, or otherwise interfering with the Plaintiff County's compliance with the State Water Code and the Administrative Rules of the Commission on Water Resources Management as they relate to any potential abandonment of State Well No. 0801-03.

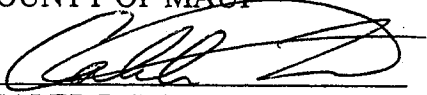
F. That Plaintiff County be awarded all its court costs and reasonable attorneys' fees, and any costs that may be incurred by Plaintiff County in enforcing its right to access State Well No. 0801-03 and the Kualapuu Mauka Well Site.

G. That Plaintiff County be awarded such other relief the Court deems appropriate, including injunctive relief, prior to the final judgment.

DATED: Wailuku, Maui, Hawaii, AUG 01 2018

PATRICK K. WONG
Corporation Counsel
Attorneys for Plaintiff
COUNTY OF MAUI

By


CALEB P. ROWE
MOANA M. LUTEY
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-10;
JANE DOES 1-10; DOE COMPANIES 1-10;
DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. _____

(Environmental Court)

DECLARATION OF CALEB P. ROWE

DECLARATION OF CALEB P. ROWE

CALEB P. ROWE does hereby declare:

1. I am an attorney with the Department of the Corporation Counsel, am licensed to practice law in the State of Hawaii, and am admitted to practice law before this court. I am one of the attorneys representing Plaintiff County of Maui ("County") in the above-captioned case.

2. I make this declaration upon personal knowledge and am competent to testify to the matters stated herein.

3. Attached to the Plaintiff County's Complaint for Declaratory and Injunctive Relief as Exhibit "A" is a true and correct copy of Map 36 as filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 132987. This map was accessed at the Department of Accounting and General Services Land Survey Map Search at the following website on August 1, 2018: <http://ags.hawaii.gov/survey/map-search/>.

4. Attached to Plaintiff County's Complaint for Declaratory and Injunctive Relief as

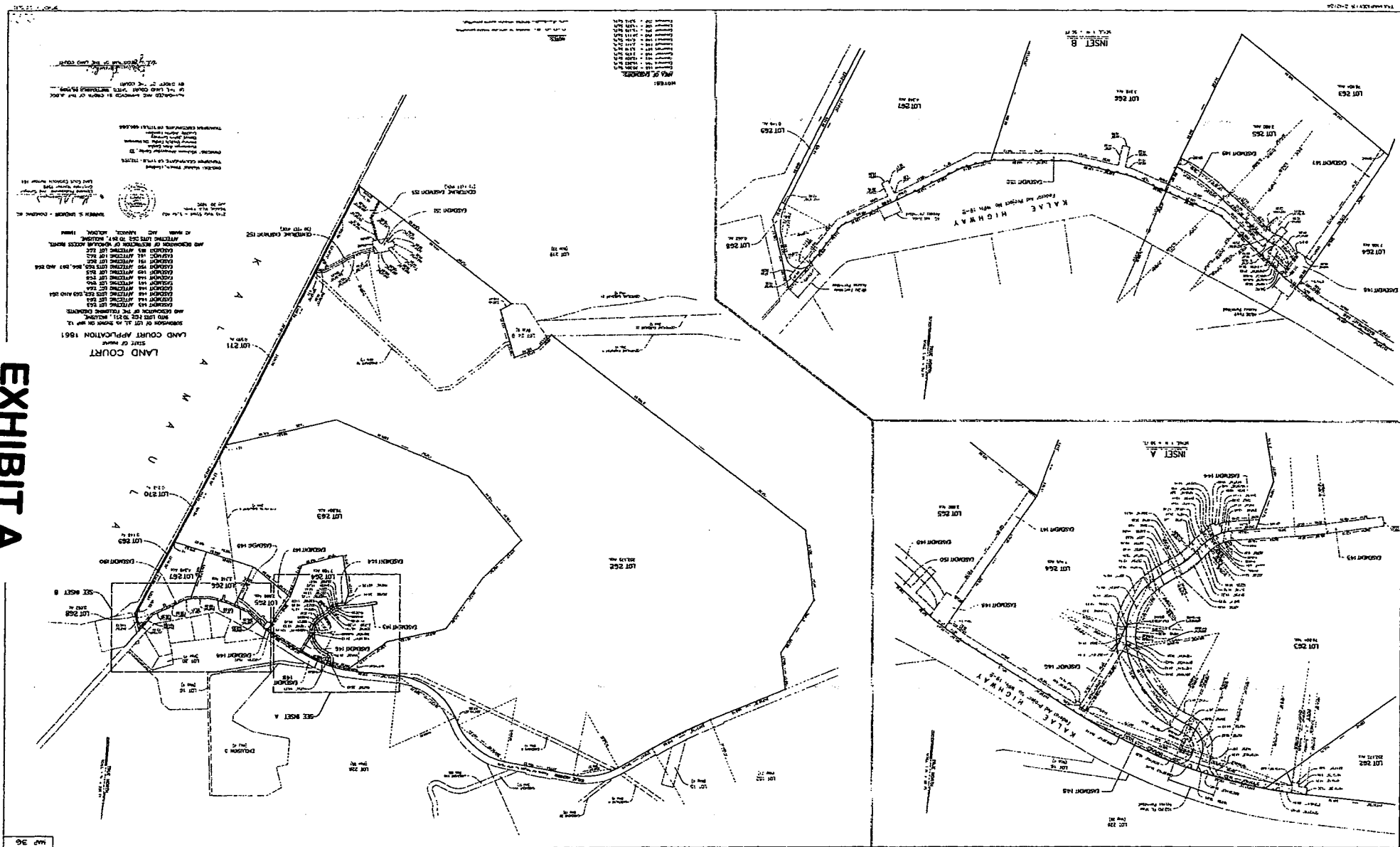
Exhibit "B" is a true and correct copy of Map 39, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 and adopted by Land Court Order No. 157892. This map was accessed at the Department of Accounting and General Services Land Survey Map Search at the following website on August 1, 2018: <http://ags.hawaii.gov/survey/map-search/>.

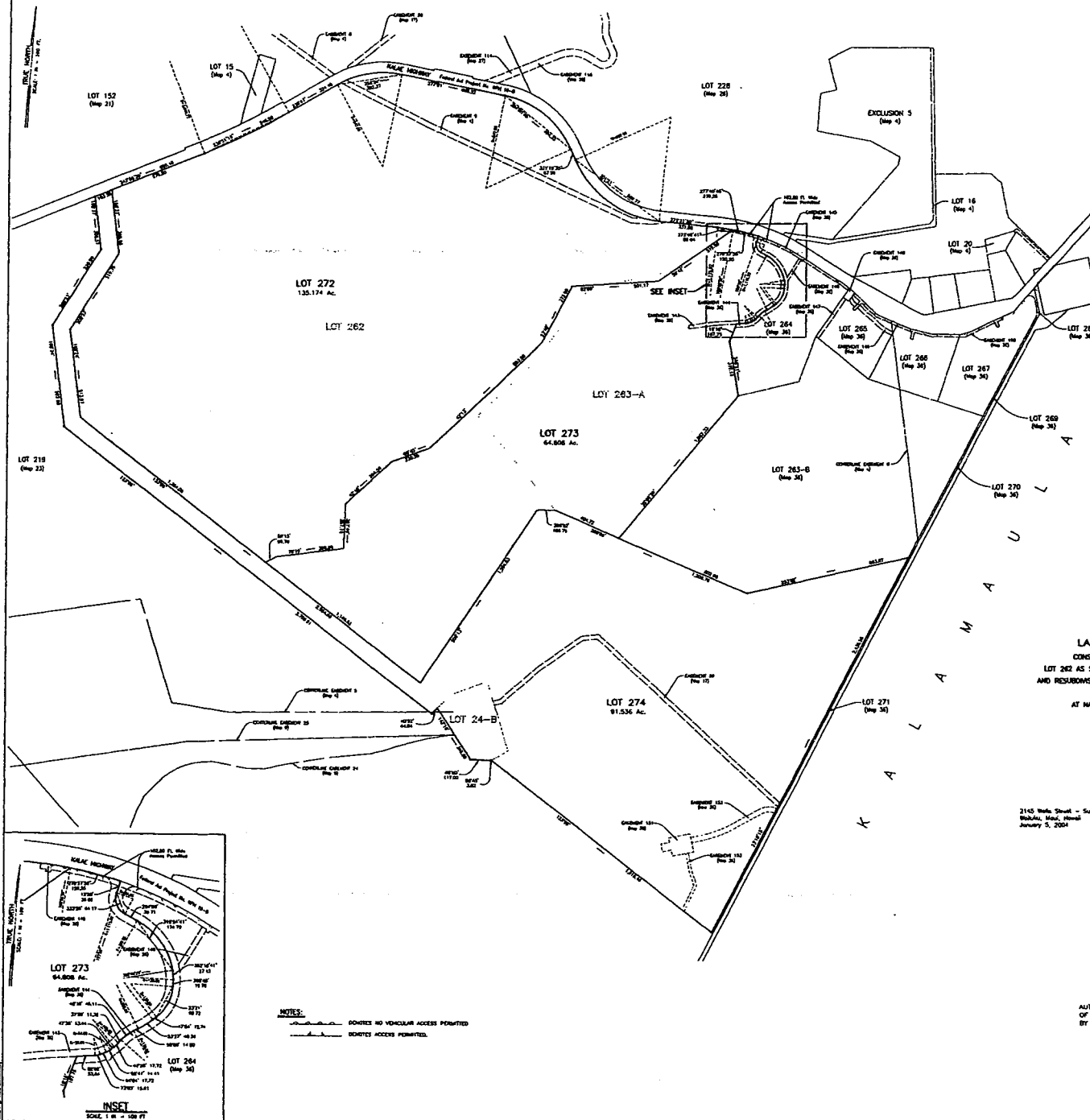
DATED: Wailuku, Maui, Hawaii,

AUG 01 2018


CALEB P. ROWE

EXHIBIT A





LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 1861
CONSOLIDATION OF LOT 263-A AS SHOWN ON MAP 36
LOT 262 AS SHOWN ON MAP 36 AND LOT 24-B AS SHOWN ON MAP 9
AND RESUBDIVISION OF SAID CONSOLIDATION INTO LOTS 272, 273 AND 274
AT HAWAII AND KAHANUI, MOLOKAI, HAWAII

2145 Kalia Street - Suite 403
Honolulu, Hawaii 96815
January 3, 2004



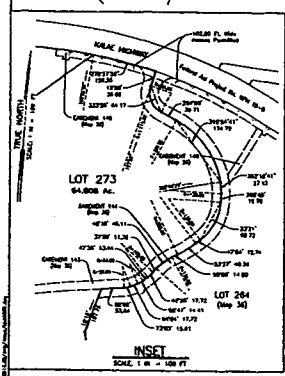
WARREN S. UNEMORI - ENGINEER, INC.
By: *Warren S. Unemori*
Licensed Professional Land Surveyor
Certificate Number 1528
Land Court Certificate Number 164

Owner: Molokai Properties, Limited
Transfer Certificate of Title: 523,669 (Lot 262)
Owner: Richard Alexander Cooke III and Brownyn Ann Cooke
Transfer Certificate of Title: 604,308 (Lot 263-A)
Owner: Kahakui Water, LLC
Transfer Certificate of Title: 596,691 (Lot 24-B)

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED AUGUST 17, 2004.
BY ORDER OF THE COURT.

Patricia S. Thompson
REGISTRAR OF THE LAND COURT

NOTES:
--- ROUTES NO VEHICULAR ACCESS PERMITTED
--- ROUTES ACCESS PERMITTED



For Map Key: (2) 3-2-12 : 24, 29 AND 30

Full April 2004 Revised Submission Register for Queen Wilhelmina Map

31" x 47" - 11.5 x 17.5

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-10;
JANE DOES 1-10; DOE COMPANIES 1-10;
DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. _____
(Environmental Court)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff COUNTY OF MAUI, by and through its attorneys, Patrick K. Wong, Corporation Counsel, Caleb P. Rowe and Kristin K. Tarnstrom, Deputies Corporation Counsel, hereby demands trial by jury on all issues triable herein.

DATED: Wailuku, Maui, Hawaii, AUG 01 2018.

PATRICK K. WONG
Corporation Counsel
Attorneys for Plaintiff
COUNTY OF MAUI

By 

CALEB P. ROWE
MOANA M. LUTEY
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-10;
JANE DOES 1-10; DOE COMPANIES 1-10;
DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. _____
(Other Civil Action)

SUMMONS

SUMMONS

TO: DEFENDANTS

You are hereby summoned and required to file with the court and serve upon PATRICK K. WONG, Corporation Counsel, and CALEB P. ROWE, Deputy Corporation Counsel, attorneys for Plaintiff COUNTY OF MAUI, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, an answer to the Complaint for Declaratory and Injunctive Relief which is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty (20) day time limit, judgment by default will be taken against you for the relief demanded in the Complaint for Declaratory and Injunctive Relief.

If you fail to obey this summons, this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be

delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Wailuku, Maui, Hawai'i, _____.

/sgd/ D. FELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT

County of Maui v KUALAPU'U RANCH 4, LLC, et al.; Civil No. TBA; SUMMONS

FILED

GARY G. GRIMMER & ASSOCIATES

GARY G. GRIMMER 1769-0
ANN CORREA 5031-0
201 Merchant Street, Suite 1940
Honolulu, Hawaii 96813
Tel: (808) 529-1502

2018 AUG 27 PM 3:50

C. VAN KUGLER, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Defendant
KUALAPU'U RANCH 4, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-
10; JANE DOES 1-10; DOE COMPANIES
1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

Civil No. 18-1-0321(3)
(Environmental Court)

DEFENDANT KUALAPU'U RANCH 4,
LLC'S ANSWER TO COMPLAINT FILED
ON AUGUST 1, 2018; DEFENDANT
KUALAPU'U RANCH 4, LLC'S
COUNTERCLAIM AGAINST PLAINTIFF
COUNTY OF MAUI; DEMAND FOR
JURY TRIAL; CERTIFICATE OF SERVICE

**DEFENDANT KUALAPU'U RANCH 4, LLC'S
ANSWER TO COMPLAINT FILED ON AUGUST 1, 2018**

Comes now Defendant KUALAPU'U RANCH 4, LLC ("KR4" or "Defendant"), by and
through its counsel, and for answer to the Complaint of Plaintiff COUNTY OF MAUI
("Plaintiff" or "County") alleges and avers as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. KR4 admit the allegations of paragraphs 1, 2, 3, 4, 6, 58 and 59 of the Complaint.

3. KR4 is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 5, 7, 8, 9, 10, 23, 24, 25, 26, 27, 28, 29, 30, 42, 49, 52, 53, 54, 60 and 61 of the Complaint and therefore denies same.

4. KR4 denies the allegations of paragraphs 40, 41, 43, 44, 45, 46, 48, 50, 51, 55, 56, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72 and 73 of the Complaint.

5. With respect to the allegations of paragraph 12 and 13 of the Complaint, KR4 denies that the County has an easement over KR4's property, and notes that the Land Court maps and documents speak for themselves.

6. With respect to the allegations of paragraph 14 of the Complaint, KR4 admits that a document titled Right of Entry Agreement for the Development of Subsurface Water and Agreement for Acquisition Well Site ("ROE 1") was recorded as Document Number 86-164780 on or about November 21, 1986. KR4 is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14.

7. With respect to the allegations of paragraphs 15, 16, and 17 of the Complaint, KR4 states that the ROE1 speaks for itself.

8. With respect to the allegations of paragraph 18 of the Complaint, KR4 admits that a document titled Right of Entry Agreement ("ROE 2") was recorded as Document Number 87-182428 on or about December 4, 1987. KR4 is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18.

9. With respect to the allegations of paragraphs 19, 20, 21 and 22 of the Complaint, KR4 states that the ROE2 speaks for itself.

10. With respect to the allegations of paragraph 31 of the Complaint, KR4 admits entering into a Lease with Defendant Molokai Properties on or about October 22, 2009, and

states that the Lease speaks for itself.

11. With respect to the allegations of paragraph 32 of the Complaint, KR4 admits being contacted by the County regarding the possibility of building a backup well on or about November 17, 2014, and is without knowledge as to the remaining allegations of paragraph 32.

12. With respect to the allegations of paragraph 33 of the Complaint, KR4 admits that it has allowed the County permissive use of the Kaulapuu Mauka Well Site while it continued negotiations regarding just compensation. KR4 also admits having discussions with the County to sell power to the County.

13. With respect to the allegations of paragraphs 34, 35, 36, 37, and 38 of the Complaint, KR4 admits that after negotiations with the County to reach agreement for sale of power to the County reached an impasse, and with no agreement for the County to pay just compensation for use of the Kaulapuu Mauka Well Site, KR4 sent a letter, dated July 19, 2018 demanding that the County cease operation of the well and vacate KR4's property by August 10, 2018.

14. With respect to the allegations of paragraph 59 of the Complaint, KR4 states that HAR 13-168-16 speaks for itself, and that paragraph 59 of the Complaint provides an incomplete quote from said administrative rule.

15. With respect to the allegations of paragraph 39 of the Complaint, KR4 repeats and realleges the allegations of paragraphs 1 – 38.

16. With respect to the allegations of paragraph 47 of the Complaint, KR4 repeats and realleges the allegations of paragraphs 1 – 46.

17. With respect to the allegations of paragraph 57 of the Complaint, KR4 repeats and realleges the allegations of paragraphs 1 – 56.

18. With respect to the allegations of paragraph 70 of the Complaint, KR4 repeats and realleges the allegations of paragraphs 1 – 69.

19. KR4 denies each and every allegation not expressly admitted herein.

THIRD DEFENSE

20. Plaintiff's claims are barred by Article I, Section 20 of the Hawaii Constitution and the Fifth Amendment to the U.S. Constitution as a taking without just compensation.

FOURTH DEFENSE

21. Plaintiff's claims are barred by Plaintiff's own conduct.

SIXTH DEFENSE

22. The claims for relief set forth in the Complaint are barred by the defense of lack and/or failure of consideration.

SEVENTH DEFENSE

23. The claims for relief set forth in the Complaint are barred by the defenses of consent, knowledge and acquiescence.

EIGHTH DEFENSE

24. The claims of Plaintiff are barred by the defenses of set off, waiver, estoppel, laches and unclean hands.

NINTH DEFENSE

25. The claims of Plaintiff are barred by Plaintiff's or its agents breach of the covenant of good faith and fair dealing imposed under Hawaii common law and statutory law.

TENTH DEFENSE

26. The claims of Plaintiff are barred by Plaintiff's or its agents contributory

negligence.

ELEVENTH DEFENSE

27. The claims of Plaintiff are barred by Plaintiff's or its agents own bad faith conduct.

TWELFTH DEFENSE

28. The alleged injuries or damages suffered by Plaintiff were the result of Plaintiff's or its agents voluntary assumption of risk.

THIRTEENTH DEFENSE

29. KR4 gives notice that it intends to rely upon the defense of avoidable consequences.

FOURTEENTH DEFENSE

30. KR4 intends to assert the defense of lack and failure of consideration.

FIFTEENTH DEFENSE

31. KR4 intends to assert the defense of breach of contract.

SIXTEENTH DEFENSE

32. KR4 intends to rely upon any matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Hawaii Rules of Civil procedure and intends to seek leave to amend its answer to allege any such matters of which Defendant may become aware during the course of discovery or trial of this action.

WHEREFORE, Defendant KR4 prays as follows:

- A That the Complaint be dismissed with prejudice; and
- B. That KR4 be awarded its costs and reasonable attorneys' fees; and
- C. That the Court award such other and further relief as it deems just and proper.

DATED: Honolulu, Hawaii, August ²⁰__, 2018.


GARY G. GRIMMER
ANN CORREA

Attorneys for Defendant
KUALAPU'U RANCH 4, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-
10; JANE DOES 1-10; DOE COMPANIES
1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

Civil No. 18-1-0321(3)
(Environmental Court)

DEFENDANT KUALAPU'U RANCH 4,
LLC'S COUNTERCLAIM AGAINST
PLAINTIFF COUNTY OF MAUI

**DEFENDANT KUALAPU'U RANCH 4, LLC'S
COUNTERCLAIM AGAINST PLAINTIFF COUNTY OF MAUI**

Comes now Defendant KUALAPU'U RANCH 4, LLC ("KR4" or "Defendant"), by and through its counsel, and for a Counterclaim against Plaintiff COUNTY OF MAUI ("Plaintiff" or "County") alleges and avers as follows:

1. The County is a municipal corporation and a political subdivision of the State of Hawaii.
2. KR4 is a limited liability company that is registered to do business in the State of Hawaii.
3. Defendant MOLOKAI PROPERTIES LIMITED ("Molokai Properties") is a corporation registered to do business in the State of Hawaii. Upon information and belief, Molokai Properties was previously known by the name Molokai Ranch, Limited.
4. Defendant Molokai Properties is, and at all times relevant hereto was, the fee owner of the real property identified by Tax Map Key (2) 5-2-012-029 (hereinafter the "Property").

5. JOHN DOES 1-10; JANE DOES 1-10; DOE COMPANIES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and/or OTHER DOE ENTITIES 1-10 are unidentified persons or entities who have an involvement in these proceedings or who may claim an interest in the subject matter of this action (as described below), and whose true names, identities, and interests are presently unknown to KR4. KR4 has made due and diligent search and review of all relevant records, files, and other documents uncovered by way of informal discovery but thus far has failed to identify said Defendants.

6. Jurisdiction and venue of the Counterclaim is properly before this Court, because it arises out of the circumstances giving rise to Plaintiff's Complaint, and concerns the parties' rights in real property situated within the Second Circuit.

7. On or about October 22, 2009, KR4 entered into a Lease with Defendant Molokai Properties for the Property, and described as "Lot 274, area 91.536 acres, more or less, as shown on Map 39, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1861 of Molokai Ranch, Limited." The term of the lease was for a period of 99 years and ending on December 31, 2109. The Lease was recorded as Land Court Document No. 3910406.

8. Plaintiff County operates State Well No. 0801-03 (also known as Kualapuu Mauka Well), a water tank, a pumping station, water transmission lines, and other infrastructure related to municipal water distribution on a portion of the Property.

9. Upon information and belief, on or about November 21, 1986, the County entered into a Right of Entry Agreement For The Development Of Sub-Surface Water and Agreement For Acquisition Of Well Site with Defendant Molokai Properties ("ROE 1"). The ROE 1 was recorded with the Bureau of Conveyances of the State of Hawaii as Document No. 86-164780.

10. ROE 1 granted the County the right to enter a portion of the Property, hereinafter referred to as the "Premises"), for a period of two years, for the purpose of drilling an exploratory well and installing materials and equipment incidental thereto.

11. ROE 1 granted the County an option to acquire the Premises, and specified that the "option shall be exercised by the County, if at all, by notice of exercise within two (2) years from the date hereof." ROE 1 specified that if the County shall exercise the option, the Owner will convey to the County title to the Premises by warranty deed.

12. ROE 1 specified that "if the County does not exercise the option to acquire the Premises, it will, unless extended by mutual agreement of the parties, forthwith vacate the Premises upon the expiration of the said two-year period and upon vacating the Premises, remove therefrom all of its machinery, material, and other equipment, except the casing, and restore the ground surface of the Premises to a condition reasonably similar to the surface condition now existing."

13. Upon information and belief, on or about October 21, 1987, the County entered into a second Right of Entry Agreement with Molokai Properties ("ROE 2"), which was recorded at the Bureau of Conveyances as Document Number 87-182428.

14. ROE 2 granted the County the right to enter and use a portion of the Property "for the purpose of surveying and obtaining engineering information, construction of pumping assembly, controls, buildings, pipelines, and the operation of the water system" for a period of two years. ROE 2 specified that, "The right of entry shall commence upon the execution of this agreement and shall terminate TWO (2) YEARS thereafter unless terminated earlier in writing by the County."

15. Upon information and belief, on or about November 15, 1989 the County sent to

Molokai Ranch a proposed Amendment To Right Of Entry Agreement. If executed, the proposed amendment would have extended the term of ROE 2 for an additional period of eighteen months, until April 21, 1991. The County indicated that it desired the extension agreement to prepare and enter into an easement agreement with the owner.

16. Upon information and belief, the Amendment To Right Of Entry Agreement was not executed. In addition, the County did not enter into an easement agreement with Molokai Ranch.

17. Despite the lack of any written agreement with the Owner, which would permit the County to remain past October 20, 1989, the County did not vacate the Property, and did not remove therefrom all of its machinery, material, and other equipment.

18. On or about late 2014, early 2015, the County initiated a request for a written lease or other right to drill a back-up well on the Property. KR4 proposed that the County purchase a photovoltaic system from another business controlled by KR4's owners to run the wells via a solar system at the County's avoided cost, in exchange for the written lease or other right of entry. KR4's owners believed this was a win-win for the parties because the County would use the land for free, its electrical cost is neutral and it derives electricity from a sustainable "green energy" source and the technologies are more reliable than Maui Electric Company's grid. No agreement was reached, but the County clearly was not adversely possessing the current well site in a hostile manner and did not claim an implied dedication of the Property and did not state it had no obligation to pay just compensation for taking of KR4's land.

19. On or about October 27, 2015, the County approached KR4 requesting that KR4 sign an electrical works permit application so it could repair and upgrade the well. The parties signed

an Agreement Regarding Electrical Permit Application in September 2016. At KR4's request that Agreement included an express statement that by signing it, KR4 was not agreeing that the County had "any right to continued operation of the Well." KR4 thought it had the County's verbal agreement that it would continue negotiating a resolution of its failure to pay just compensation for use of KR4's land, including the trade of land use for solar power set forth in paragraph 18, supra. However, the County has yet to communicate a proposal to resolve its failure to pay just compensation.

20. Despite the lack of written agreement with the Owner, Molokai Ranch, and later KR4, when it became Lessee of the Property, continued to permit the County to remain in possession. This was done in part, because negotiations with the County had not yet reached an impasse, and also because a termination of well operations could have a potential detrimental effect to the residents of Molokai if the County did not make adequate other arrangements for the supply of water to residents.

21. On or about July 19, 2018, KR4, as Lessee of the Property, gave notice to the County that negotiations had reached an impasse, and made demand upon the County to pay just and adequate compensation for the County's past and future use of KR4's Property, or cease operation of the well and vacate KR4's property no later than August 10, 2018.

22. The County failed and refused to pay just and adequate compensation, and also failed and refused to cease operation of the well and vacate KR4's Property. Instead, the County initiated this action asserting it has the legal right to remain on KR4's Property without paying any compensation.

COUNT I (QUIET TITLE)

23. KR4 incorporates by reference the allegations contained in paragraphs 1 through

22.

24. The County, in refusing to vacate and refusing to pay just and adequate compensation, is asserting a claim adversely to the interest of KR4 as Lessee of the Property.

25. Despite the County's claim to the contrary, there was no implied dedication to the County, to allow the County to use the Property, without payment of just and adequate compensation.

26. Despite the County's claim to the contrary, the County does not have a prescriptive easement to continue to use the Property, without payment of just and adequate compensation.

27. KR4, as Lessee of the Property, is entitled to an order from this Court adjudicating that the County does not have any right to continued use of the Property or any easement over the Property; and, the County must immediately commence proper process to close the well and continue the process diligently.

Count II (EJECTMENT)

28. KR4 incorporates by reference the allegations contained in paragraphs 1 through 27.

29. The County remains in possession of a portion of the Property without legal authority or permission.

30. KR4 has made demand upon the County to vacate, and the County fails and refuses to do so.

31. By reason of the matters set forth herein, KR4 is entitled to an order from this Court that the County immediately commence proper process to close the well and continue the process diligently, restoring full possession of the Property to KR4, and requiring the County to

remove all of its machinery, material, and other equipment.

Count III (TRESPASS)

32. KR4 incorporates by reference the allegations contained in paragraphs 1 through 31.

33. By refusing KR4 demands to vacate the property and remove all of its machinery, material, and other equipment, the County is trespassing on KR4's Property.

Count IV (INVERSE CONDEMNATION)

34. KR4 incorporates by reference the allegations contained in paragraphs 1 through 33.

35. The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation.

36. Article I, Section 20 of the Hawaii Constitution provides that private property shall not be taken or damages for public use without just compensation.

37. By virtue of the matters set forth herein, KR4 is entitled to an order from this Court requiring the County to pay KR4 just compensation for its past and continuing use of KR4's Property.

Count V (EQUAL PROTECTION VIOLATION)

38. KR4 incorporates by reference the allegations contained in paragraphs 1 through 37.

39. HRS Const. Art. I, § 5 provides, "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

40. The 14th Amendment to the United States Constitution prohibits any State from depriving any person of life, liberty or property, without due process; and prohibits any State from denying to any person within its jurisdiction the equal protection of the laws.

41. The 14th Amendment to the United States Constitution prohibits any State from depriving any person of life, liberty or property, without due process; and prohibits any State from denying to any person within its jurisdiction the equal protection of the laws

42. By virtue of its conduct, as set forth herein, the County has denied equal protection to KR4.

Count VI (DUE PROCESS VIOLATION)

43. KR4 incorporates by reference the allegations contained in paragraphs 1 through 42.

44. The 5th Amendment to the United States Constitution provides that no person shall be deprived of life, liberty or property, without due process; nor shall private property be taken for public use, without just compensation.

45. By virtue of its conduct, as set forth herein, the County has denied KR4 of its due process rights.

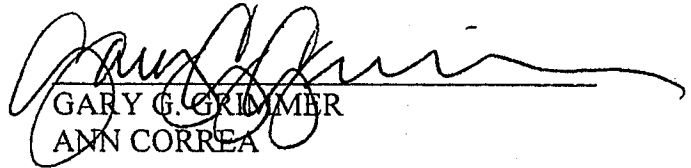
WHEREFORE, KR4 prays for judgment against the County as follows:

A. For an order and judgment determining that the County does not have any right to continuing use of any portion of the Property, and requiring the County to take all steps necessary to vacate the Property and close the well;

B. For a judgment for possession and writ of possession directing the Sheriff or serving officer to remove the County, and all of its machinery, material, and other equipment from the Property;

- C. For an award of damages in an amount shown upon motion or at trial, including, but not limited to, eminent domain damages; and
- D. For an award of pre-judgment and post-judgment interest; and
- E. For an award of reasonable attorneys' fees and costs of suit incurred herein; and
- F. For such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawaii, August 20, 2018.



GARY G. GRIMMER
ANN CORREA

Attorneys for Defendant
KUALAPU'U RANCH 4, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-
10; JANE DOES 1-10; DOE COMPANIES
1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.


Civil No. 18-1-0321(3)
(Environmental Court)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Defendant KUALAPU'U RANCH 4, LLC, hereby submits its demand for trial by jury of all issues so triable in the above-entitled action. This demand is made pursuant to Rule 38 of the Hawaii Rules of Civil Procedure and the Constitution of the State of Hawaii.

DATED: Honolulu, Hawaii, August 20, 2018.


GARY G. GRIMMER
ANN CORREA

Attorneys for Defendant
KUALAPU'U RANCH 4, LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

KUALAPU'U RANCH 4, LLC; MOLOKAI
PROPERTIES LIMITED; JOHN DOES 1-
10; JANE DOES 1-10; DOE COMPANIES
1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

Civil No. 18-1-0321(3)
(Environmental Court)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of DEFENDANT KUALAPU'U RANCH 4, LLC'S ANSWER TO COMPLAINT FILED ON AUGUST 1, 2018; DEFENDANT KUALAPU'U RANCH 4, LLC'S COUNTERCLAIM AGAINST PLAINTIFF COUNTY OF MAUI; DEMAND FOR JURY TRIAL; CERTIFICATE OF SERVICE, was duly served on the date below, upon the following parties by depositing same in the United States Mail, First Class, postage prepaid, at their last known address:

PATRICK K. WONG, ESQ.
CALEB P. ROWE, ESQ.
MOANA M. LUTEY, ESQ.
Department of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

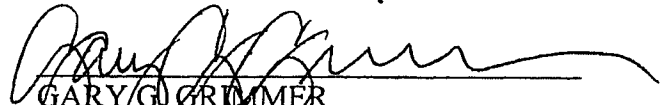
Attorneys for Plaintiff
COUNTY OF MAUI

CALVERT G. CHIPCHASE IV, ESQ.
DANA A. BARBATA, ESQ.
Cades Schutte
Cades Schutte Building 1000 Bishop St., Fl. 12

Honolulu, HI. 96813
and

Attorneys for Defendant
MOLOKAI PROPERTIES LIMITED

DATED: Honolulu, Hawaii, August ²⁰__, 2018.



GARY G. GRIMMER
ANN CORREA

Attorneys for Defendant
KUALAPU'U RANCH 4, LLC