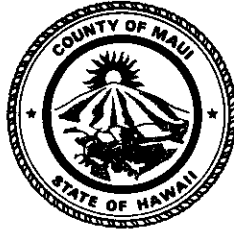


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November 7, 2018

Unites States Supreme Court  
1 1<sup>st</sup> Street, NE  
Washington D.C. 201543  
Attention: Supreme Court Clerk

Re: Leone, et al. v. County of Maui, et al, U.S. S.Ct. No. 18-324

Dear Court Clerk:

Pursuant to the Rules of the Supreme Court of the United States, Rule 30.4, Respondents County of Maui and William Spence, as Planning Director of the County of Maui ("Respondents" or "County"), respectfully request that the time to file their brief in opposition to Petitioners Douglas Leone's and Patricia Leone-Perkins' (the "Petitioners" or "Leones") Petition for a Writ of Certiorari be extended for an additional thirty (30) days to **December 14, 2018**.

After Petitioners were granted two (2) extensions of time to file (totaling 60 days), their Petition for a Writ of Certiorari ("Petition") was docketed on September 10, 2018. Absent an additional extension of time, the brief in opposition would be due on November 14, 2018. Respondents have previously requested one (1) extension of time.

**Substance of the Petition**

The Petition asks this Court to review a decision by the Supreme Court of Hawaii issued on October 16, 2017. See, Petition, filed September 10, 2018, Appendix ("App.") at 1a-58a. According to the Petition, the question presented for review is:

Whether holding undeveloped property as an "investment" or using it as a "park" in its natural state constitutes economically beneficial or productive use of land under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). See, Petition at p. i.

Respondents' brief in opposition will demonstrate that the Petition's very presentation of this question as a purported legal ground mischaracterizes the Supreme Court of Hawai'i's decision on the underlying state circuit court case. Moreover, the underlying state circuit court case reviewed by the Supreme Court of Hawai'i was decided by a jury upon a substantial amount of evidence, demonstrably independent of the narrow issue presented by the Petition.

### **Background of the Underlying Case**

The Leones contend they have been unable to build a residence on land they purchased in February 2000, over eighteen (18) years ago, at Palau'ea Beach, Makena, Maui, Hawai'i, because the applicable Maui community plan designated their parcel as "park" land in 1998. *See*, Petition at pp. 5-6. Several adjacent parcels on Palau'ea Beach, subject to the same community plan designation, state and county land use regulations, have all historically and contemporaneously been developed with single-family residences. *See*, Petition, App. at pp. 11a-12a.

A jury verdict was rendered on May 5, 2015 against the Leones. In light of the substantial volume of testimony and evidence at trial, the jury had a number of independent bases to conclude not only that the Leones failed to demonstrate a permanent loss of economic use of their land, but also that the County was not the cause of *any period of loss* of the use of their land.

### **Reasons for Granting an Extension of Time**

The time for Respondents to file a brief in opposition to the Petition should be extended for an additional thirty (30) days, to **December 14, 2018**, for several reasons:

1. As required by Sup. Ct. R. 15.2, the brief in opposition will be presenting "perceived misstatement[s] of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted," as well as "objection[s] to consideration of [the] question presented based on what occurred in the proceedings below[.]" The brief in opposition has substantially progressed, but is requiring careful, extensive review, and concise excerpting of multiple trial transcripts, testimony, and exhibits admitted into evidence and deliberated on by the jury.

2. The undersigned as counsel of record has had to give substantial attention to two (2) separate matters within the past two months, before the Supreme Court of Hawai'i and Hawai'i's Intermediate Court of Appeals. The state supreme court matter involved briefing and oral argument contesting a state ballot measure which proposed to amend the Hawai'i State Constitution. The intermediate appellate court matter involves a complex commercial real property tax appeal, for which principal briefing is due this month. The brief in opposition for this matter is otherwise substantially in progress. As respondents' counsel, however, our office has elected to retain independent Washington D.C. counsel with U. S. Supreme Court experience

for assistance with review of the briefing. That counsel has also had to give separated attention within the past month to briefing in another matter currently before this Court – *County of Maui v. Hawai'i Wildlife Fund, et al.*, S. Ct. No. 18-260.

3. Respondents have received three (3) amicus briefs in support of the Petition, which Respondents need more time to assess and respond to. The amici in support of the Petition include the Pacific Legal Foundation, the Chamber of Commerce of the United States, and the Center for Constitutional Jurisprudence.

4. No prejudice would arise from the extension. As Petitioners have already noted in their own two prior requests for extensions, “[w]hether it is permitted or not, the case would be heard next Term should the Court choose to grant review.”

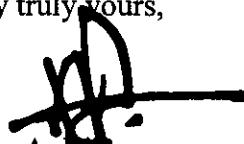
### **Conclusion**

The Petition seeks to have this Honorable Court make a broadly impactful substantive ruling(s) of law, despite a jury determination and verdict that is supported by a significant quantity of testimonial facts and volumes of documentary evidence independent of the narrow issue presented in the Petition.

For the foregoing reasons, Respondents respectfully request that the time to file their brief in opposition to the Petition for a Writ of Certiorari in this matter be extended thirty days to and including **December 14, 2018**.

Your prompt attention and action on this request will be greatly appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Bilberry', with a long horizontal line extending to the right.

Brian A. Bilberry  
Deputy Corporation Counsel