

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)

DOCKET NO. SP88-369

AINAKO RESORT ASSOCIATES AND)
GROVE FARM PROPERTIES, INC.)

AINAKO RESORT ASSOCIATES)
AND GROVE FARM)
PROPERTIES, INC.)

For a Special Permit to Establish)
An 18-Hole Golf Course, Driving)
Range, Putting Green, Clubhouse)
and Parking, and Accessory Related)
Uses and Structures on Approxi-)
mately 210 Acres of Land Situate)
Within the Agricultural District)
at Pa'a, Koloa, Island and County)
of Kauai, Tax Map Key Number:)
2-9-01: Portion of Parcel 1)

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LAND USE COMMISSION
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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Ainako Resort Associates and Grove Farm Properties, Inc. (hereinafter "Petitioner" or "Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Title 15, Chapter 15, Subchapter 12 of the Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"). The Land Use Commission (hereinafter "Commission"), having jurisdiction to consider this petition pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Title 15, Chapter 15, Subchapter 12 of the Commission Rules, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

Procedural Matters

1. The Special Permit application was received by the Kauai Planning Department (hereinafter "Planning Department") on April 18, 1988.

2. On April 21, 1988, the Kauai Planning Commission (hereinafter "Planning Commission") conducted a field trip of the petition area pursuant to notice posted on April 15, 1988.

3. Notice of the public hearing was published in the Garden Island and Honolulu Star-Bulletin newspapers on May 4, 1988. Notice was also transmitted to adjoining property owners in accordance with Section 8-19.6, Kauai County Code (KCC), and Section 9.0 of the Special Management Area (SMA) Rules, as evidenced by an affidavit by Gregory A. Kamm dated May 6, 1988.

4. On May 10, 1988, Ohana O Maha'ulepu filed a timely petition to intervene and on May 17, 1988, Malama Maha'ulepu filed a timely petition to intervene.

5. On May 25, 1988, Ohana O Maha'ulepu and Malama Maha'ulepu (hereinafter "Intervenors") were granted the status of intervenor subject to the requirement that they consolidate their claims with respect to similar issues raised in their petitions for intervention.

6. On May 18, 1988, Kauai Windsurfing Association filed a timely petition to intervene which was subsequently withdrawn on May 25, 1988.

7. The Planning Commission conducted public hearings on this matter on May 25, June 16, June 23 and June 24, 1988.

8. During the Special Permit proceedings, numerous public witness testimonies for and against the proposed project were submitted to the Planning Department or Planning

Commission. In addition, various petitions with signatures for and against the proposed project were submitted.

~~9. On May 25, 1988, Petitioner filed its Memorandum~~
Re: Exclusion of Irrelevant Evidence.

10. On June 3, 1988, Intervenors filed a Memorandum in Support of the Review of the Grove Farm Master Development Plan as Required by Statute.

11. On June 14, 1988, Intervenors filed a Motion for Declaratory Order; Memorandum in Support of Motion For Declaratory Order; Exhibits "A" and B"; Certificate of Service.

12. On or about June 15, 1988, Intervenors filed Request For Subpoenas requiring the following witnesses to attend the continued hearing of June 23, 1988: Charlie Ortega, William Kikuchi, David Boynton, Avery Youn, Trinette Kauai or other representative of Alexander & Baldwin, Michael Hahn or other representative of County Real Property Tax Division, Representative of the State Unemployment Office, David Pratt, Paul Rosendahl, Joe Vierra, Mel Ventura and Don Heacock.

13. On June 16, 1988, the Planning Commission conducted a prehearing.

14. On June 16, 1988, the Planning Commission Chairperson, Sunshyne Costa, issued subpoenas to the following: Charlie Ortega, Trinette Kauai, William Kikuchi, David Boynton, Michael Hahn or Other Representative of Tax Office and Don Heacock.

15. On June 22, 1988, Intervenors filed a Request For Issuance of Subpoena and Subpoena Duces Tecum; Affidavit; ~~Certificate of Service, for issuance of a subpoena to Ken Uyeda~~ and a Subpoena Duces Tecum for a letter to Sports Shinko from Ken Uyeda dated October 10, 1986.

On this same date, Intervenors filed a Motion to Continue Testimony of Subpoenaed Witnesses and Affidavit to allow Michael Hahn or Other Representative of Tax Office to testify on June 28, 1988 or any other date which is convenient. In addition, Intervenors filed a Motion For Order Allowing Witnesses to Testify Out of Order.

16. On June 23, 1988, the Planning Commission filed its Order Granting Motion For Declaratory Order and Granting in Part and Denying in Part Requests For Production of Documents.

17. On or about July 25, 1988, Intervenors filed Intervenors Proposed Findings of Fact, Conclusions of Law and Decision and Order and Certificate of Service.

18. On July 28, 1988, Petitioner filed its Motion to Correct Transcript; Memorandum in Support of Motion to Correct Transcript; Exhibit A and Certificate of Service.

19. On July 29, 1988, Petitioner filed Applicant's Proposed Findings of Fact, Conclusions of Law and Decision and Order and Certificate of Service.

20. On or about July 28, 1988, the Planning Department filed Planning Department's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

21. On August 1, 1988, Petitioner filed Applicant's Objections to Intervenor's Proposed Findings of Fact, Conclusions of Law, Decision and Order and Certificate of Service.

22. On August 3, 1988, Petitioner and the Planning Department filed its Stipulation and Joint Findings of Fact, Conclusions of Law, Decision and Order and Certificate of Service.

23. On August 8, 1988, Intervenor's filed Intervenor's Motion to Defer Final Argument to Permit Exceptions to Late Filed Proposed Findings of Fact and Certificate of Service.

24. On August 5, 1988, Tom Shigemoto, Director of the Planning Department, filed Certification as to Transcripts of the Proceedings.

25. On August 9, 1988, Petitioner filed Applicant's Memorandum in Opposition to Motion to Defer Final Argument.

26. On August 11, 1988, the Planning Commission filed Findings of Fact, Conclusions of Law, Decision and Order, Exhibit A, and Certificate of Service approving the Permit subject to 28 conditions (hereinafter "Decision and Order").

27. On August 18, 1988, the Commission received the record of the proceeding on the Special Permit from the County of Kauai Planning Department.

28. On August 29, 1988 and on September 1, 1988, the Commission received from the Planning Department additional

materials to supplement and complete the record on the Special Permit proceedings.

29. On August 30, 1988, Sunshyne Costa, Planning Commission Chairperson signed Order Ruling on Findings of Fact proposed by Intervenors.

Description of the Property

30. The petition area (hereinafter "Property") is located adjacent to the proposed Hyatt Regency Kauai Hotel (hereinafter "Hyatt Hotel") on the eastern perimeter of the Poipu resort community in South Kauai. The Property generally lies along and parallel to the southern shoreline of the area and adjacent to the shoreline Conservation District.

31. Immediately to the west of the Property are several resort-residential projects, including Bayview, a 40 lot residential subdivision; Lanai Villas Makai, a 47 lot residential subdivision; and Poipu Sands, a resort-residential condominium.

32. The Project consists of approximately 210 acres and is a portion of a parcel totaling 1,229.262 acres.

33. The overall terrain of the Property gradually rises from the 30 foot elevation near the shoreline to approximately 125 feet above sea level at the mauka boundary. The average slope is approximately 4 percent.

34. Grove Farm Company, Inc. owns the Property and has authorized Grove Farm Properties, Inc. to apply for the

Special Permit. A portion of the Property is leased to McBryde Sugar Company, Limited and is subject to withdrawal by the landowner under the terms of a 1974 lease agreement.

35. The Property and surrounding area consists primarily of former and existing sugarcane lands. Approximately 50 acres of the Property are currently planted in sugarcane.

36. According to the U.S. Department of Agriculture Soil Conservation Service, the Property contains the following soil types:

- Waikomo stony silty clay (WS)
- Koloa stony silty clay (KvB, KvD)
- Jaucas loamy fine sand (JfB)
- Mamala stony silty clay loam (MnC)
- Rock outcrop (rRO)

37. The Land Study Bureau classifies soils on the Property as Master Productivity rating "B", "D" and "E". Mauka portions of the Property are designated "B" lands and in the makai portions of the Property "B", "D" and "E" lands predominate.

38. The Property generally encompassed by the Waikomo stony silty clay and Mamala stony silty clay loam soils are with the State Department of Agriculture's "Other Important Agricultural Land" classification of the Agricultural Lands of Importance to the State of Hawaii (ALISH) agricultural land

evaluation system. Except for approximately 11 acres of land classified "Prime Agricultural" at the mauka boundary of the Property, the remainder of the 210-acre project site, generally behind the shoreline area is not classified.

39. There are no distinguishable drainage ways on the Property and the topography is relatively even. Runoff at the Property is primarily by sheet flow towards the ocean.

40. Offshore waters in the vicinity of the Property are classified as Class A Waters by the State Department of Health. Class A Waters are the second highest class of water rating under the Department's rating system. Discharge into these waters is permitted only upon having the best degree of treatment of control compatible with the criteria established by the Health Department for this class.

41. There are no sand beaches in the Property or on the oceanside of the Property boundary. The nearest sand beach is at the Hyatt Hotel.

42. The Property is outside of any flood plain identified by the Flood Insurance Rate Map ("FIRM") prepared by the U.S. Army Corp of Engineers. The base flood elevation of a potential 100-year tsunami inundation is 7 feet according to the FIRM map. There are no ravine flood plains which could adversely affect the Property.

Summary of Proposed Use

43. Applicant proposes to develop an 18-hole championship golf course, a driving range, putting green,

clubhouse, parking, golf course maintenance building and temporary field nursery within the State Land Use Agricultural District (hereinafter "Project"). The clubhouse will be located near the planned Hyatt Hotel and will include parking and access from Poipu Road extension. The clubhouse will include a golf pro shop, restaurant, golf club storage room and golf cart maintenance area. The golf course maintenance building and temporary field nursery are to be located within the golf club fairways away from the golf clubhouse.

44. Petitioner proposes the golf course layout to be configured to consist of three holes mauka of the proposed Hyatt Hotel and the remainder in an area east of the clubhouse generally following the coastline. Petitioner indicates that the makai holes are intended to take advantage of the area's scenic amenities, as well as preserve, in perpetuity, the shoreline's open space environment. No fairways or holes of the course are proposed on the oceanside of the Conservation District boundary.

45. Petitioner also proposes a public shoreline trail within the Conservation District, outside of the Property, along the length of the proposed golf course which will be maintained as part of the development of the Project. Petitioner proposes that the trail be kept in a natural state and the actual trail alignment be integrated with the existing topography and other natural features. Petitioner will also provide public access for fishermen and for recreation purposes.

46. Petitioner proposes to begin construction of the golf course in mid 1988 and be completed in July 1990.

~~Petitioner proposes to operate the proposed golf course in association with the planned Hyatt Hotel. The proposed golf course will be operated as a resort-oriented facility but will be open to the public for play.~~

47. Petitioner indicates that the proposed golf course is needed to accommodate an increasing demand for golf play in the Poipu area and to make South Kauai more competitive among other visitor destinations on the island.

48. Petitioner proposes to fund and construct the infrastructure required to support the golf course.

State and County Plans and Programs

49. The Property is designated within the State Land Use Agricultural District as reflected on Land Use Commission Official Map K-8, Koloa.

50. The Property is zoned Agriculture District and Open District.

51. The Kauai County General Plan and the Poipu-Koloa-Kalaheo Development Plan designates the Property as Agriculture and Open.

52. A portion of the Property is located within the Special Management Area of the County of Kauai.

53. The record of the proceeding indicates that Petitioner has concurrently applied for the following County of

Kauai approvals: Use Permit, Special Management Area Use Permit and Class IV Zoning Permit.

Hydrology and Drainage

54. There are no surface water features on the Property. The site's topography and soil characteristics provide an extremely well-drained condition suitable for development. A man-made retention and sedimentation basin exists in a low-lying area adjacent to the site makai of Pu'u Ainako.

55. Runoff from the Property will be maintained in the current manner. No increase in surface water discharge or ground water discharge will result from the development.

56. The proposed Project will not involve discharge of any wastewater, commercial pollutants or industrial waste into the ocean. Surface runoff generated by the proposed development is planned to be contained within the golf course or to be limited to that which currently flows into the ocean. With increased landscaping at the Property, surface runoff will be reduced by permitting more ground percolation to take place consequently less flow into coastal waters will occur.

Fauna

57. A variety of bird species have been observed and recorded at the Property. No endangered species have been identified as currently frequently or nesting in the Property. Mammal ground species identified include dogs, cats, rats and mice.

58. The Property and its surrounding environs provides a fairly diverse range of habitats which are utilized by the typical array of exotic birds and migratory shorebirds expected in this location. No endemic species have been identified on the Property.

59. The native indigenous bird species identified at and adjacent to the Property fall predominantly into migratory types of birds including the Pacific Golden Plover and seabirds such as the Wedge-tailed Shearwater. The importation of trees into the area as part of the golf course development will create a greater diversity of living spaces and habitats than are currently available at the site and will likely result in the increase of various species of tree-nesting avifauna.

60. Development of the golf course will not have an adverse impact on any of the identified birds or those expected to use the area or on the habitat utilized by those birds. On the contrary, the development of the course will probably improve the habitat for a variety of species. The development will not adversely impact any birds including seabirds such as the shearwater or migratory shorebirds. Moderate control of the coastwise access and prohibition of inappropriate vehicular access along the coast may improve the habitat for the shearwater and other coastal nesting avifauna.

Flora

61. Those portions of the Property not currently covered by sugarcane field contain scrub vegetation and various weedy or "ruderal" vegetation forms.

62. One hundred forty-nine (149) species of flora were inventoried within and adjacent to the Property of which 120 species have been introduced, 19 are indigenous, i.e., native to the islands and elsewhere, 5 are endemic, i.e., native only to the islands, and 5 originally of Polynesian introduction. No threatened or endangered species were found in the Property although a few species, including hinahina-kahakai, kipukai, puapilo, nama and ohelo-kai are considered rare or depleted. Those species are described commonly as native coastal strand vegetation and have been identified as occurring within the Conservation District, including the seaward facing slopes, outside of the Property.

63. Development of the Project will have no adverse effect on rare or depleted, endemic or indigenous species of plants or on flora generally. The abutment of the Property to the Conservation District and exclusion of off-road vehicles along the coastal stretch of the Property abutting the Conservation District will improve the habitat for coastal strand vegetation which has been impacted heavily in the past by such vehicles.

64. The Applicant and Intervenors' floral experts, Winona Char and Dorothy Tao, respectively, have each

recommended that access to Makawehi dune not be permitted to off-road vehicles as they have had a definite negative impact on dune vegetation and have contributed greatly to erosion of the dune area. Each has recommended that pedestrian traffic for the purposes of fishing, hiking, sightseeing and the like continue to be allowed. Further, each has recommended that landscaping with easily-grown native species adapted to local environmental conditions including salt spray be incorporated into the golf course landscaping plans.

Air Quality

65. Existing air quality within and around the Property is very good. Short-term air quality impact may result from the proposed Project during its construction phase. Implementation of adequate dust control measures employed during the construction phase will mitigate and alleviate resulting adverse effects, if any, on surrounding resort and residential areas resulting.

66. No substantial adverse environmental or ecological effect will result from the development of the course. The placement of the course within the Property will reduce direct long-term air quality impacts associated with cane harvesting in adjacent areas.

Noise

67. Construction activities associated with the development of the golf course may contribute in the

short-temporarily increase noise levels. Restriction of construction activities to daylight hours where the activities are conducted in proximity to developed areas will mitigate and alleviate any possible impact associated with such activity.

68. The proposed implementation of the Project at the Property is not expected to increase noise levels in the long-term. An increase in traffic, which would be principal source of long-term noise level increase, is not expected by virtue of implementation of the proposed Project. Consequently, the development will not have any substantial adverse environmental or ecological effect in terms of noise. To the extent that noise may be a concern, roadside landscaping will buffer noise emanating from automotive vehicles.

Archaeological and Historical Resources

69. A surface and subsurface survey of the area identified a total of 18 archaeological sites within and about the Property (7 of which had been previously identified in the June 1974 Archaeological Research Center of Hawaii Survey). Subsurface excavation conducted as part of the 1988 survey revealed no subsurface cultural deposits.

70. Of the 18 archaeological sites identified, 10 have been identified as important for their information and have been preserved through the recordation of that information and no further protective or preservation measures are required in respect of those sites. Eight of the identified sites are

important both for their information and for their potential as good examples of site types and/or for their cultural value.

71. The 8 sites recommended for preservation by both the Applicant's and the Intervenors' archaeological experts, Phillip Rosendahl and William Kikuchi, respectively, have been labeled T-2, T-3, T-7, T-8, T-9, T-10, T-11 and 3216. Their site location is reflected generally at figure 1 of the Revised Archaeological Survey. Sites T-7 and T-8 are located outside of the boundary of the Property. Site T-9 is located within the golf course boundary. Site T-2 is within the overall Property located atop Pu'u Ainako and therefore not within the limits of golf fairways nor within any area proposed for improvement by Applicant. Site T-3 is a large stone-stepped platform situated on the seaward side of Pu'u Ainako and is seemingly located on the Property boundary. Site T-3, however, is not within an area proposed for construction on the golf course or any improvements associated with the golf course. Sites T-10, T-11 and Site 3216 should be considered a single site complex consisting of stepped platforms, the larger of which, T-10 is located within the Conservation District outside the boundary of the Property. The smaller platforms, sites T-11 and 3216 appear to be within the Property.

72. Each expert has recommended some level of preservation for the 8 significant archaeological sites ranging from conservation (site preservation as is and site protection)

through interpretation (public education and resource study). Both the Applicant's and Intervenor's experts concur that the scope of preservation recommended by Dr. Rosendahl at Table 1 of his Protective Measures Memo should be undertaken by the Applicant. The Applicant has agreed to undertake these recommended preservation measures in respect of the significant archaeological sites which include conservation, clearing and cleaning of sites T-7 and T-8, and interpretation of sites T-2, T-3, T-9, and T-10, T-11 and 3216 through clearing and cleaning, and stabilization, among other interpretive measures.

73. To insure preservation of the 8 significant sites a buffer zone around the sites should be clearly flagged during the construction period. Also, an archaeologist should be available to work with the construction people on-site so that they know where the boundaries of the archaeological sites are. In this manner accidental incursion into the areas can be avoided.

74. Due to the flexible nature of golf course design, the archaeological sites within the Property boundaries and on the boundaries may be successfully integrated into the golf course and thus preserved in the long-term as well as in the short-term construction period. The sites can be incorporated and it is preferable to incorporate the archaeological sites into the course's natural and cultural features. Including the sites within the course boundary will better serve to preserve

the sites through better maintenance and control of the sites, and will not jeopardize public access to the sites to interested persons.

75. Both the Applicant's and Intervenors' archaeological experts have concurred that the Survey and Protective Measures Memorandum prepared by Dr. Rosendahl can be integrated into a cultural resource management plan for the regional area in a successful manner should such a plan be developed by others in the future. Both experts further agree that the significant sites located can be effectively studied independent of a regionwide plan or survey.

Views

76. The Project will contain a large expanse of green turf, scattered shrubs and trees. The major structural improvements will be the golf clubhouse and maintenance facilities.

77. The golf clubhouse facilities will be nestled on the mauka side of Pu'u Ainako and therefore will not impair views to, from or along the ocean. Through the development of the golf course views to and from the ocean and lateral shoreline views will not be impacted adversely, but, rather improved. The maintenance facility to be located at the field nursery site will be screened with shrubs and trees and will not impact mauka/makai views, nor the view along the shoreline. Development of a golf course at this site will

result in the opening up of views towards the ocean and mountains resulting in a more aesthetically pleasing and visually enhanced environment in the Pa'a area than that which presently exists.

Biological/Ocean Marine Resources

78. Water quality in the Pa'a area coastline can be described as very high (class A) except in times of major rains when natural erosion and sugarcane siltation discharge in the ocean can impact the waters.

79. Nitrogen, which is a component of fertilizer, can potentially impact marine resources, including water quality and coral reefs in nearshore regions adjacent to the Property.

80. Current qualitative evaluations of the nearshore water quality reflect no evidence of pollution of any sort or any sort of adverse effect attributable to chemical infiltration through runoff or ground water attributable to sugarcane operation.

81. Petitioner intends to utilize a secondary treated effluent created at the Applicant's sewage treatment facility to irrigate and in part fertilize the golf course.

82. The creation of a golf course at the Property and the utilization of fertilizers on the course and effluent to irrigate the course will result in about 1/20th of the nitrogen introduced into ground water compared to present sugarcane usage at the site.

83. The conversion of the Property to golf course use will result in no increase in phosphorous introduction to the nearshore environment. ~~No adverse environmental or ecological effect will result by virtue of these uses.~~

84. No conclusive evidence was adduced regarding the potential impacts, whether adverse or otherwise, to the environment or ecology of the off-shore waters as a result of the use of chemical herbicides or pesticides in the Property.

85. The current sugarcane operation along the coast has a more detrimental effect in general on nearshore water quality than will golf course use.

86. Based on the testimony of Dr. Steven Dollar, it is unnecessary at this time to conduct a baseline qualitative study of the marine shore organisms in the area as there is no evidence that there will result a negative impact from the golf course operation.

Economic Impact

87. Construction and operation of the proposed golf course can be expected to result in increased employment, personal income and government revenues. Direct short-term construction and long-term operational economic benefits will be realized in the neighboring Koloa-Poipu area communities as well as indirect economic benefits in the rest of Kauai and the State.

88. Direct employment is expected to result during the temporary construction phase and the operational phase of

the golf course facility. The Applicant has represented that it will endeavor to use as many local employees as possible in both the construction and operational phases of the golf course. This activity would be in keeping with the developer's historical approach in connection with developments on the island.

89. Indirect employment will be generated in companies supplying materials and services needed to construct the golf course and related facilities. Induced employment is also expected to result from the introduction of the golf course operation at the Property. The coupling of indirect and induced employment added to direct employment will result in a multiplier effect generating more than one job opportunity for each job created at the golf course construction site.

90. Construction of the facilities is expected to require approximately 20 months to complete. A total of 12 full-time equivalent jobs are expected to be created during that period.

91. Direct golf course employment, including employment at the golf clubhouse and maintenance facility, is estimated to include about 86 persons with management personnel accounting for about 10% of the golf course employment.

92. It is expected that government revenue in the long-term will increase by virtue of the implementation of the proposed Project attributable both to an increase in the

property tax base and consequent property taxes payable to the County, as well as tax revenues resulting from earnings and spending of wage, salary and proprietor's income associated with direct, indirect and induced jobs generated by the operation of the golf course.

93. Each of the foregoing socio-economic impacts is perceived as beneficial and will not create any adverse impact on the island economy, environment or ecology.

Public Facilities and Services

94. The cost to construct the infrastructure required to support the Project will be borne by Petitioner. Development of the proposed golf course will require the extension of Poipu Road along the mauka boundary of the Hyatt Hotel site as well as the construction of a driveway to the proposed golf clubhouse, a distance of approximately of 2,000 feet. It will be improved to create a two-laned paved road in compliance with County standards, with graded shoulders and landscaping. The portion of the road which adjoins the mauka boundary of the hotel site will be developed by the hotel owner and approval for this road segment has already been obtained from the County in connection with approval of the hotel. This road will also be extended towards the beach at Keoneloa Bay to afford public access to the planned public beach park at the hotel site parcel.

95. Potable water for the golf course operation will be available through the 12-inch water line running along the

existing portion of Poipu Road. It is expected that the clubhouse will require an average 6,600 gallons per day of potable water. Any required improvement to the existing water system, which will include an extension of the existing transmission line approximately 2,000 feet from the Poipu Road terminus to the clubhouse will be effected by the Petitioner as part of the development of the Hyatt Hotel and all fees of the Department of Water will be paid. Water Source is currently sufficient to satisfy the projected demand.

96. Secondarily treated effluent generated by the planned Hyatt Hotel's sewage treatment plant, as well as planned irrigation wells to be constructed by the Petitioner, will be used to irrigate the course. It is possible that Applicant may also use recycled surface runoff from mauka lands for irrigation purposes.

97. No public sewage collection system exists in the area of the Project. All existing systems consist of private collection and treatment facilities. Liquid waste generated from the proposed Project will be treated in conjunction with the planned Hyatt Hotel at the hotel's sewage treatment plant, which will be designed to service the two facilities. Sludge will be disposed of in accordance with Health Department regulations and County requirements. Solid waste will be disposed of by private contractor. Neither waste element will have any substantial adverse environmental or ecological effect

and adequate services exist or can be developed without cost to the County, to meet these needs.

98. Adequate police and fire protection services and electrical and telephone services are available to service any need which may be generated by the proposed Project.

99. Implementation of the Project will not unreasonably burden public agencies to provide roads, streets, sewer and water facilities, drainage facilities, school improvements or police and fire protection.

Access

100. Development of a golf course on the Property will not impair public access or reduce or impose restrictions on public access to tidal or submerged lands, beaches or areas designated by the mean high tide line. Development of the course will legitimize and improve public access to and along the shoreline and the foregoing areas.

101. Concurrent with the development of the golf course, Petitioner will create on and off-site public parking facilities at the western end of the course at the base of Makawehi dune (off-site), at the northeastern coastal border of the course (off-site) and at the field nursery/maintenance building location (on-site) in the approximate areas reflected on Applicant's Exhibit 1. An area sufficient for parking 40 automobiles will be afforded at the western parking area and area sufficient to park 5 vehicles at each site will be

afforded at the northeast coastal and field nursery maintenance building sites. Access to the western parking facility will be via Poipu road, the beach access road, the golf clubhouse drive way and a compacted (but possibly not surfaced) road to be constructed by Applicant in the general area reflected on Applicant's Exhibit 1. Access to the field nursery parking facility and the northeast coastal facility will be via existing haul cane roads (with minor realignments) also reflected on Exhibit 1.

102. Notwithstanding the closure by McBryde Sugar Co., Ltd., and other plantations of their haul cane roads to public access, arrangements have been made with McBryde Sugar (who will continue to utilize the existing haul cane road mauka and northeast of a portion of the course) to maintain open public access for fishermen and other users along those portions of the haul cane road system necessary to access the field nursery and northeast coastal parking facilities.

103. The parking facilities proposed to be created in connection with the development of the golf course have been sited in areas most commonly used by fisherman and others to access the coastline. Access from the parking facilities to the coastline will be afforded to the public and the existing shoreline trail present in the Conservation District adjacent to the Property, which affords lateral access along the entirety of the coastline adjacent to the Property, will also

be made available for pedestrian access. Additionally, a shoreline trail from the existing Hyatt Hotel site to the ~~intersection of the Property boundary and the Conservation~~ District boundary will be afforded to the public in the general area reflected on Applicant's Exhibit 1, thereby affording lateral pedestrian public access along the coastline from the hotel site to the northeastern most boundary of the Property. The existing shoreline trail in the Conservation District will be maintained unobstructed in the general area reflected by a dotted line and labeled as shoreline trail on Applicant's Exhibit 1.

104. Petitioner has represented that it will provide to the county a sufficient license affording to the public the access to and along the shoreline indicated. Although relocation of various facilities may occur in the future, any form of license granted by the Petitioner shall provide for the substitution of substantially equivalent access upon such relocation.

105. Utilization of a license in lieu of a grant of easement will minimize potential liability exposure to the County, by retaining as private the ownership and rights associated with the licensed access areas to be created in connection with the development of the course and reflects the County's current stated preference.

Grove Farm's Plans

106. Grove Farm Company, Incorporated, currently has under lease to McBryde Sugar Company, Ltd. areas in Pa'a and Maha'ulepu. The lease by its terms expires in 1994.

107. Since as early as 1960 Grove Farm has been developing conceptual plans relating to prospective land uses in the Pa'a and Maha'ulepu areas adjacent to the Property.

108. In assessing the potential cumulative impacts of other developments, the Planning Commission has received and reviewed all of the conceptual plans formulated by Grove Farm Company, Incorporated in respect of its Pa'a and Maha'ulepu properties.

109. Grove Farm Company's Pa'a/Maha'ulepu plans, Intervenors' Exhibit E, are not reasonably probable of implementation in the reasonably anticipated future. The conceptual plans that Grove Farm Company has for the areas in Pa'a and Maha'ulepu surrounding and adjacent to the present Property require substantial further study and may require substantive change before Grove Farm Company, Incorporated, will be in a position to seek governmental approval of any of the proposed land uses considered.

110. The current proposed golf course is independent of the conceptual plans Grove Farm Company has for the surrounding Pa'a-Maha'ulepu areas and was formulated subsequent to the concept for the development of the surrounding area.

The current Project and the land uses envisioned in concept by Grove Farm for areas surrounding the proposed golf course are not inter-dependent. The proposed golf course on the Property is not economically or functionally dependent on the implementation of any land use concept for areas surrounding the Property and conceived by Grove Farm Company in its conceptual plans.

Need

111. Since the establishment of district boundaries generally and the Commission Rules, there has been a substantial increase in the use and interest in the golf industry. The focus of many resort endeavors has moved from conventions and the free independent traveler to the incentive group market, which cannot be attracted effectively without an on-site golf facility.

112. Based on current need and demand, Kauai will need to significantly increase the number of golf courses currently available to satisfy existing and anticipated need for such recreational facilities.

113. Existing golf facilities on the island of Kauai are inadequate to meet current demand and need for golf on Kauai created by the resident and tourist population, exclusive of the demand and need to be generated by the Hyatt Hotel.

114. Reasonable estimates of the demand and need to be created for additional golf attributable to the Hyatt Hotel

reflect that the Hyatt Hotel will create a need for additional golf facilities exclusive of the general public and tourist need. It is estimated that the Hyatt Hotel will create a demand for some 35,000 rounds of golf annually at its initial stage which will increase thereafter and is expected to reach a demand for some 48,000 rounds of golf annually.

115. The existing County golf facility at Wailua is currently overused. Play at that facility has been described as reaching the saturation level. The average municipal course in sunbelt states, where golf usage is higher than other states in the mainland United States, has 55,000 rounds per year played on the facility. At Wailua some 120,000-130,000 rounds of golf are played annually.

116. Notwithstanding the creation of new courses, including the additional 9-holes contemplated at Princeville and the possible development of an 18-hole golf course at Kukuiula, an 18-hole golf course in Lihue and an additional 9-holes at Kiahuna, there exists a compelling private need (created by the Hyatt Hotel) and public need for additional golfing facilities available for the tourist and resident population on Kauai.

Hawaii State and County General Plan

117. The development of the Property is consistent with the Hawaii State Plan and will contribute to the fulfillment of goals, objectives, and/or policies set forth in the Plan.

118. The General Plan establishes the County's policy governing the long-range, comprehensive development and ~~allocation of land and water resources within the County of~~ Kauai. The Development Plans, including the Koloa-Poipu-Kalaheo Development Plan ("Development Plan"), are used as guidelines in implementing the General Plan. The development of the Property conforms to and is consistent with the provisions of the General Plan and the Development Plan.

Agency Comments

119. The Department of Public Works of the County of Kauai, the Department of Water of the County of Kauai, the Department of Health of the State of Hawaii, the Fire Department of the County of Kauai, the Kauai Historic Preservation Review Commission and the State Department of Agriculture, referred to collectively as the "Agencies" have each commented on the Special Permit application and the proposed development.

120. Insofar as the various Agencies have requested Petitioner to address issues regarding expressed concerns or potential impacts of the proposed golf course on various resources within the area, the Petitioner has addressed the same either through written or oral testimony in the context of the proceeding.

Conformance With Special Permit Tests

The Planning Commission, in its Decision and Order, provided the following in support of its conditional approval of the Special Permit:

"A Special Permit is necessary since the Applicant proposes to establish golf course recreational use on a portion of the lands which are rated Class "B" by the Land Study Bureau's Detailed Land Classification Overall (Master) Productivity Rating, which use is not expressly permitted in that district.

"The proposed golf course usage at the Project Site is an unusual and reasonable use which may be permitted within the State Land Use Agricultural District and has been permitted in other locations.

"The proposed golf course use is not contrary to the objectives sought to be accomplished by Chapters 205 and 205A of the Hawaii Revised Statutes and the Land Use Rules. Creation of a golf course at the Project Site will not result in an infusion of major urban uses into the Agricultural District. The golf course merely introduces a landscaped parklike open space recreational experience into the district and implementation of the Project through the mechanism of a special permit does not frustrate the effectiveness and objectives of the State's Land Use Laws.

"The proposed golf course use at the Project Site will not adversely affect and is not inconsistent with the current uses of surrounding property. The proposed use will not substantially alter the essential character of the land and will be the highest and best use of the land as it remains the Agricultural District.

"The proposed golf course use at the Project Site will not unreasonably burden public agencies to provide roads and street, sewers, water, drainage and school improvements and police and fire protection.

"Unusual trends, conditions and needs have arisen in the visitor industry, the golfing industry and the agricultural industry since the establishment of the district boundaries and the Land Use Rules which justify the proposed golf course at the Project Site.

"The evidence is both clear and convincing that the land upon which the proposed use is sought is unsuited for the uses permitted within the Agricultural District.

"The proposed Project Area consists of predominantly vacant and uncultivated land with a portion in cane. Withdrawal of that portion of the Property currently in sugarcane cultivation from the current lease in favor of McBryde Sugar, which is permitted under that lease, will not occur until harvest and will not adversely affect the continued economic survival of McBryde Sugar's operations and will not be contrary to the objectives sought to be accomplished by the Land Use Rules and Land Use Law.

"McBryde Sugar's yields are among the lowest in the industry, approximately 22% below average which is the case with many windward plantations situated in areas such as the Project Site and its environs. McBryde Sugar has itself been withdrawing portion of its acreage from cane over the last several years and there is a strong possibility that McBryde Sugar will not continue its lease for sugarcane in the Project Area and surrounding environs in 1994 when its lease expires.

"There is no proven alternative agricultural crop which has been shown to be economically viable in the windward areas of the State or Kauai. Indeed, the windward plantation at Kilauea, Kahuku and Kohala have gone out of business and existing windward plantations such as Mauna Kea, Hamakua, Lihue and McBryde are doing the least well of all the other plantations in connection with their sugar operations and their diversified agricultural operations.

"The effect of cloud cover and high minimum and low diurnal temperatures on the Pa'a area affects the economic viability and suitability of the area for agricultural pursuits, including sugarcane and, although millions of dollars in agricultural diversification studies have been conducted, none have yielded a productive, successful or economically viable crop that can substitute for cane in this area."

Recommendations of the Planning Commission

122. On August 10, 1988 and by Decision and Order filed on August 11, 1988, the Planning Commission recommended approval of the Special Permit to develop a golf course and accessory related uses and structures on approximately 210

acres of land subject to the following conditions and restrictions:

-
- "1. The clubhouse facility, including restaurant and snack shop, shall be connected to an approved wastewater treatment facility. Liquid waste from the proposed clubhouse will be conveyed to either the planned wastewater treatment facility for the new Hyatt Regency Kauai or the Private Wastewater Treatment Work (PWTW) at Poipu Kai upon its expansion to accommodate the sewage from the clubhouse and the hotel. Applicant may institute alternate means for sewage treatment at remote facilities provided the same are approved by the Department of Health.
 - a. A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance with the applicable requirements of Hawaii Rev. Stat., Chapter 27, as amended, and the plans for the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the Department of Health for review and approval.
 - b. In connection with Health Department's review and approval of such plans, Applicant shall obtain approval of its proposed effluent irrigation system under the applicable requirements of Hawaii Rev. Stat. § 282-1, et seq.
 - "2. As stated in Hawaii Rev. Stat. § 27-21.6, the engineer designing the proposed PWTW is given flexibility and design responsibility; provided, however, the engineer should consider incorporating into the design:
 - a. A sludge holding tank to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant; and
 - b. exposing to the atmosphere the water surface in the aeration tank and clarifier to facilitate ease of operation, repair and maintenance of the facility; and

- c. a stand-by or emergency power source for electrical powered equipment; and
 - d. provisions to ensure that storm water does ~~not enter the facility.~~
-

- "3. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.
- "4. The project shall be provided with potable water through the County water system.
- "5. Prior to the issuance of a building permit the Applicant shall prepare and obtain the Department of Water's approval of construction drawings for necessary water system facilities and shall either construct said facilities or post a performance bond for construction. These facilities shall include: the domestic service connection and the fire service connection. The Applicant shall also submit to the Department of Water the interior plumbing plans with the appropriate backflow prevention device reflected, if the same is required.
- "6. If applicable, a refund agreement between the Department of Water and the Applicant must be completed, whereby the developer contributes its share to Blackfield Hawaii as provided in the Department of Water's Rules.
- "7. The Applicant shall pay all applicable charges of the Department of Water as required by the Department's Rules.
- "8. Grubbed material created in the construction phase of the Project shall be disposed of at a site approved by the Department of Health. Open burning is prohibited.
- "9. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:
 - a. building elevations, roof design, material color schemes and/or samples;

- b. landscaping plan(s);
- c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;
- d. any and all grading plan(s).

"10. The Applicants shall identify the boundaries on the Conservation District with survey stakes or pins and shall notify the Planning Department and attorneys of record for the Interveners prior to any construction, grading, improvements or landscaping activities on the overall parcel area in order that an inspection might be conducted. The location of the boundaries shall be discernible and maintained throughout all phases of development of the project.

"11. In view of the series of public accesses and facilities, including parking, which were developed and executed over several phases of development within the Poipu Kai resort community, the Applicants shall provide a consolidated easement location map showing all public roadways, pedestrian and vehicular beach accesses, and the respective owners of any easement areas.

"12. The Applicants shall pay to the Planning Department the required Environmental Impact Assessment fee, based on the final construction drawings submitted at time of building permit application.

"13. In the event the cane haul road fronting the golf course is improved as a major thoroughfare, the applicant shall provide, install and maintain at their expense, on the makai side of the roadway along its entire length, the following:

- a. curbs, gutters and sidewalks designed and constructed in accordance with County standards; and

- b. additional improved pavement width to County standards, for use as a non-vehicular pathway for joggers, pedestrians and bicyclists.

This condition shall be embodied in an agreement entered into by and between both Applicants and the County of Kauai, an executed copy of which shall be submitted to the Planning Department prior to the commencement of any ground alteration activities on the property.

- "14. The Applicants shall within two (2) years from the date of State Land Use Commission approval, complete substantial construction of the project. "Substantial construction" shall mean grading and grassing of no less than 30% of the project site and the completion of building foundations for the golf clubhouse facility. Failure to complete substantial construction within the time period specified shall result in the revocation of the subject permits, pursuant to proper procedures.
- "15. The Applicants shall discuss, resolve and/or comply with the agency comments and requirements incorporated herein, or imposed hereafter, with the appropriate government agency prior to any building permit approval.
- "16. The Applicants shall submit a certified shoreline survey to the Planning Department prior to issuance of any grading or building permits dated no earlier than six (6) months from the commencement of any construction activity on the property.
- "17. The Applicants shall establish and maintain a group rate structure incorporating a Kamaaina rate to be set at \$22.00 (including cart fees) for Kauai residents, which \$22.00 rate shall be maintained for a period of five (5) years from the date of the opening of the golf course, with increases of no more than \$1.00 a year, each year thereafter for the next five (5) years. The Applicants shall also guarantee three consecutive starting times daily (except on tournament days) commencing at 10:00 a.m., for Kauai residents for which reservations must be made no less than twenty-four (24) hours in advance of the starting time. Should there be no requests made within

this time frame, such times can be sold or given away.

- "18. The Applicants shall institute and maintain ~~whatever measures are necessary, including but~~ not limited to filter screens, siltation ponds, etc., to limit to not more than current rates, surface runoff flowing directly or indirectly into the off-shore waters, both during development of and operation of the project. Plans and/or improvements for such runoff prevention measures are subject to Planning Department review and approval prior to the issuance of any grading permits and prior to the commencement of site work on the property.
- "19. The Planning Commission shall impose additional conditions, restrictions or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in Chapter 8, KCC, State Land Use District Rules and Regulations, or the Special Management Area Rules and Regulations.
- "20. Prior to the issuance of any grading or building permits, the Applicants shall resolve with the Planning Department the location and/or relocation of the existing horseback riding trail previously approved by the Planning Commission (Class IV Zoning Permit Z-IV-86-9).
- "21. Effective dust and soil erosion control measures shall be implemented during all phases of development and operation by the Applicants.
- "22. Prior to the issuance of any building or grading permit, the Applicants shall flag and create buffer zones around the eight (8) significant archaeological sites identified in the Archaeological Report. Such buffer zones/ flagging shall be maintained by the Applicants at all times during the construction/development phase of the project. During grading and construction of the golf course, the Applicants shall have a qualified archaeologist on site to monitor the work. Should anything of historical or archaeological significance be discovered, work in that area shall be stopped for review by the archaeologist. Any information generated

from such review shall be forwarded without delay to the Planning Department and State Historic Preservation Officer. The eight (8) significant archaeological sites shall be preserved in the manner reflected in Table 1 of the Archaeological Report, a copy of which is attached hereto and incorporated herein as Exhibit "A" and, where possible, the sites shall be integrated into the golf course layout design.

The Applicants shall notify the Planning Department and attorneys of record for the Intervenor at such time that the creation of buffer zones and the flagging of the sites are completed, for review and approval by the Department.

With respect to those 10 sites identified in the Archaeological Report as not being included or considered as significant and warranting preservation, the Applicants shall at the time of submitting the first of any grading plans, present to the Planning Department for review, a written report detailing the proposals therefor.

If applicable, the Office of Hawaiian Affairs' guidelines and standards shall be followed for this interment of ancient Hawaiian burials at the site.

- "23. The Applicants shall implement a system of barricades and signage that will be designed to prohibit and exclude all vehicular access on and around the Makawehi sand dune. Such system shall be implemented within three (3) months of the date of Planning Commission approval. The Applicants shall submit a map reflecting the method and location of such barriers and an example or examples of signage, to scale, for review and approval by the Planning Department.
- "24. Prior to any building and/or grading permit application, the Applicants shall submit for review and approval by the Planning Department, the form of license by which members of the public will be afforded the accesses created in connection with this application. An executed copy shall be submitted prior to the issuance of a certificate of occupancy for the project.

- a. The license shall provide for vehicular access to the parking facilities described in condition #25 herein, and shall create a public right to utilize such access and the parking facilities for the purposes described in this condition and said condition #25.
- b. The license shall provide pedestrian access to the shoreline from the parking facilities and shall grant public pedestrian access along the shoreline in the general area of the shoreline trail, reflected on Applicants' Exhibit 1, from the Hyatt Regency Kauai site to the intersection of the northeastern coastal border of the project site and the Conservation District boundary.
- c. The license shall permit relocation in the future of the various facilities described in this condition and condition #25 herein, subject to the review and approval of the Planning Commission, and subject to the requirement that the Applicants provide alternate and substantially equivalent substitute accesses and/or parking.
- d. The license shall absolve the County of any liability claims. The Applicants shall be responsible for the maintenance of the access and parking facility areas, together with any improvements installed, erected, placed or constructed thereupon.
- "25. Concurrent with its development of the project, the Applicants shall construct three (3) unimproved parking facilities at locations as depicted on Exhibit 1 of sufficient dimensions to park 40 cars at one site, and 5 cars at the remaining two sites. Prior to said construction, the Applicants shall stake the subject sites for inspection by the Planning Department. These facilities, together with vehicular access to the facilities, shall officially be made available to the coastal recreational users on the date of the first public opening to the golf course.

During construction, alternate access areas shall be provided to the public. The Applicants shall submit a map reflecting these temporary access areas, and shall publish such map in the local newspaper.

"26. Upon the execution of a lease in favor of Ainako Associates for the property, the Applicants shall, without delay, submit a fully executed copy thereof to the Planning Department, together with any extensions or renewals of said lease. Non-pertinent items, such as lease rentals, may be excised from the required lease, renewal or extension.

"27. The Applicants are restricted from utilizing any pesticides or herbicides on the project area until such time as a report or reports are submitted to the Planning Commission and the Intervenor's' counsels of record, concluding that no significant adverse environmental or ecological consequences will result therefrom to the project area, immediate environs, and the waters off-shore from the project area. Should the Applicants petition or move the Planning Commission for modification, amendment or deletion to this Condition, notice shall be given to the Intervenor's to attend any meeting or hearing thereon, together with a copy of any petition or motion and accompanying documentation.

"28. The permits issued hereunder shall continue in effect through the lease period or any extensions or renewals thereof for the property and thereafter so long as the property is used for golf course purposes, and are further conditioned upon the use of the property only for golf course purposes and the structures and improvements listed in the application and depicted on the construction plans which will be certified by the Planning Department in connection herewith. No additional structures or improvements are hereby authorized, nor any expansions thereof."

CONCLUSIONS OF LAW

The proposed use is an "unusual and reasonable" use as defined in Chapter 205-6, Hawaii Revised Statutes, as amended, and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect and encourage development of lands in the state for

those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that Special Permit Docket Number 88-369 by Ainako Resort Associates and Grove Farm Properties, Inc. to allow the establishment of an 18-hole golf course, driving range, putting green, clubhouse and parking, and accessory related uses on approximately 210 acres within the State Land Use Agricultural District, situate at Pa'a, Koloa, Island and County of Kauai, Kauai Tax Map Key Number: 2-9-01: portion of parcel 1, and approximately identified on Exhibit B attached hereto and incorporated by reference herein, is hereby approved subject to the following conditions as recommended by the Kauai Planning Commission:

1. The clubhouse facility, including restaurant and snack shop, shall be connected to an approved wastewater treatment facility. Liquid waste from the proposed clubhouse will be conveyed to either the planned wastewater treatment facility for the new Hyatt Regency Kauai or the Private Wastewater Treatment Work (PWTW) at Poipu Kai upon its expansion to accommodate the sewage from the clubhouse and the hotel. Applicant may institute alternate means for sewage treatment at remote facilities provided the same are approved by the Department of Health.

- a. A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance

with the applicable requirements of Hawaii Rev. Stat., Chapter 27, as amended, and the plans for the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the Department of Health for review and approval.

b. In connection with Health Department's review and approval of such plans, Applicant shall obtain approval of its proposed effluent irrigation system under the applicable requirements of Hawaii Rev. Stat. § 282-1, et seq.

2. As stated in Hawaii Rev. Stat. § 27-21.6, the engineer designing the proposed PWTW is given flexibility and design responsibility; provided, however, the engineer should consider incorporating into the design:

a. A sludge holding tank to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant; and

b. exposing to the atmosphere the water surface in the aeration tank and clarifier to facilitate ease of operation, repair and maintenance of the facility; and

c. a stand-by or emergency power source for electrical powered equipment; and

d. provisions to ensure that storm water does not enter the facility.

3. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating

Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.

4. ~~The project shall be provided with potable water through the County water system.~~

5. Prior to the issuance of a building permit the Applicant shall prepare and obtain the Department of Water's approval of construction drawings for necessary water system facilities and shall either construct said facilities or post a performance bond for construction. These facilities shall include: the domestic service connection and the fire service connection. The Applicant shall also submit to the Department of Water the interior plumbing plans with the appropriate backflow prevention device reflected, if the same is required.

6. If applicable, a refund agreement between the Department of Water and the Applicant must be completed, whereby the developer contributes its share to Blackfield Hawaii as provided in the Department of Water's Rules.

7. The Applicant shall pay all applicable charges of the Department of Water as required by the Department's Rules.

8. Grubbed material created in the construction phase of the Project shall be disposed of at a site approved by the Department of Health. Open burning is prohibited.

9. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:

a. building elevations, roof design, material color schemes and/or samples;

b. landscaping plan(s);

c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;

d. any and all grading plan(s).

10. The Applicants shall identify the boundaries on the Conservation District with survey stakes or pins and shall notify the Planning Department and attorneys of record for the Intervenor prior to any construction, grading, improvements or landscaping activities on the overall parcel area in order that an inspection might be conducted. The location of the boundaries shall be discernible and maintained throughout all phases of development of the project.

11. In view of the series of public accesses and facilities, including parking, which were developed and executed over several phases of development within the Poipu Kai resort community, the Applicants shall provide a consolidated easement location map showing all public roadways, pedestrian and vehicular beach accesses, and the respective owners of any easement areas.

12. The Applicants shall pay to the Planning Department the required Environmental Impact Assessment fee,

based on the final construction drawings submitted at time of building permit application.

13. In the event the cane haul road fronting the golf course is improved as a major thoroughfare, the applicant shall provide, install and maintain at their expense, on the makai side of the roadway along its entire length, the following:

a. curbs, gutters and sidewalks designed and constructed in accordance with County standards; and

b. additional improved pavement width to County standards, for use as a non-vehicular pathway for joggers, pedestrians and bicyclists.

This condition shall be embodied in an agreement entered into by and between both Applicants and the County of Kauai, an executed copy of which shall be submitted to the Planning Department prior to the commencement of any ground alteration activities on the property.

14. The Applicants shall within two (2) years from the date of State Land Use Commission approval, complete substantial construction of the project. "Substantial construction" shall mean grading and grassing of no less than 30% of the project site and the completion of building foundations for the golf clubhouse facility. Failure to complete substantial construction within the time period specified shall result in the revocation of the subject permits, pursuant to proper procedures.

15. The Applicants shall discuss, resolve and/or comply with the agency comments and requirements incorporated herein, or imposed hereafter, with the appropriate government agency prior to any building permit approval.

16. The Applicants shall submit a certified shoreline survey to the Planning Department prior to issuance of any grading or building permits dated no earlier than six (6) months from the commencement of any construction activity on the property.

17. The Applicants shall establish and maintain a group rate structure incorporating a Kamaaina rate to be set at \$22.00 (including cart fees) for Kauai residents, which \$22.00 rate shall be maintained for a period of five (5) years from the date of the opening of the golf course, with increases of no more than \$1.00 a year, each year thereafter for the next five (5) years. The Applicants shall also guarantee three consecutive starting times daily (except on tournament days) commencing at 10:00 a.m., for Kauai residents for which reservations must be made no less than twenty-four (24) hours in advance of the starting time. Should there be no requests made within this time frame, such times can be sold or given away.

18. The Applicants shall institute and maintain whatever measures are necessary, including but not limited to filter screens, siltation ponds, etc., to limit to not more

than current rates, surface runoff flowing directly or indirectly into the off-shore waters, both during development of and operation of the project. Plans and/or improvements for such runoff prevention measures are subject to Planning Department review and approval prior to the issuance of any grading permits and prior to the commencement of site work on the property.

19. The Planning Commission shall impose additional conditions, restrictions or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in Chapter 8, KCC, State Land Use District Rules and Regulations, or the Special Management Area Rules and Regulations.

20. Prior to the issuance of any grading or building permits, the Applicants shall resolve with the Planning Department the location and/or relocation of the existing horseback riding trail previously approved by the Planning Commission (Class IV Zoning Permit Z-IV-86-9).

21. Effective dust and soil erosion control measures shall be implemented during all phases of development and operation by the Applicants.

22. Prior to the issuance of any building or grading permit, the Applicants shall flag and create buffer zones around the eight (8) significant archaeological sites

identified in the Archaeological Report. Such buffer zones/flagging shall be maintained by the Applicants at all times during the construction/development phase of the project.

During grading and construction of the golf course, the Applicants shall have a qualified archaeologist on site to monitor the work. Should anything of historical or archaeological significance be discovered, work in that area shall be stopped for review by the archaeologist. Any information generated from such review shall be forwarded without delay to the Planning Department and State Historic Preservation Officer. The eight (8) significant archaeological sites shall be preserved in the manner reflected in Table 1 of the Archaeological Report, a copy of which is attached hereto and incorporated herein as Exhibit "A" and, where possible, the sites shall be integrated into the golf course layout design.

The Applicants shall notify the Planning Department and attorneys of record for the Intervenors at such time that the creation of buffer zones and the flagging of the sites are completed, for review and approval by the Department. With respect to those 10 sites identified in the Archaeological Report as not being included or considered as significant and warranting preservation, the Applicants shall at the time of submitting the first of any grading plans, present to the Planning Department for review, a written report detailing the proposals therefor.

If applicable, the Office of Hawaiian Affairs' guidelines and standards shall be followed for this interment of ancient Hawaiian burials at the site.

23. The Applicants shall implement a system of barricades and signage that will be designed to prohibit and exclude all vehicular access on and around the Makawehi sand dune. Such system shall be implemented within three (3) months of the date of Planning Commission approval. The Applicants shall submit a map reflecting the method and location of such barriers and an example or examples of signage, to scale, for review and approval by the Planning Department.

24. Prior to any building and/or grading permit application, the Applicants shall submit for review and approval by the Planning Department, the form of license by which members of the public will be afforded the accesses created in connection with this application. An executed copy shall be submitted prior to the issuance of a certificate of occupancy for the project.

a. the license shall provide for vehicular access to the parking facilities described in condition #25 herein, and shall create a public right to utilize such access and the parking facilities for the purposes described in this condition and said condition #25.

b. The license shall provide pedestrian access to the shoreline from the parking facilities and shall grant

public pedestrian access along the shoreline in the general area of the shoreline trail, reflected on Applicants' Exhibit 1, from the Hyatt Regency Kauai site to the intersection of the northeastern coastal border of the project site and the Conservation District boundary.

c. The license shall permit relocation in the future of the various facilities described in this condition and condition #25 herein, subject to the review and approval of the Planning Commission, and subject to the requirement that the Applicants provide alternate and substantially equivalent substitute accesses and/or parking.

d. The license shall absolve the County of any liability claims. The Applicants shall be responsible for the maintenance of the access and parking facility areas, together with any improvements installed, erected, placed or constructed thereupon.

25. Concurrent with its development of the project, the Applicants shall construct three (3) unimproved parking facilities at locations as depicted on Exhibit 1 of sufficient dimensions to park 40 cars at one site, and 5 cars at the remaining two sites. Prior to said construction, the Applicants shall stake the subject sites for inspection by the Planning Department. These facilities, together with vehicular access to the facilities, shall officially be made available to the coastal recreational users on the date of the first public opening to the golf course.

During construction, alternate access areas shall be provided to the public. The Applicants shall submit a map reflecting these temporary access areas, and shall publish such map in the local newspaper.

26. Upon the execution of a lease in favor of Ainako Associates for the property, the Applicants shall, without delay, submit a fully executed copy thereof to the Planning Department, together with any extensions or renewals of said lease. Non-pertinent items, such as lease rentals, may be excised from the required lease, renewal or extension.

27. The Applicants are restricted from utilizing any pesticides or herbicides on the project area until such time as a report or reports are submitted to the Planning Commission and the Intervenor's' counsels of record, concluding that no significant adverse environmental or ecological consequences will result therefrom to the project area, immediate environs, and the waters off-shore from the project area. Should the Applicants petition or move the Planning Commission for modification, amendment or deletion to this Condition, notice shall be given to the Intervenor's to attend any meeting or hearing thereon, together with a copy of any petition or motion and accompanying documentation.

28. The permits issued hereunder shall continue in effect through the lease period or any extensions or renewals thereof for the property and thereafter so long as the property

is used for golf course purposes, and are further conditioned upon the use of the property only for golf course purposes and ~~the structures and improvements listed in the application and~~ depicted on the construction plans which will be certified by the Planning Department in connection herewith. No additional structures or improvements are hereby authorized, nor any expansions thereof.

DOCKET NO. A88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM
PROPERTIES, INC.

Done at Honolulu, Hawaii, this 23rd day of November, 1988

per motions on September 29, 1988 and November 17, 1988.

LAND USE COMMISSION
STATE OF HAWAII

BY *J. P. Tacbian*
TEOFILO PHIL TACBIAN
Commissioner

BY *Allen Y. Kajioka*
ALLEN Y. KAJIOKA
Commissioner

BY *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Commissioner

BY *Tomu Suzuki*
TOMU SUZUKI
Commissioner

BY *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

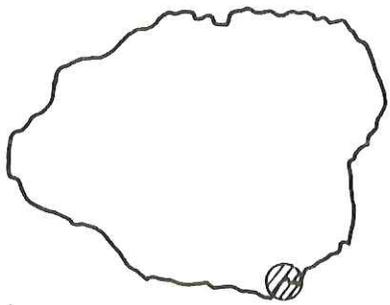
Table 1.

**SUMMARY OF RECOMMENDED PRESERVATION MEASURES
HYATT REGENCY KAUAI PROPOSED GOLF COURSE PROJECT AREA**

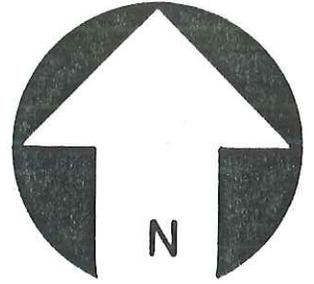
Preservation Measures	Site Number							
	T-2	T-3	T-7	T-8	T-9	T-10	T-11	3216
<u>Further Data Collection</u>								
Detailed Recording	+	+	+	+	+	+	+	+
Planetable mapping	+	+	+	+	+	+	+	+
Surface profiles	+	+	+	+	+	+	+	+
Photographs	+	+	+	+	+	+	+	+
Written description	+	+	+	+	+	+	+	+
Surface Collections (artifacts/midden)	+	+	+	+	+	+	+	+
Test Excavations	+	+	-	-	+	+	+	+
Structural data	+	+	-	-	+	+	+	+
Dating samples	+	+	-	-	+	+	+	+
Portable remains	+	+	-	-	+	+	+	+
Human burials	-	-	-	-	-	-	?	?
<u>Treatments - Conservation</u>								
Resource Barking	-	-	+	+	-	-	-	-
Clearing/Cleaning	-	-	+	+	-	-	-	-
<u>Treatments - Interpretation</u>								
<u>Level</u>								
Off-site	+	+	-	-	+	+	+	+
<u>Mechanism</u>								
Printed materials	+	+	-	-	+	+	+	+
Exhibits/signage	+	+	-	-	+	+	+	+
<u>Themes</u>								
Habitation	+	-	-	-	-	-	-	-
Religion	-	+	-	-	+	+	-	-
Burial	-	-	-	-	-	-	?	?
Aesthetics	-	-	-	-	+	+	+	+
<u>Site Preparation</u>								
Clearing/Cleaning	+	+	-	-	+	+	+	+
Stabilization	+	+	-	-	+	+	+	+
Restoration	?	-	-	-	?	?	?	?

Key: + = recommended; - = not recommended; ? = needs further consideration.

EXHIBIT A



KAUAI



SCALE:
1" = ±2000'

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KOLOA MILL

PUUHI RESERVOIR

POIPU ROAD

POIPU

KEONILOA BAY

MAKAWEHI

MAKAHUENA

LOCATION MAP

SP88 - 369
AINAKO RESORT -
ASSOCIATES AND
GROVE FARM PROPERTIES
T. M. K.: 2 - 9 - 01: POR OI
PAA, KOLOA, KAUAI

 APPROVED AREA

EXHIBIT B

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP88-369
)	
AINAKO RESORT ASSOCIATES AND)	AINAKO RESORT ASSOCIATES
GROVE FARM PROPERTIES, INC.)	AND GROVE FARM
)	PROPERTIES, INC.
For a Special Permit to Establish)	
An 18-Hole Golf Course, Driving)	
Range, Putting Green, Clubhouse)	
and Parking, and Accessory Related)	
Uses and Structures on Approxi-)	
mately 210 Acres of Land Situate)	
Within the Agricultural District)	
at Pa'a, Koloa, Island and County)	
of Kauai, Tax Map Key Number:)	
2-9-01: Portion of Parcel 1)	
<hr/>		

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. TOM H. SHIGEMOTO, Planning Director
Planning Department, County of Kauai
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CERT. DENNIS LOMBARDI, ESQ., Attorney for Petitioner
Case & Lynch
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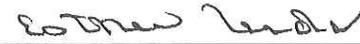
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DOCKET NO. SP88-369/AINAKO RESORT ASSOCIATES AND GROVE FARM
PROPERTIES, INC.

CERT. STEPHEN LEVINE, ESQ.
 Attorney for Intervenor Ohana Maha'Ulepu
 4365 Kukui Grove Street, Suite 103
 Lihue, Hawaii 96766

DATED: Honolulu, Hawaii, this 23rd day of November, 1988.



ESTHER UEDA
Executive Officer