

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A89-650
))
WAIHE'E OCEANFRONT HAWAII,)	WAIHE'E OCEANFRONT
INC., a Hawaii corporation,)	HAWAII, INC., a Hawaii
)	corporation
To Amend the Agricultural District))	
Boundary Into the Urban District)	
for Approximately 105.648 Acres)	
and to Amend the Urban District)	
Boundary into the Conservation)	
District for Approximately 26.456)	
Acres at Waihee, Maui, Tax Map)	
Key Nos.: 3-2-10: portion 01,)	
3-2-12: portion 01 and 3-2-13:)	
portion 10)	
_____)	

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LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

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FINDINGS OF FACT,
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WAIHE'E OCEANFRONT HAWAII, INC., a Hawaii corporation, (hereinafter "Petitioner"), filed a Petition on December 1, 1989, and amendments to the Petition on January 29, 1990, March 19, 1990, May 3, 1990, June 7, 1990, and June 18, 1990 (collectively referred to as the "Petition"), pursuant to Chapter 205, Hawaii Revised Statutes ("HRS"), as amended, and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (hereinafter "Land Use Commission Rules"), to amend the Land Use District Boundary to reclassify approximately 105.648 acres of land from the Agricultural Land Use District to the Urban Land Use District, and approximately 26.456 acres from the Urban Land Use District to the Conservation Land Use District, situate at Waihe'e, Wailuku, Island and County of

Maui, State of Hawaii, identified as Tax Map Key Nos.: 3-2-10: portion of 01, 3-2-12: portion of 01, and 3-2-13: portion of 10 to develop a portion of an 18-hole golf course, clubhouse, pool, tennis courts, and other related facilities. The Land Use Commission (hereinafter "Commission"), having heard and examined the testimony, evidence, and arguments presented during the hearings, the findings of fact, conclusions of law, and decision and order, exceptions to the findings of fact, conclusions of law and decision and order, and the proposed findings of fact of the Intervenor, does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACTS

PROCEDURAL MATTERS

1. Petitioner filed its Petition for a Land Use District Boundary Amendment on December 1, 1989, and amendments to Petition on January 29, March 19, May 3, June 7, and June 18, 1990.

2. Petitioner is Waihe'e Oceanfront Hawaii, Inc., a Hawaii corporation, whose business and mailing address is Suite 1202, 130 Merchant Street, Honolulu, Hawaii 96813. Petitioner is a subsidiary of Sokan Hawaii, Inc., a Hawaii corporation.

3. On January 26, 1990, a statement of position stating no position was filed with the Commission by the County of Maui Department of Planning (hereinafter "County").

4. On January 30, 1990, a statement of position of the Office of State Planning (hereinafter "OSP") requesting

additional information from the Petitioner was filed with the Commission.

5. On February 16, 1990, the Commission received a petition containing 138 signatures from the Waihe'e Community.

6. On February 16, 1990, the Commission received petitions to intervene from James Murakami and Thomas S. Yagi, and Trudy Yip. By letters dated March 2, 3, and March 6, 1990, James Murakami, Thomas S. Yagi, and Trudy Yip, respectively, requested that their petitions to intervene be withdrawn. The Commission granted their requests to withdraw the petitions to intervene on March 20, 1990.

7. On February 23, 1990, petitions to intervene were filed with the Commission by Issac Hall on behalf of the Office of Hawaiian Affairs (hereinafter "OHA"), and by Burt Sakata. These petitions to intervene were granted by the Commission by Orders filed on March 23, 1990.

8. On March 6, 1990, the Commission held a prehearing conference attended by the parties.

9. On March 20 and 21, 1990, the Commission held hearings on the Petition pursuant to a notice published on February 8, 1990, in the Honolulu Advertiser and Maui News, newspapers of general circulation. Hearings were also held on June 19 and 20, 1990 and August 9 and 10, 1990 pursuant to notices of continued hearing dated May 25, 1990 and July 17, 1990, respectively. The hearings included field trips to Petitioner's property on March 21 and August 9, 1990.

10. On March 20, 1990, the County filed and the Commission heard the County's motion to continue the hearing until a complete petition is filed.

11. On March 20, 1990, the Commission allowed John Blumer-Buell, Warren Watanabe, Jimmy Rust, Jan Buen for Thomas Yagi, Dr. David Brown, Milton Lai, Dana Naone Hall, Greg West, Charles Maxwell, Aloysius Lincoln, Mary Evanson, Leslie Ann Bruce, Terry Holokai Murata, Charles Powell, Kahele Apo, Oliver Dukelow, and Leslie Kuloloio to testify as public witnesses. The Commission also received into evidence the written testimony of Warren Watanabe, James Murakami, Janet Buen for Thomas Yagi, David Nobriga, Trudy Yip, Dr. David H. Brown, Dana Naone Hall, Greg West, Charles Kauluwehi Maxwell, Sr., Aloysius Lincoln, Mary Williamson and Mary Evanson, Christian Bal, and Leslie Ann Bruce, Elizabeth Ann Stone, Jack Hashimoto, Bob Vogele, Marcy Kester, Marjorie Ziegler, and a petition containing 22 signatures.

12. On June 19, 1990, the Commission allowed Charles Keau to testify as a public witness and admitted the written testimony of Earl Kahae, Cathy Criteser, Richard Kaelokalani Wallace, Lai Kahae, Marlene F. Powell, Debra L. Damian, Ken Kahalekai, Marcus Molina, Jr., Duane Molina, Gordon Kahale Apo, Amy Hashimoto, Elizabeth Anakalea, Ethel Kushiyama, Warren Vellina, Stanley Faustino, David M. Ayers and Eleanor Ayers, Nelson H. Alana, Racheal Kekona, Mary M. Evanson, Mercy Cabatingan, Peter Kekona, Esther Molina and Joseph Molina, Mary

Benevides, Elsie Iwamasa, Rebecca and Jack Kahalekai, Fern P. Duvall II, Renate Gassman-Duvall, Daniel C. Kester, Angela Roth, Mercy Kester, Anita Roth, Crystal Roth, Barbara Goo, James Goo, Dan Holmes, Greg West, Esther K. Santos, L. Santos, Wesley S. Kono, and the Maui Historical Society Archaeology Committee.

13. On June 19, 1990, the Commission permitted the County to withdraw its motion for a continuance and defective filing previously heard on March 20, 1990.

14. On June 19, 1990, the Commission received into evidence the agreement of conditions between Petitioner and OHA. OHA's request to withdraw as a party was granted by the Commission by Order filed on July 2, 1990.

15. On June 19, 1990, the Commission granted Petitioner's request to amend the acreage and configuration of the original petition area consisting of approximately 105.64 acres from the Agricultural District to the Urban District and approximately 22.64 acres from the Urban District to the Conservation District to reflect the acreage and configuration reflected on Petitioner's Fifth Amendment, Appendix B2 which Order was filed on July 2, 1990.

16. On June 20, 1990, the Commission admitted the written testimony of Herbert Kaluau, Sr. and Mary Kaluau, Herbert Kaluau, Jr., and Henry Akima.

17. On August 9, 1990, the Commission allowed Dr. Rick Sands to testify as a public witness and admitted the

written testimony of Dana Kokubun, Mrs. Walter K. Barrett, Mr. & Mrs. Jared Aiwohi, Arthur Goo, Utako Goo, Esther Goo, Diannah K. Goo, Jack Hashimoto, Anni C. Elliott, Carol S. Gentry, Leslie Bruce, Dr. Rick Sands, and Elizabeth Ann Stone.

DESCRIPTION OF PETITION AREAS

18. The petition area, as amended (hereinafter the "Property"), consists of approximately 132.124 acres on two parcels of non-contiguous property and is a portion of the overall project containing approximately 313.224 acres. The Property's tax map key numbers are summarized as follows:

<u>Tax Map Keys</u>	<u>Acres</u>	<u>Land Use District From</u>	<u>Reclassification to</u>	<u>Parcel</u>
3-2-10: por. 1, 3-2-12: por. 1, 3-2-13: por. 10	105.648	Agricultural	Urban	A
3-2-10:01	<u>26.456</u>	Urban	Conservation	B
Total	<u>132.104</u>			

Source: Petitioner's Fifth Amendment Appendix B2

19. The overall project's tax map key numbers, acreage and land use designations are as follows:

<u>Tax Map Keys</u>	<u>Acres</u>	<u>Land Use District Classification</u>
3-2-10:01	247.123	Urban, Agricultural, Conservation
3-2-10:02	3.47	Agricultural, Conservation
3-2-12: por. 1	35.931	Agricultural
3-2-13:10	<u>26.7</u>	Agricultural, Conservation
Total	<u>313.224</u>	

20. The 313.224-acre project (hereinafter "Project Area") surrounds the makai half of the Waihe'e Village Urban District, together with the Kahekili Highway which forms its southwestern boundary. The ocean and the Conservation District lands along the shoreline form the entire makai and northeastern boundary of the Project Area. To the north is the Waihee Stream, the Waihee Valley rural district, and a small urban district. The Agricultural District with a macadamia nut tree farm and the Conservation District with the County of Maui's municipal golf course is to the east of the Project Area.

21. Petitioner owns the Project Area in fee except for a 34-acre portion identified as Tax Map Key No. 3-2-12: portion of 1 which is co-owned with Wailuku Agribusiness Co., Inc. and pending final subdivision approval. Wailuku Agribusiness Co., Inc. has authorized Petitioner to file the Petition for the portion of the Property co-owned with Wailuku Agribusiness Co., Inc.

22. Previous historic uses of the Project Area include taro and rice cultivation, sugarcane cultivation, and dairy operations. Currently, the Project Area is used for limited cattle grazing, macadamia nut cultivation, landscaping activities, and recreational uses, including hang gliding, fishing and other shoreline uses.

23. There are several buildings in Parcel A of the Property. Only one is being used as a single-family residence to house a caretaker. One house, situated makai of Parcel A

and within the Conservation District, is used on an intermittent basis as a beach house and meeting place for community groups.

24. There are extensive archaeological sites in both Project and Petition Areas.

25. The Project Area has a seasonal wetland area of approximately 20 acres designated by the Army Corps of Engineers.

26. The National Flood Insurance Program's Flood Insurance Map (FIRM) rated the Project Area with two designations. A majority of the Project Area has been designated as Zone C, areas of minimal flooding, while a small portion of the property has been designated as Zone B, or areas between limits of the 100-year and 500-year flood. Both areas may be subject to 100-year flooding with average depths of less than one foot.

27. Another geological feature of the Project Area is the large, crescent-shaped sand dunes which extend about 1-1/3 mile across the Project Area. The sand dunes reach 255 feet in elevation. A 26.456-acre portion of the sand dunes is proposed for reclassification from the Urban District to the Conservation District. These sand dunes are one of the few remaining, intact dunes on the island of Maui.

28. Parcel A ranges in elevation from approximately 4 to 10 feet above sea level in the wetlands and on the makai side to approximately 100 feet on the mauka side. A portion of

the makai sand dunes, up to an elevation of approximately 40 feet, is included in the Property.

29. Generally, the sand dunes have slopes of 10% to 20% and the remaining Project Area has slopes of 0% to 10%.

30. According to the Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, prepared by the United States Department of Agriculture Soil Conservation Service, the soils of the Property consist of the Pulehu-Ewa-Jaucas Association and the Waiakoa-Keahua-Molokai Association. Most of Parcel A contains clays, cobbly clays, and silty clays (Iao clay, 0 to 7 percent slopes, IcB) which can be moderately productive if irrigated. A small amount of silty clay (Wailuku silty clay, 3 to 7 percent slopes, WvB) is found in the southwest corner of Parcel A and is also moderately productive if irrigated. The grayish brown sand visible on the sand dunes contains calcareous sand (Puuone sand, 7 to 30 percent slopes, PZUE) beneath the top layers of topsoil which is unsuited for cultivation. Other soils found on the Project Area include those found on stream terraces, alluvial fans, and basins (Pulehu silt loam, 0 to 3 percent slopes, PpA) and the excessively drained, calcareous sand, 0 to 12 percent slopes, JaC, and Jaucas sand saline, 0 to 12 percent slopes, JcC.

31. Under the University of Hawaii Land Study Bureau's Overall Productivity Rating Classification, most of the soil in the Property is rated "E" (i.e., E3, E4 and E58)

which includes a portion of the wetland area, pasture land and all of the sand dune area. The soil in the remaining portion of the Property, formerly sugarcane and presently a macadamia nut orchard and nursery, is rated "B" (i.e., B82i). Generally, soils rated "E" are non-stony but poorly suited for machine tillability and has an overall low productive rating. The alluvial clays and silty soils rated as "B" are moderately productive when irrigated.

32. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Maps classifies portions of Parcel A as "Prime" and "Other Important" Agricultural Land.

PROPOSAL FOR RECLASSIFICATION

33. Petitioner proposes a master plan to develop an 18-hole golf course with full support facilities in the Property and on adjacent Agricultural District lands in the Project Area. Support facilities include a clubhouse with dining establishments, a banquet room, swimming pool, tennis courts, driving range, other recreational amenities and accessory buildings for maintenance and golfer conveniences. No residential or resort development is proposed for any part of the Project Area.

34. Petitioner stated that the proposed project will not be developed on Conservation District lands or lands within 200 feet of the shoreline, whichever is greater. Petitioner has amended its petitioned area to delete lands originally

proposed for reclassification to the Urban District within 200 feet of the shoreline.

35. Petitioner stated that the Property proposed for reclassification from the Agricultural District to the Urban District, includes lands designated by the Land Study Bureau as class "E" lands. According to the Petitioner, these lands were included in the Property rather than retained in the Agricultural District with the other "E" lands in the Project Area because construction of the clubhouse facility includes commercial type activities requiring an urban area designation. Thus, Petitioner extended the Property to include other "E" lands in the vicinity down to the nearest the Conservation District boundary.

36. Petitioner stated that lands between the Waihee Village Urban District and the sand dunes were included in the Property so that all class "B" lands were proposed for reclassification into the Urban District. The original Petition proposed golf holes for these lands but subsequent amendments to the Petition relocated the golf holes from these lands to other locations in the Project Area.

37. Petitioner states that the size of Parcel A could be reduced and still allow for construction of the proposed clubhouse based on a possible flag lot configuration.

38. Petitioner proposes to preserve the shoreline areas, designated archaeological sites, and a majority of the sand dunes.

39. Halewaiu Road which leads to the Waiehu Golf Course will also be re-routed to reduce golf course traffic through Waihee Village.

40. According to Petitioner, the proposed golf course will be of similar quality as other existing private golf courses on Maui.

41. The proposed golf course will be a privately owned course that will offer foreign memberships in Japan, and in the future, local memberships at rates to be determined.

42. Petitioner proposes to reserve a minimum of 15 starting times (60 rounds) per day for Hawaii state residents at \$30.00 per round including the cart fee.

DEVELOPMENT TIMETABLE AND PROJECTED COSTS

43. Petitioner estimates that it will take approximately two years to design and construct the golf course, clubhouse, pool, tennis courts and other related facilities. Petitioner anticipates that the golf course will be operational by the end of 1992.

44. Petitioner's revised estimated construction cost for the golf course, clubhouse, and accessory structures is approximately \$30,000,000. Petitioner anticipates that the golf course construction will cost approximately \$18,000,000 and the clubhouse and accessory structures will be about \$7,000,000. Offsite road, drainage and utilities will cost approximately \$5,000,000.

45. Petitioner's total project cost of approximately \$45,000,000 includes the land acquisition cost of approximately \$10,000,000 and "soft" costs of approximately \$5,000,000.

NEED AND DEMAND FOR THE PROPOSED DEVELOPMENT

46. Petitioner's market consultant, Peat Marwick Main & Co., prepared a market study for the proposed project. Ann Bouslog of Peat Marwick Main & Co. testified on the market study.

47. According to the market study, the National Golf Foundation states that 21.7 million U. S. golfers played 434 million rounds of golf in 1987. This represents a 7.4 percent increase in golfers over the previous year and 3.1 percent increase in the number of rounds played. The National Golf Foundation estimates approximately 10 percent of all Americans aged 5 and older play golf. Additionally, two nationally recognized demographic trends are the rapid increase in the forty to sixty age group, which has the highest golf participation rates and growth of the female golfer market.

48. The market analyst's study indicates that the island of Maui currently has eleven golf courses. Petitioner's market analyst stated Maui golf courses presently accommodate 600,000 rounds per year or approximately 1,600 rounds per day, of which 60 percent are by visitors to the island and 40 percent by Maui residents. The study indicates visitor count for Maui County is expected to increase.

49. According to Petitioner's market analyst there are presently nine proposed golf courses on Maui. If all nine proposed courses are developed, capacity for potential golf rounds played would increase to about 2,500 rounds per day by 1992 or 2,900 per day by 1995.

50. Petitioner's proposed golf course is projected to average approximately 54,800 rounds per year or 150 rounds per day. During peak Japanese member seasons 180 to 250 rounds are projected to be played per day.

51. The use of the proposed golf course by Japanese club members is anticipated to be highly seasonal. The four periods of heavy use would be the New Year season, February, late April and early May (Golden Week), and August.

52. The player mix projected for the proposed golf course should stabilize in 1995 with Japanese club members and guests at approximately 33 percent, Maui residents at approximately 30 percent, and other visitors to Maui at approximately 37 percent.

53. The Waiehu Municipal Golf Course with 87 percent resident players averages 280 rounds per day which far exceeds the Maui average of 145 rounds per day. As an adjacent golf course, Petitioner's proposed course may provide an alternative to the excess demands for rounds played at the Waiehu Municipal Golf Course.

54. The proposed golf course is anticipated to appeal to Maui residents because of its: proximity to population centers such as Kahului and Wailuku, where many residents reside; attractively reduced resident rates (\$30 per round); oceanfront location and secluded private nature; and satisfaction of current shortage of golf facilities geared to resident players.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

55. Petitioner's consolidated balance sheet as of June 30, 1989, indicates total assets of \$13,000,000, the majority of which is in land owned by the Petitioner.

56. Petitioner's consolidated statement of operations and deficits accumulated as of June 30, 1989 indicate a deficit of \$197,932.

57. Petitioner's estimated construction cost of approximately \$45,000,000 will be paid from the sale of 3,000 Japanese memberships and from Sokan Co., Ltd.'s retained earnings reserved by the Petitioner's parent corporation and its various Japan affiliates. In addition to the cost of construction, Petitioner's parent, Sokan Co., Ltd. will stand as surety for any obligations incurred by Petitioner's development.

58. Petitioner's total net revenue after cost of selling memberships and reserve fund for various subsidies for membership usage would be approximately \$87,700,000.

STATE AND COUNTY PLANS AND PROGRAMS

59. Parcel A is designated within the State Land Use Agricultural District and Parcel B is designated within the State Land Use Urban District as reflected on Land Use District Boundary Map M-5 Wailuku, Hawaii.

60. The Project Area lies within the Wailuku-Kahului Community Plan, Project District Number 4 (Waihe'e). The Project District 4 ordinance states:

"The objective of this project district is to allow flexibility in planning for the development of Waihe'e by providing for the integration and inclusion of community input during the formulation of all planning phases for the project district, prior to issuing of permits. This project shall provide for the maintenance of agricultural activities as well as the preservation of archaeological sites, traditional beach access, and of existing sand dune features in the former dairy and beach areas.

"This project district shall include the following uses: single family dwellings; parks, including a golf course; public; agriculture; aquaculture; and open space or conservation.

"The project district shall also entail the construction of a new access road to serve the existing and proposed golf courses to alleviate through traffic in Waihe'e town.

"Provisions for a golf course along the shoreline with appropriate open space or conservation separation between the ocean and the golf course shall be provided in the form of a minimum, two hundred (200) foot wide buffer. This area shall be retained in its natural condition as much as possible."

61. The Project Area is within the Special Management Area, as defined by Chapter 205A, HRS, as amended.

IMPACT UPON RESOURCES OF THE AREA

Agricultural Resources

62. Petitioner's agricultural consultant, Bruce Plasch, prepared a study on the impact of the proposed golf course on agricultural activities. The study indicates that, until recently, one-third of the Agricultural District lands in the Property were vacant or in pasture, another third was fallow sugarcane land, and the final third was replanted from sugarcane to macadamia nuts. Currently, less than 20 acres of orchards remain under macadamia nut cultivation.

63. Petitioner's agricultural consultant stated that climate, strong on-shore tradewinds and the strong on-shore salt spray are the major factors that would affect crop yields on the Property.

64. According to Petitioner's agricultural consultant, the loss of 20 acres of macadamia nut orchard would not adversely impact the macadamia nut industry on Maui or in the State. The area comprises only about one percent of the 1,650 acres of Wailuku Agribusiness Company's macadamia nut

farms, and is less than 0.1 percent of 21,900 acres of macadamia nut farms in the entire state.

65. Petitioner's agricultural consultant stated no adverse impact on jobs would be anticipated from the loss of the 20 acres macadamia nut farm which requires less than one part-time position.

66. A portion of the Property is also used for pasture operations. Presently about 26 head of cattle plus calves graze on 150 acres of land.

67. According to Petitioner's agricultural consultant, the loss of this small pasture land will have an inconsequential impact on the cattle industry. The area comprises less than 0.07 percent of the 225,400 acres of pasture land on Maui, and less than 0.02 percent of the 974,000 acres of pasture land in the entire state.

68. Petitioner's agricultural consultant testified that several factors would not justify the cost of cultivation for taro and aquaculture, and that use of the Property as a golf course will not adversely affect the potential for diversified agriculture.

69. According to Petitioner's agricultural consultant, in general, the proposed golf course would be a better economic use of the land than agriculture. The golf course would provide recreation and substantial economic benefits such as employment and tax revenues.

Archaeological and Historical Resources

70. Historical literature indicates that prior archaeological field work was done on the Property. An archaeological reconnaissance survey and study was conducted by the Petitioner's archaeologist, Paul Rosendahl of PHRI. Discussions between Petitioner's archaeologist and the State Office of Historic Preservation, Department of Land and Natural Resources were held to define the scope of the study.

71. Petitioner's archaeologist stated the study had four specific objectives: 1) to define all archaeological sites and features; 2) to collect sufficient information to determine the general significance of all identified archaeological sites; 3) to assess potential impacts of any proposed development upon the archaeological sites identified; and 4) to define the general scope of any subsequent archaeological or mitigation work required.

72. According to the Petitioner's archaeologist, the State Historic Preservation Division, and the Maui Historical Society, the Property contains numerous archaeological resources, some dating back 1,000 years. These resources include a full range of site types reflecting Hawaiian settlement in the area.

73. The survey identified 88 sites with a minimum of 195 component features. A previous statewide inventory identified 4 of these sites, the remaining 84 sites were newly identified by the survey. Of these, 31 sites consisted of a

single structure feature. Surface midden or lithic scatter accounted for 20 sites and 34 sites were complex systems.

74. The survey contains significant evaluations and recommendations for future archaeological work on the Property based on the National Register criteria and guidelines prepared by the National Advisory Council on Historic Preservation. The same criteria is utilized by the Historic Preservation Division.

75. Petitioner's archaeologist stated that a historic preservation mitigation plan would be prepared and implemented. This preservation mitigation plan consists of five major phases: 1) preparing a formal mitigation plan to be approved by the Historic Preservation Division and the Maui County Planning Department; 2) upon review and approval of the formal plan, performance of actual data recovery field work, analysis and reporting; 3) preparation of a final site preservation plan; 4) implementing an approved preservation plan; and 5) monitoring the on-site construction.

76. Members of the community testified, and the Petitioner concurred, that the Waihe'e sand dunes are important cultural and scenic resources.

77. Intervenor's witness Dana Naone Hall, and the Planning Department's witness John Min, testified that human burials have been encountered in excavations of sand dunes on Maui. Human burials have been found in both consolidated (lithified) and unconsolidated dunes, throughout all vertical layers and across the horizontal plane. While it is difficult

to predict the exact number and location of burials, there is a high likelihood that human burials are present in the Waihe'e sand dunes.

78. According to Agnes Griffin, staff archaeologist with the Historic Preservation Division of the State Department of Land and Natural Resources (hereinafter "DLNR"), the Project Area represents one of the richest assemblages of historic sites on the island. There is evidence of a village situated along the coastline, evidence of agricultural activities along Waihe'e Stream and at the base of the dune near Waihe'e Point, and early prehistoric subsurface cultural deposits along the coastline. In addition, there are burial sites, historic and probably prehistoric, on the sand dunes. It is highly likely that unmarked burials will also be found throughout the sand dunes.

79. According to the DLNR staff archaeologist, the proposed project will adversely affect the significant historic sites in the Project Area in the following manner:

- a) All sites located within the development areas will be either totally or partially destroyed;
- b) All sites to be preserved located near development areas are at risk of being damaged during construction activities; and
- c) The integrity of all sites to be preserved will be affected by the development due to increased pedestrian traffic over these sites.

80. On June 7, 1990, the State Department of Land and Natural Resources recommended that additional work, to determine subsurface extent and nature, shall be performed on 4 sites, and data recovery work on 16 sites. In addition, all sites on the sand dunes and 14 sites in the Conservation District, and 9 sites in the golf course area shall be preserved with a preservation plan approved by the Historic Preservation Division prior to project implementation.

81. In addition, DLNR recommended that the following standard condition be imposed on the Petitioner:

Petitioner shall immediately stop work on the impacted area and contact the State Historic Preservation Division should any significant cultural remains such as artifacts, shells, bones, or charcoal deposits, human burial, or rock or coral alignments, pavings, or walls of historic or prehistoric significance be encountered during development of the Property.

82. According to the DLNR staff archaeologist, one of the more significant unresolved issues associated with the project's layout is the placement and development of hole 13 and the cart paths to and from that hole. Site 2453 encompasses nearly the entire area required for that hole, including tee areas, fairways, and green. Site 2470, a cemetery, may also be affected by hole 13. The golf cart paths will traverse the face of the dune and may be placed on or near Sites 2430 and 2431. Due to the expected presence of

additional significant historic sites in the sand dunes, as yet uncovered in the archaeological survey, the determination of whether hole 13 and the cart paths can be developed will be determined by the Historic Preservation Division when the Petitioner's archaeological consultant undertakes additional work to survey and test these areas.

83. Because of design constraints imposed by the archaeological sites, Petitioner stated that if required to do so, hole 13 will be relocated out of the Waihe'e Stream area.

84. Petitioner and Petitioner's archaeologist agreed to undertake additional archaeological work at the hole 13 area prior to finalizing the golf course design, as recommended by the Historic Preservation Division.

Flora

85. Petitioner's botanist, Winona Char, conducted a botanical survey of the Project Area. The survey indicates a total of six vegetation types on the Project Area. The six types include pastureland, Kiawe Thicket, Dune vegetation, streamside and drainage vegetation, strand vegetation and canefields.

86. According to Petitioner's botanist, the majority of the 202 species surveyed were historically introduced species. Only 30 species out of the 202 were native species. Native plant species were primarily found on the sand dune and the strand of the coastal areas.

87. Intervenor Burt Sakata testified that the endangered "Creeping Naupaka" is found on the sand dunes. The "Creeping Naupaka" was not surveyed by Petitioner's botanist but she stated that the sand dune area may contain the endangered plant.

88. According to Petitioner's botanist, with perhaps the exception of the Creeping Naupaka, the plant species inventoried during the survey are not listed as endangered or threatened. In addition, since the sand dunes will be preserved and remain intact, the proposed golf course would pose no threat to the native plant species.

89. Petitioner's botanist recommends that a management plan to restore native flora in the sand dune areas be implemented. Furthermore, Petitioner's botanist recommends native plants presently growing on the property to be used for landscaping since these plants are already acclimated to the environment.

Fauna

90. Petitioner's biologist, Phil Bruner, conducted a reconnaissance survey to ascertain the natural habitat for birds and mammals.

91. The initial survey revealed the usual mix of bird species typically introduced to the State of Hawaii. Only one native waterbird, a Black-Crowned Heron, was observed flying over the Property.

92. Petitioner's biologist conducted a second survey which concentrated on waterbirds that may feed, forage or nest in the wetland area. The survey noted the presence of two endemic and endangered species, the Black-necked Stilt aka the Hawaiian Stilt and Hawaiian Coot.

93. Petitioner's biologist stated that the wetlands area in the Project Area is currently suitable for certain waterbirds (i.e., Hawaiian Stilt) to forage and feed, but is not currently a suitable nesting area. The wetland area is ephemeral thus food resources for waterbirds are not available year-round. In addition, the wetland area is accessible to mongoose, dogs and cats which threaten waterbirds.

94. OSP's witness, Andrew Yuen, a biologist with the U.S. Fish and Wildlife Service ("USFW"), testified that the endangered Hawaiian Stilt and Coot have both been observed in the wetland area. Andrew Yuen also stated that the wetlands area is used by migratory birds.

Wetland Resources

95. According to Petitioner's engineer, the Army Corps of Engineers (hereinafter "COE") has designated 20+ acres of the Project Area as wetlands. Approximately 1.5 acres of the designated wetlands are within Parcel A. The proposed project involves the filling of the existing wetland area and will require a Section 404 permit under the Clean Water Act from COE.

96. The wetland is also identified in the National Wetland Inventory maps of Hawaii, prepared by the Fish and Wildlife Service, as a palustrine-emergent-persistent-seasonal wetland.

97. According to Petitioner's biologist, the wetland area can be enhanced in the context of a golf course to create a suitable habitat for waterbirds. The enhanced habitat can be designed as an ideal nesting and feeding ground for waterbirds. However, chemical and other pollutant levels should be carefully monitored and drainage designed to minimize impact on the habitat. In addition, ponds should be designed to prevent predators from entering.

98. According to OSP's witness, Andrew Yuen, of the U.S. Fish and Wildlife Service (USFWS), re-creation of the wetlands may be difficult. Andrew Yuen testified that Petitioner's proposal to create and enhance the wetland area does not provide for wetland habitat replacement since the proposed wetland is relatively narrow, is without a buffer from human activity, and lacks the opportunity for lowering and raising water levels to create shallow mud flats suitable for a feeding ground. He further stated that a 20+ acre contiguous area of wetland has more benefit than a narrow water feature.

99. According to the USFWS, the Service would recommend to COE that the Waihee wetlands not be filled, as proposed by Petitioner, because of the relative scarcity of

wetlands on Maui and the value of this wetland to endangered and migratory birds.

100. According to Petitioner's engineer, the COE's preferred alternative regarding replacement and relocation of wetland area is betterment and "no net loss". Based on this criteria and consultations with the USFWS, the COE may issue a Section 404 permit which allows modifications to wetlands.

Coastal and Aquatic Resources

101. Petitioner's marine biologist, Steve Dollar, investigated the project's impacts on nearshore waters.

102. The marine biology study indicates that, in the offshore waters of the project, there is a broad flat, fringing reef composed of calcium carbonate. The reef is mostly covered with benthic algae. The reef shows little coral cover nearshore. Coral cover, however, increases with distance from the shore and at depths of 10 to 15 feet. The biological communities were not abundant or diverse.

103. According to a water chemistry study prepared by the marine biologist, the quality of the offshore waters within a zone of 30 feet from the edge of the land showed noticeable materials from land caused by groundwater output and sheetflow runoff during rainy periods. According to Petitioner's marine biologist, natural areas of land causes more sediment to discharge into offshore waters than golf courses because golf course turf limits discharge.

104. According to Petitioner's marine biologist, the water chemistry at the adjacent Waiehu Golf Course and the proposed golf course site were similar. Nitrate nitrogen was detected from waters off of both sites since both sites have agricultural development.

105. According to Petitioner's marine biologist, the significant negative impact upon the marine environment or water quality in the nearshore water from fertilization and irrigation can be minimized by careful maintenance and management practices during construction and operation of the golf course.

Water Quality

106. According to the Petition, a properly developed and managed golf course should not represent a threat to the quality of either groundwater, surface drainage waters, wetland area or coastal waters of the Project Area.

107. OSP's witness, Andrew Yuen stated that there are fish populations, including native goby fish (o'opu and o'opunakea) that migrate from ocean to stream and back again.

108. A report on the environmental impact of fertilizer and pesticide use on the proposed Waihe'e golf course was prepared for the Petitioner by Dr. Carl Miles, Harry Sato and Dr. Barry Brennan. Dr. Brennan, an entomologist, testified that persistence of pesticides in the environment may be a concern. The pesticide consultants stated that registered

fertilizers and pesticides will have no impact to either the shoreline or wetland if their application is properly managed.

109. Petitioner's pesticide consultants provided a number of recommendations concerning the application and storage of fertilizers and pesticides. In addition, the consultants recommended:

- a. Employment of a golf course superintendent certified by the State Department of Agriculture to use Restricted Use Pesticides;
- b. Increase the organic matter content of sandy soils with the application of a minimum of one foot of topsoil above the sandy base;
- c. Establishment of programs to detect, monitor, and manage potential leaching and runoff to the wetlands and groundwater.

110. In April 1990, the Department of Health ("DOH") recommended that new golf course developments be subject to eight conditions intended to protect water quality. These eight conditions are listed in the Office of State Planning's Exhibit 10.

Open Space and Visual Resources

111. According to County's witness, John Min, the Project Area is one of the significant scenic and natural open space resource areas on the Island. This is largely attributable to the height of the sand dunes and the visibility of these prominent dunes and Waihe'e Point from other areas of

the Island. These high sand dunes are the remnants of a physiographic feature that once stretched across the isthmus of Maui. The value of the natural open space qualities of the sand dunes and shoreline are recognized by the County of Maui and are reflected in the Wailuku-Kahului Community Plan and the restrictions placed on the Wailuku-Kahului Project District 4.

112. According to the Petition, there will be no significant loss of open space. The proposed golf course will ensure maintenance of green open space and most of the natural terrain will be preserved. The proposed wetland enhancement will compliment the present natural surroundings and the sand dunes and shoreline will substantially remain in their natural state.

ENVIRONMENTAL QUALITY

Noise and Air Quality

113. Most of the Project Area is surrounded by a natural buffer of trees, open space and sand dunes.

114. The existing sources of noise in the project site include normal vehicular traffic from the adjacent Kahekili Highway.

115. Short term impact from construction activities on ambient noise levels will occur only for the duration of the construction.

116. The impact of construction noise on the community will be mitigated by limiting construction to daylight hours and on weekdays only.

117. The air quality would be impacted by fugitive dust associated with grading of the proposed golf course.

118. As with noise, the short term impact from dust on ambient air quality levels will occur only during construction.

119. The impact of fugitive dust on ambient air quality levels will be mitigated by watering the exposed surfaces and traffic areas by water truck or temporary sprinklers. Retention basins will be used to minimize potential siltation runoff.

120. The overall impact should be minimal and temporary in duration.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water Service

121. Petitioner estimates that approximately 18,000 gallons per day (gpd) of potable water will be required for clubhouse use and approximately 1,000,000 gpd of non-potable water will be required for golf course irrigation.

122. Potable water will be available from the County of Maui. Petitioner will improve the present system by installing a new pipeline to the existing County waterline and will pay for the actual hookup and all necessary fees.

123. The average amount of irrigation water for the proposed golf course is approximately 800,000 gpd. During times of no rainfall, a higher flow or maximum flow of 1,000,000 gpd would be required.

124. Petitioner intends to purchase non-potable water from Wailuku Agribusiness, Co., Ltd. Alternatively, if the non-potable water cannot be purchased, then on-site brackish water sources will be developed as an option.

125. Petitioner acknowledges the existing taro farmers' kuleana water rights and their claim to their share of water presently controlled by Wailuku Agribusiness, Co. Ltd. would supersede any claim of use for the proposed golf course.

Sewage Treatment and Disposal

126. According to Petitioner's engineer the project will generate approximately 12,000 plus gpd of wastewater.

127. The golf course clubhouse will be connected to the existing Maui County sewage system. A pump station and force main and an additional pipeline will be installed at Petitioner's cost to handle the additional wastewater flow.

128. Alternatively, in the event the County system does not have adequate capacity, Petitioner would install an on-site wastewater treatment system if acceptable to the Hawaii State Department of Health.

Solid Waste

129. Collection of solid waste generated by the project will be contracted with a private refuse service system.

Drainage

130. The proposed project site has two natural drainage systems. The overall drainage patterns are not

expected to be significantly altered by the golf course development.

131. The confluent drainage system which converges at the southern most side near the Roundtable area of the Property will be improved. This drain improvement will be made in consultation with the U.S. Department of Agriculture, Soil Conservation Service and Maui County Department of Public Works.

Electrical Power and Communications

132. The proposed golf course and clubhouse will connect to existing electrical, telephone, and cable services.

Police and Fire Protection

133. Petitioner anticipates that the proposed golf course project will not require significant increases in public services such as police and fire protection.

Highway and Roadway Facilities

134. Petitioner's traffic consultant, Susan Uejo, prepared a traffic impact and mitigation study. The study indicates that the proposed project will improve the existing traffic of the intersection of Kahekili Highway and Halewaiu Road. The Kahekili Highway links Waihe'e with Wailuku. Intersecting Kahekili is Halewaiu Road a single lane access to an existing residential area which ends at the Roundtable area.

135. Based on the consultant's study, the unsignalized intersection of Kahekili Highway and Halewaiu Road currently run at Level of A, as defined by the Highway Capacity Manual. This level indicates little or no delay during Friday

PM peak hour and the Saturday mid-day hour. Moreover, since the Project is without residential development, total traffic impact from a previous study has decreased by 20 percent.

136. The traffic currently going through the existing Waiehu Golf Course and to the Roundtable area will be a two-lane project traffic road. The existing intersection will be closed off and most traffic will be rerouted to the Waiehu Golf Course and the Roundtable areas before entering the Waihe'e residential community. The intersection for that project traffic road will be unsignalized but would have a stop sign. It will be designed according to County of Maui and State Department of Transportation standards.

SOCIO-ECONOMIC IMPACTS

137. A study on the social characteristics of the Waihe'e community was made by the Petitioner's sociologist, John Kirkpatrick. The study indicates that Waihe'e is a small rural community of over 400 people. The residents' lifestyle includes small-scale agriculture for family subsistence, fishing, and shoreline collecting as identified by the Waihe'e Community Association.

138. According to Petitioner's sociologist, the Waihe'e Community Association has articulated goals for development which is incorporated in the 1987 Wailuku-Kahului Community Plan Project District Number 4. The priorities include: the protection of the shoreline and near shore resources; preservation of the sand dunes and archaeological

sites; retention of relatively low-density land use in the area, including a golf course and some single-family residential construction; and construction of a new road to the Waiehu Golf Course, minimizing traffic through residential areas of Waihe'e. The County testified that additional land for the expansion of Waihe'e Field may be required during rezoning.

139. Petitioner proposes to create a community foundation which would be governed by Waihe'e Community Association's Board of Directors and representatives of Waihe'e Elementary School to support worthy causes for the community and the elementary school. Petitioner will initially contribute \$30,000.00 to this Community trust fund. In addition, one dollar from each round of play by visitor golfers and members of the proposed golf course will be contributed to this fund. The independence of this community foundation from Petitioner's control will be assured.

140. According to the Petition, a vote taken at the Waihe'e Community Association meeting in June 1989, resulted in a majority in favor of the proposed golf course.

141. Petitioner's sociologist testified that Petitioner's proposed project is expected to preserve the rural atmosphere and meet the concerns of the Waihe'e Community by: providing nearby employment in Waihe'e; preserving open space and protecting special areas such as shoreline, sand dunes and archaeological sites; providing access to the shoreline; and

re-routing the golfer traffic outside the residential area of Waihe'e. According to Petitioner's sociologist, the proposed golf course will not significantly impact on property taxes.

142. According to Petitioner's sociologist, in 1980, most employed residents hold blue-collar jobs which are not agricultural related.

143. According to the study, construction employment directly attributable to the proposed golf course is estimated at 94 person-years, spread over a 20-month period. The total employment impact, both indirect and induced, is estimated at 264 person-years.

144. The proposed course will create about 96 direct operational jobs. During the operational phase, annual employment attributable to spending by visitors from outside Hawaii is estimated as 117 direct, indirect and induced jobs.

145. Wages during the construction period are expected to total \$2,600,000. The total income offset of the project construction is estimated at \$5,800,000. Direct wages for golf course operations are expected to exceed \$1,750,000 annually. The total income impact, including indirect and induced income, is estimated at over \$2,400,000 annually.

146. Petitioner's sociologist's study indicates that the State would derive annually an estimated \$1,200,000 in general excise tax from the entire permitting and construction phase of the proposed golf course. Additionally, revenues derived by the State annually in income tax is estimated at

\$409,200. During the operation phase of the course, the estimated annual state taxes and fees would amount to \$348,000 in 1990 dollars.

147. According to the Petition, the development of the proposed golf course would trigger rollback taxes of \$16,200 and \$70,000 from building and grading permits, respectively, and during the entire permitting and construction period of the course. Once the golf course is operational, annual property taxes derived by Maui County is estimated at \$124,300.

CONFORMANCE TO STATE LAND USE POLICIES AND CONTROLS

Hawaii State Plan

148. The proposed reclassification generally conforms with the objectives and policies set forth in the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as follows:

Sec. 226-5 Objectives and Policies for Population

The proposed golf course represents a recreational use which will have virtually no negative impacts on the residential population growth.

Sec. 226-6 Objectives and Policies for the Economy in General

Development of the proposed golf course will directly benefit the economy by generating construction, use fees, retail, food and beverage sales, employment opportunities, and tax revenues.

Sec. 226-7 Objectives and Policies for the Economy-
Agriculture

Portions of the project site are currently designated Agricultural on the State Land Use District Boundary Map. The project will replace agricultural uses with other revenue generating use which can benefit the community and state. The proposed golf course use will maintain some of the agricultural characteristics of agricultural areas, such as open space and a non-urban setting. As discussed in previous findings, the loss of 20 acres of macadamia nut orchard will have an inconsequential impact on the macadamia nut industry on Maui and the State of Hawaii and is not expected to have a significant adverse effect on the growth of diversified agriculture.

Sec. 226-10 Objectives and Policies for the Economy -
Potential Growth Activities

The proposed golf course, through its use by overseas members and visitors, will provide an impetus for expanding a growth activity which serves to increase and expand Hawaii's economic base. The number of visitors that play golf in Hawaii and elsewhere throughout the world is expected to increase. These visitors constitute a significant part in driving the economy of the State of Hawaii.

Sec. 226-12 Objectives and Policies for the Physical
Environment-Scenic, Natural Beauty, and Historic Resources

The proposed golf course will generally follow the natural contours of the site and will be designed to be aesthetically pleasing and compatible with the surrounding area. Historic resources on site will be preserved and incorporated into the golf course design, or salvaged for their archaeological information.

Sec. 226-13 Objectives and Policies for the Physical Environment-Land, Air, Water Quality

The golf course site will be cleared with some grading and site clearing, however, no significant environmental impacts are expected from this action. Air quality is expected to remain excellent in the area. Water quality impacts will be minimal or possibly improved through implementation of the State Department of Health and pesticides consultants.

Sec. 226-15 Objectives and Policies for Facility Systems-Solid and Liquid Wastes

Waste water generated by the proposed golf course's facilities will utilize the existing County sewage system. In the event that the County sewage system does not have adequate capacity, an on-site waste water system will be developed if acceptable to the State Department of Health. Solid waste will be collected by private refuse collection services.

Sec. 226-16 Objectives and Policies for Facility Systems-Water

Potable water for the golf course clubhouse will be requested from the Maui County Department of Water Supply. The

Project will be serviced by the existing water system which will be improved by Petitioner installing a new pipeline. The Petitioner has a contract to purchase irrigation water from Wailuku Agribusiness Co., Ltd. subject to existing taro farm Kuleana rights.

Sec. 226-17 Objectives and Policies for Facility Systems-Transportation

The proposed golf course will add to traffic volumes on Kahekili Highway, however, the golf course traffic improvements will accommodate the additional project generated traffic. Net impact on the regional system will be negligible.

Sec. 226-18 Objectives and Policies for Facility Systems-Energy/Telecommunications

Energy and telecommunication facilities necessary for the development will be planned and coordinated with the appropriate agencies and public utilities.

Sec. 226-20 Objectives and Policies for Socio-Cultural Advancement-Health

The proposed project is a recreational use which promotes health and well being by providing golf, tennis, swimming and social activities in an outdoor setting.

Sec. 226-21 Objectives and Policies for Socio-Cultural Advancement-Education

The project is not a residential use and will not increase the area population; therefore, the proposed golf

course will not increase the demand for any public educational facilities or services.

Sec. 226-23 Objectives and Policies for Socio-Cultural Advancement-Leisure

The proposed project is planned as a full service leisure/recreational facility providing golf activity to overseas members, visitors and the community at large.

Sec. 226-24 Population Growth and Land Resources Priority Guidelines

The proposed project will result in changing the land use from agricultural to urban. Parcel A was formerly used for sugar cane cultivation and dairy operations. In addition the proposed action will also reclassify some urban lands to conservation. The proposed project will be consistent with the present uses of the surrounding lands and is expected to be environmentally compatible.

State Functional Plans

149. The proposed project generally conforms with the following implementing actions in the State Recreation Plan:

Policy A(2) "Ensure that intended uses for a site respect community values and are compatible with the areas physical resources and recreation potential."

Policy A(3) "Emphasize the scenic and open space qualities of physical resources and recreation areas."

The proposed golf course will incorporate the Property's natural features in its drainage and grading improvements, and general course layout. The project will serve as valuable, permanent open space for nearby residents of the Waihe'e community.

CONFORMANCE WITH APPLICABLE DISTRICT STANDARDS

Urban District Standards

150. The proposed reclassification generally conforms to Section 15-15-18, Hawaii Land Use Commission Rules for determining Urban District Standards as follows:

a. The proposed project generally conforms to the policies of the Hawaii State Plan and the applicable functional plans.

b. The proposed Project is located near two existing urban employment centers Wailuku and Kahului. Kahului's commercial and industrial areas will generate new employment opportunities. The proposed project will also generate new employment opportunities near these urban centers.

c. Petitioner has presented evidence in support of the economic feasibility of the development of the proposed project.

d. Basic services such as major transportation systems, police and fire protection, and medical services already exist in proximity to the project. Payment for some services such as water, sanitation and roadway improvements

will be provided by Petitioner. The proposed project will not impact nearby schools and parks.

e. The site is suitable for a golf course and is reasonably free from the danger of most natural hazards.

f. The Project Area is already appropriately designated golf course on the Wailuku-Kahului Community Plan Project District Number 4.

g. The Project Area contains the following rare and endangered flora and fauna such as the Creeping Naupaka, Hawaiian Stilt and Hawaiian Coot. The conversion of the Property from fallow pastureland may have a positive effect on the populations of most bird species found on the Property.

h. Significant archaeological sites will be preserved and impact on the sites will be mitigated through careful planning, monitoring and by implementing the recommendation of the State Historic Preservation Division.

i. No significant state or city expenditures will be required for infrastructure development, facilities or services for the proposed golf course.

j. The proposed golf course will generate long-term jobs and will result in a increase in revenues to the state and the county in the form of taxes and user fees.

Conservation District Standards

151. The proposed reclassification conforms to Section 15-15-20, Hawaii Land Use Commission Rules for determining Conservation District Standards as follows:

a. The proposed project conforms to the policies of the Wailuku-Kahului Community Plan Project District Number 4.

b. The sand dunes on the Property has a unique physiographic make up and is one of the few sand dunes found intact on the island of Maui.

c. The sand dunes serve as an important habitat for native floral species. Native vegetation prior to introduction of foreign species can be found on the sand dunes. The native plants such as the "nama" and the "Creeping Naupaka" as well as other native and/or endemic plant species will be preserved.

d. Gravesites and significant archaeological sites are located on the sand dunes. Petitioner proposes to keep most of the sand dunes intact and will work with the State's Historic Preservation Division and other governmental agencies to minimize the impact of these significant sites.

e. The sand dunes offer one of the few panoramic views of Central Maui coastline from an area relatively near the shoreline.

CONFORMANCE TO COASTAL ZONE POLICIES AND OBJECTIVES

152. The proposed reclassification generally conforms with the policies and objectives of the Coastal Zone Management Program; provided, however, that the Petitioner shall obtain a Special Management Area Use Permit from the Maui County Planning commission pursuant to Chapter 205A, HRS, as amended.

RULING ON STIPULATED AND PROPOSED FINDINGS OF FACT

Any of the stipulated or proposed findings of fact submitted by the Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, the Commission finds upon a preponderance of the evidence that the partial reclassification of the Property, consisting of approximately 98.922 acres of land situate at Waihe'e, Wailuku, Island and County of Maui, State of Hawaii, identified as Tax Map Key Nos. 3-2-10: portion of 1, 3-2-12: portion of 1, and 3-2-13: portion of 10 from the Agricultural Land Use District to the Urban Land Use District for an 18-hole golf course, clubhouse and related facilities, and approximately 26.456 acres of land situated at Waihe'e, Wailuku, Island and County of Maui, State of Hawaii, identified as Tax Map Key No. 3-2-10: portion of 1 from the Urban Land Use District to the Conservation Land Use District for conservation purposes

subject to the conditions in the Order, conforms to the standards established in the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, as amended, and the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission further concludes that the reclassification of the portion of the Property, consisting of approximately 6.726 acres, Tax Map Key Nos. 3-2-10: portion of 1 and 3-2-13: portion of 10 is not reasonable under Hawaii Revised Statutes, Section 205-2, and Chapter 226, HRS, and shall remain in the Agricultural District.

ORDER

IT IS HEREBY ORDERED that a portion of the Property, which is the subject of Docket No. A89-650 filed by Waihee Oceanfront Hawaii, Inc., consisting of approximately 98.922 acres at Waihee, Wailuku, County of Maui, Island of Maui, and identified as Maui Tax Map Key Nos. 3-2-10: portion of 1, 3-2-12: portion of 1, and 3-2-13: portion of 10 and also described on Exhibit "A" attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and State Land Use District Boundaries are amended accordingly, and approximately 26.456 acres at Waihe'e, Wailuku, County of Maui Island of Maui, and identified as Maui Tax Map Key No. 3-2-10: portion of 1 and also described on Exhibit "A" attached hereto

and incorporated by reference herein, shall be and the same is hereby reclassified from the Urban District to the Conservation District and State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. There shall be no hotel, condominium, or residential uses, of the project area (subject of this petition) other than residential use of the vacant manager's house near the 16th green as shown in Petitioner's Exhibits P-22 and P-23, as may be allowed under applicable County law. Until completion of the golf course, the present residential use of the Project Area may continue.

2. There shall be no overnight accommodations in the clubhouse, except use as employee accommodation for security purposes.

3. Petitioner shall establish a flag lot for the clubhouse area and access roadway, the metes and bounds of which shall be established subsequent to the completion of the golf course. Petitioner shall file a new application reclassifying the remainder of the Urban District, between the flag lot and the Conservation District from the Urban to Agricultural designation.

4. There shall be no golf course construction in the Conservation District or within 200 feet of the shoreline, whichever is greater.

5. Subsequent to construction of the golf course, Petitioner shall file a new application reclassifying all land

within the Project Area, makai of the 200 foot setback, into the Conservation District.

6. There shall be no golf course construction in the wetlands unless a Corps of Engineers 404 permit is obtained. Furthermore, Petitioner's 404 permit application for any proposed wetland reconfiguration shall be filed with the Army Corps of Engineers before a Special Management Area Use Permit application is filed with the County of Maui.

7. There shall be no construction on the sand dunes in areas above the forty (40) foot elevation contour line, with the exception of the tee for Hole 11 which shall not exceed the seventy (70) foot elevation; Hole 12 which shall not exceed the fifty (50) foot elevation; and the cart path between Holes 9 and 10 which shall follow the alignment of the existing road. In the event that the forty (40) foot requirement adversely impacts upon the feasibility of the project, Petitioner may file a motion seeking modification of this condition.

8. Petitioner shall grant a conservation easement(s) to the State of Hawaii and/or the County of Maui for the following areas: that portion of the sand dunes not developed for the golf course; and lands within the Conservation District and within 200 feet of the shoreline, whichever is greater; and that portion of land along Waihee Stream not developed for the golf course.

9. Petitioner shall provide a minimum of \$2,000,000 for management, restoration, and education purposes in

connection with the conservation easement(s) of which proposals are to be reviewed by the Office of State Planning and the Maui County Planning Department. At Petitioner's sole discretion, in the alternative, \$100,000 per year shall be contributed for 20 years commencing with approval of this petition by the Land Use Commission.

10. Petitioner shall make available adequate golf tee times, no less than forty (40) percent of total daily golf tee times, at affordable rates for public play by Hawaii state residents. These rates for Hawaii state residents shall not exceed one-third of the rates for non-residents. In addition, after the opening of the golf course, Petitioner shall make available golf course memberships to Hawaii state residents.

11. Petitioner shall provide other community benefit assessments such as contributing to the Waihe'e Community Foundation, dedicating lands for park uses, providing a new shoreline access road, developing public facilities for the shoreline at the Roundtable area, and installing a pipeline from Waihe'e Park to Waihe'e Elementary School which will be determined in consultation with and acceptable to the Office of State Planning and Maui County Planning Department.

12. Petitioner shall participate in the funding and construction of transportation improvements as required by the State Department of Transportation and the Maui County Department of Public Works.

13. Petitioner shall connect the wastewater system for the proposed development to the County's system. Construction of the clubhouse shall not commence until Petitioner has obtained assurances from the County of Maui that sufficient capacity at the Kahului Wastewater Treatment Facility has been reserved for the project; provided, however, that if the capacity at that facility will not be sufficient for the proposed development, Petitioner will utilize other alternatives acceptable to the State Department of Health.

14. Petitioner shall comply with "The Eight (8) Conditions" applicable to this golf course development, prepared by the State Department of Health dated April, 1990 (Version 3) and introduced as OSP Exhibit Number 10 and attached hereto as Exhibit "B".

15. Petitioner shall engage the services of a qualified golf course manager to oversee the irrigation of the golf course and application of fertilizers and pesticides to the golf course and who shall be certified by the State Department of Agriculture in the application of fertilizers and pesticides.

16. Petitioner shall conduct a follow up botanical survey to confirm the presence of the endangered Creeping Naupaka, and shall develop a management plan for the preservation of the endangered plants and bird species within the Project Area.

17. Petitioner shall design and construct the golf course to minimize adverse environmental impacts, to enhance and preserve habitats for endangered Hawaiian birds, and allow the exercise of traditional fishing and gathering activities at Waihe'e Stream.

18. Petitioner shall preserve all historic sites on the dunes (2404, 2420, 2421, 2422, 2423, 2427, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2445, 2450, 2452, 2457, 2470), all sites in the Conservation District (32, 33, 1189, 1796, 2403, 2407, 2408, 2417, 2418, 2419, 2449, 2463, 2469, 2470), and nine sites in the golf course areas (2405, 2410, 2436, 2453, 2464, 2442, 2466, 2468, 2471 (S-1, S-2, S-6, S-10, S-13)). A preservation plan shall be approved by the Historic Preservation Division, State Department of Land and Natural Resources, and County of Maui, Department of Planning, prior to implementation of the project. This plan may include further data collection in these sites.

19. Petitioner shall complete a preservation plan approved by the Historic Preservation Division, State Department of Land and Natural Resources and the County of Maui prior to the filing of the Coastal Zone Management Special Management Area application.

20. Petitioner shall undertake further archaeological work in four sites to determine their subsurface extent and nature (1796, 2417) and to establish the surface and subsurface

nature (2403, 2453). This work shall refine the golf course layout plan and establish the percentages of the sites to be preserved and to be data recovered. This plan shall be approved by the Historic Preservation Division, State Department of Land and Natural Resources, and the Maui County Planning Department.

21. Petitioner shall undertake data recovery for the following historic sites: 2389, 2390, 2395, 2401, 2406, 2412, 2414, 2416, 2424, 2454, 2458, 2461, 2462, 2465, 2467. A detailed data recovery plan shall be approved by the Historic Preservation Division, State Department of Land and Natural Resources, and the Maui County Planning Department prior to implementation of the project.

22. Petitioner shall immediately stop work on the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources should any significant cultural remains hereto undiscovered or not reflected in the archaeological study such as artifacts, shells, bones, or charcoal deposits, human burial, rock or coral alignments, pavings, or walls of historic or prehistoric significance be encountered during the development of the Property.

23. Petitioner shall complete the development on the Property in substantial compliance with the representations made before the Land Use Commission. Failure to so develop may

result in reclassification of the Property to its former land use classification.

24. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest or development interest in the Property covered by the approved Petition prior to visible commencement of construction on the Property; provided, however, that Petitioner may transfer ownership in the Property to an affiliate or joint venture of which Petitioner is a member or in a manner consistent with prior representations to the Land Use Commission, and may mortgage the Property at any time without notice to the Land Use Commission. A mortgagee under such mortgage may foreclose the mortgage, by judicial foreclosure or under a power of sale contained in such mortgage (provided notice of the date of such foreclosure sale is given to the Land Use Commission), or may, with notice to the Land Use Commission, acquire title to such Property in lieu of foreclosure and the mortgagee or the person acquiring title at such foreclosure or in lieu of foreclosure may also transfer title to the Property with notice to the Land Use Commission.

25. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Maui, Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

26. Petitioner shall obtain County of Maui Project District Zoning and Special Management Area approval prior to any golf course development.

27a. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

b. Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction or similar document in recordable form stating that such condition has been reasonably satisfied, in whole or in part. The Office of State Planning will certify for itself and all state department and agencies, and the Maui County Department of Planning will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction.

28. Petitioner shall provide written notice of intent to file a motion or petition to the Office of Hawaiian Affairs, the Waihee Community Association and the parties, in the event that residential, resort, and condominium uses are proposed for the project.

In the event such motion or petition is filed with the Land Use Commission, the Commission shall hold a public hearing on the Island of Maui to obtain testimony on said motion or petition.

IT IS HEREBY FURTHER ORDERED that reclassification of the remaining Agricultural District of the Property consisting of approximately 6.726 acres situate at Waihe'e, Wailuku, Island and County of Maui, identified as Tax Map Key Nos. 3-2-10: portion of 1 and 3-2-13: portion of 10 and also described on Exhibit "A" attached hereto and incorporated herein, shall be and the same is hereby denied reclassification to the Urban District.

DOCKET NO. A89-650 - WAIHE'E OCEANFRONT HAWAII, INC.

Done at Honolulu, Hawaii, this 20th day of November 1990,
per motion on October 29, 1990.

LAND USE COMMISSION
STATE OF HAWAII

By (conflict)
RENTON L. K. NIP
Chairman and Commissioner

By Allen K. Hoe
ALLEN K. HOE
Vice Chairman and Commissioner

By Allen Y. KajioKa
ALLEN Y. KAJIOKA
Vice Chairman and Commissioner

By Karen S. Ahn
KAREN S. AHN
Commissioner

By Eusebio Lapenia, Jr.
EUSEBIO LAPENIA, JR.
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

By James M. Shinno
JAMES M. SHINNO
Commissioner

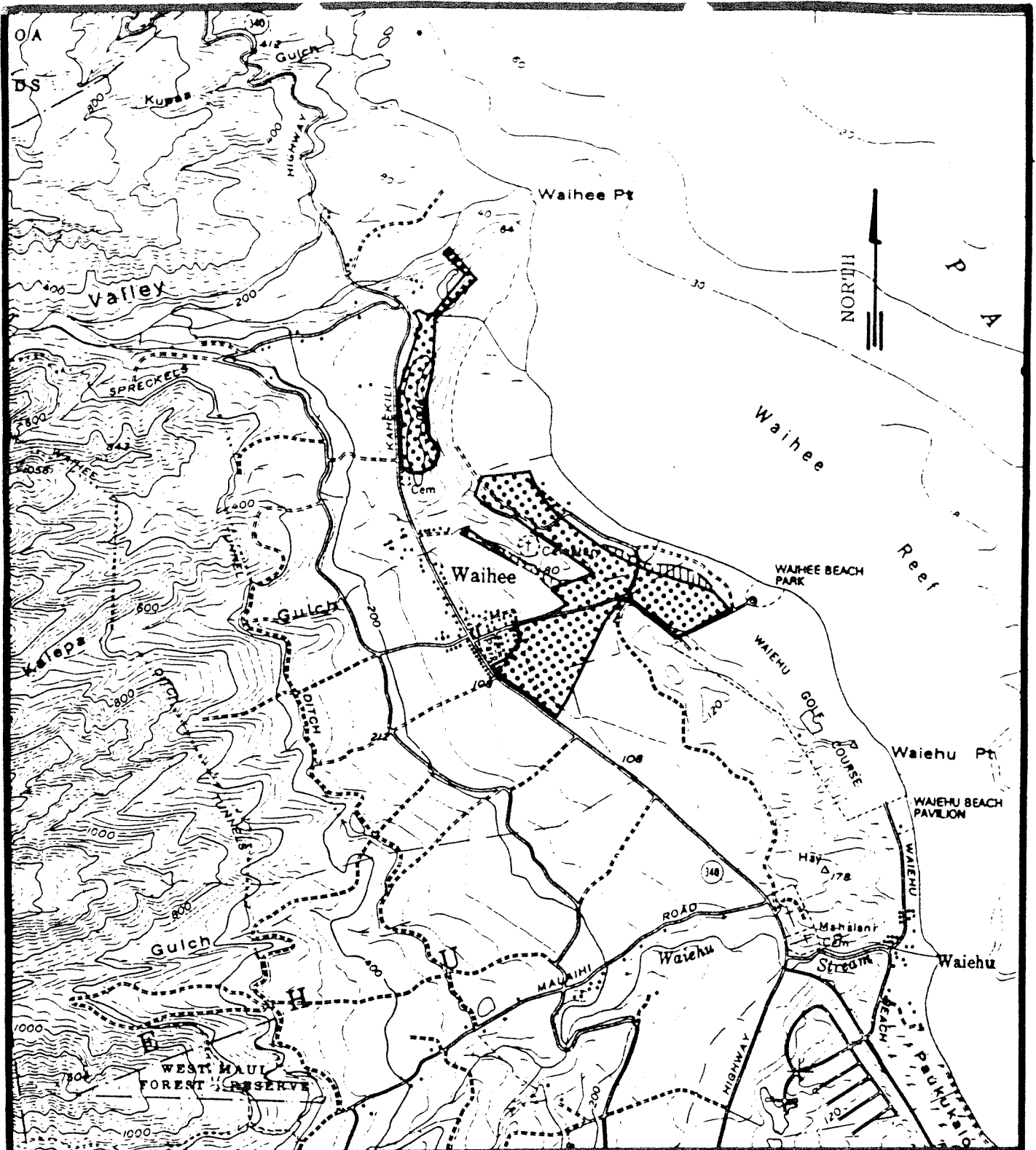
Filed and effective on
November 20, 1990

Certified by:

Executive Officer

By Elton Wada
ELTON WADA
Commissioner

By (absent)
DELMOND J. H. WON
Commissioner



DOCKET NO. : A89-650 / WAIHE'E
OCEANFRONT HAWAII, INC.

T.M.K.: 3-2-10: por. 01
3-2-12: por. 12
3-2-13: por. 10

WAIHE'E, MAUI, HAWAII
SCALE : 1" = 2,000 ft.±



APPROVED AREA



DENIED AREA

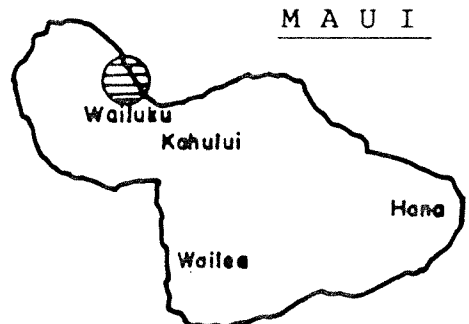


EXHIBIT "A"



STATE OF HAWAII DEPARTMENT OF HEALTH

April, 1990 (Version 3)

EIGHT (8) CONDITIONS APPLICABLE TO THIS NEW GOLF COURSE DEVELOPMENT

1. The owner/developer and all subsequent owners shall establish a groundwater monitoring plan and system which shall be presented to the State Department of Health for its approval. The groundwater monitoring plan and system shall minimally describe the following components:
 - a. A monitoring system tailored to fit site conditions and circumstances. The system shall include, and not be limited to, the use of monitoring wells, lysimeters and vadose zone monitoring technologies. If monitoring wells are used, the monitoring wells shall generally extend 10 to 15 feet below the water table.
 - b. A routine groundwater monitoring schedule of at least once every six (6) months and more frequently, as required by the State Department of Health, in the event that the monitoring data indicates a need for more frequent monitoring.
 - c. A list of compounds which shall be tested for as agreed to by the State Department of Health. This list may include, but not be limited to the following: total dissolved solids; chlorides; PH; nitrogen; phosphorus; or any other compounds associated with fertilizers, biocides or effluent irrigation.
2. Baseline groundwater/vadose zone water data shall be established as described in this paragraph. Once the monitoring system and list of compounds to be monitored for have been determined and approved by the State Department of Health, the owner/developer shall contract with an independent third-party professional (approved by the State Department of Health) to establish the baseline groundwater/vadose zone water quality and report the findings to the State Department of Health. Testing of the analyses of the groundwater shall be done by a certified laboratory.
3. If the data from the monitoring system indicate the presence of the measured compound and/or the increased level of such compound, the State Department of Health can require the owner/developer or subsequent owner to take immediate mitigating action to stop the cause of the contamination. Subsequently, the developer/owner or subsequent owner shall mitigate any adverse effects caused by the contamination.

EXHIBIT "B"

4. Owner/developer shall provide sewage disposal by means of connection to the public sewer system; or by means of a wastewater treatment works providing treatment to a secondary level with chlorination. Effluent from this wastewater treatment works may be used for golf course irrigation, subject to Condition #3. The entire system shall be approved by the State Department of Health in conformance with Administrative Rules Title 11, Chapter 62, Wastewater Treatment Systems, effective December 10, 1988.

5. If a wastewater treatment works with effluent reuse becomes the choice of wastewater disposal, then the owner/developer and all subsequent owners shall develop and adhere to a Wastewater Reuse Plan which shall address as a minimum, the following items:
 - a. Management Responsibility. The managers of the irrigation system using reclaiming wastewater shall be aware of the possible hazards and shall evaluate their system for public health, safety, and efficiency. They must recognize that contact with the reclaimed wastewater from treated domestic sewage poses potential exposure to pathogenic organisms which commonly cause infectious diseases (bacteria, viruses, protozoa, and helminths or worms).

 - b. General Recommendations
 - 1) Irrigated areas should be no closer than 500 feet from potable water wells and reservoirs.
 - 2) Irrigated areas should be no closer than 200 feet from any private residence.
 - 3) Application rates should be controlled to minimize ponding. Excess irrigation tailwater in the reclaimed wastewater irrigation area shall be contained and properly disposed. An assessment should be made of the acceptable time and rate of application based on factors such as type of vegetation, soil, topography, climate and seasonal variations.
 - 4) Effluent holding/mixing ponds shall be designed to prevent the infiltration of the wastewater into the subsurface. The holding/mixing ponds shall be made impervious.
 - 5) Irrigation shall be scheduled such that the public is not in the vicinity and the soil is sufficiently dry to accept the irrigation water.
 - 6) Permanent fencing or barriers shall be erected around polishing or holding ponds to prevent public entry or stray feral and tame animals from gaining access to the ponds.

- 7) Adequate irrigation records shall be maintained. Records should include dates when the fields are irrigated, rate of application, total application and climatic conditions. Records should also include any operational problems, diversions to emergency storage or safe disposal and corrective or preventive action taken.
 - 8) The holding/mixing ponds shall be periodically monitored for the purpose of detecting leakage into the subsurface. If leakage is detected, corrective action shall be immediately taken.
- c. Adequate Notice. Appropriate means of notification shall be provided to inform the employees and public that reclaimed wastewater is being used for irrigation on the site.
- 1) Posting of conspicuous signs with sufficient letter size for clear visibility with proper wording should be distributed around the use areas.
 - 2) Signs shall be securely fastened. Periodic surveillance shall be conducted to assure permanent posting at all times. Immediate replacements shall be made when necessitated by deterioration, vandalism or misuse.
- d. Adequate Employee Education. Employees or users should be cautioned and warned of the potential health hazards associated with the ingestion of reclaimed wastewater being used at the site.
- 1) Employees should be warned that the ingestion of reclaimed wastewater is unsafe.
 - 2) Employees should be protected from direct contact of the reclaimed wastewater. If necessary, protective clothing should be provided.
 - 3) Employees should be informed of the following:
 - The irrigation water is unsafe for drinking or washing.
 - Avoid contact of the water or soil with any open cuts or wounds.
 - Avoid touching the mouth, nose, ear or eyes with soiled hands, clothes or any other contaminated objects.
 - Be aware that inanimate objects such as clothes or tools can transport pathogenic organisms.
 - Always wear shoes or boots to protect feet from the pathogenic organisms in the soil or irrigation water.

6. Releases from underground storage tanks (USTs) used to store petroleum products for fueling golf carts, maintenance vehicles, and emergency power generators pose potential risks to groundwater.

Should the owner/developer/operator plan to install USTs that contain petroleum or other regulated substances, the owner/developer/operator must comply with the federal UST technical and financial responsibility requirements set forth in Title 40 of the Code of Federal Regulations Part 280. These federal rules require, among other things, owners and operators of USTs to meet specific requirements in the detection, release response and corrective action. Also, the owner/developer/operator must comply with all State UST rules and regulations pursuant to Chapter 342-L 'Underground Storage Tanks' of the Hawaii Revised Statutes.

In consideration of the above-mentioned remarks, the Department of Health recommends that the owner/developer/operator implement facility plan alternatives that exclude the installation and operation of UST systems (e.g., the preferential use of electric golf carts, use of above-ground storage of fuel oil for emergency power generators, etc.), or, if USTs are utilized, that secondary containment be considered.

7. Buildings designated to house the fertilizer and biocides shall be bermed to a height sufficient to contain a catastrophic leak of all fluid containers. It is also recommended that the floor of this room be made waterproof so that all leaks can be contained within the structure for cleanup.
8. A golf course maintenance plan and program will be established based on "Best Management Practices (BMP)" in regards to utilization of fertilizers and biocides as well as the irrigation schedule. BMP's will be revised as an ongoing measure. The golf course maintenance plan will be reviewed by the State Department of Health prior to implementation.

If there are any questions regarding the eight (8) conditions mentioned here, please contact Mr. James K. Ikeda at 543-8304. We ask you cooperation in the protection of Hawaii's valuable groundwater resource.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A89-650
WAIHE'E OCEANFRONT HAWAII,)	
INC., a Hawaii corporation,)	WAIHE'E OCEANFRONT
)	HAWAII, INC., a Hawaii
)	corporation
To Amend the Agricultural District)	
Boundary Into the Urban District)	
for Approximately 105.648 Acres)	
and to Amend the Urban District)	
Boundary into the Conservation)	
District for Approximately 26.456)	
Acres at Waihee, Maui, Tax Map)	
Key Nos.: 3-2-10: portion 01,)	
3-2-12: portion 01 and 3-2-13:)	
portion 10)	
_____)	

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:

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Wailuku, Hawaii 96793

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Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 20th day of November 1990.



ESTHER UEDA
Executive Officer