

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
LANAI RESORT PARTNERS )  
To Amend the Land Use District )  
Boundary to Reclassify Approximately )  
319.447 Acres of Land from the )  
Agricultural District and Rural )  
District into the Urban District )  
at Manele, Lanai, Maui, State of )  
Hawaii, Tax Map Key No.: 4-9-02: )  
Por. 49 )  
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Docket No. A92-674  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER

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Lanai Resort Partners ("Petitioner"), a California general partnership registered to do business in the State of Hawaii, whose partners are MK Development, Inc., a Hawaii corporation, and Lanai Company, Inc., a Hawaii corporation, filed this petition on February 7, 1992, which was amended pursuant to section 15-15-43, Hawaii Administrative Rules ("HAR") on April 30, 1992 (hereinafter collectively referred to as "Petition"). The Petition was filed pursuant to chapter 205, Hawaii Revised Statutes ("HRS"), and chapter 15-15, HAR, to amend the land use district boundary of certain land at Manele, Lanai, Hawaii, Tax Map Key No. 4-9-02: portion of 49, covering approximately 174.462 acres of land from the Rural District to the Urban District and approximately 144.985 acres of land from the Agricultural District to the Urban District situated at Manele, Lanai, Hawaii, Tax Map Key No. 4-9-02: portion of 49

(hereinafter collectively referred to as the "Property") for residential development of the Property. The Land Use Commission of the State of Hawaii ("Commission") having heard and examined the testimony, evidence and argument of counsel presented during the hearings, the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by Lanaians for Sensible Growth ("Intervenor"), the Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the Maui County Planning Department ("County"), Intervenor's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, Petitioner's Response to Intervenor Lanaians for Sensible Growth's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, Petitioner's Response to Maui County Planning Department's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, the Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, Maui County Planning Department's Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and upon consideration of the entire records and files in this proceeding, hereby makes the following findings of fact, conclusions of law and decision and order:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On June 3, 1992, a prehearing conference was conducted at the conference room of the Department of Business, Economic Development and Tourism, Central Pacific Plaza, in Honolulu with representatives of the Petitioner, County of Maui, and the Office of State Planning (OSP) present. At the prehearing conference, the lists of exhibits and lists of witnesses of the parties as of that date were reviewed by the parties.

2. On June 16, 1992, the Commission received an untimely Petition For Leave To Intervene in this proceeding filed by the Lanaians For Sensible Growth ("Intervenor"). By Order dated July 2, 1992, the Commission, after having heard and considered the Petition For Leave To Intervene on June 18, 1992, allowed the Lanaians For Sensible Growth to intervene in this proceeding, provided that its intervention was limited to the issues of water quality, access to the ocean, and social impacts.

3. The Commission conducted hearings on this petition on June 18 and 19, 1992, September 9 and 10, 1992, February 11 and 12, 1993, May 12 and 13, 1993, August 12 and 13, 1993, December 15 and 16, 1993, February 10, 1994, and March 2 and 3, 1994, pursuant to the notices published on May 7, 1992 in the Maui News and the Honolulu Advertiser.

4. The following persons appeared and testified as public witnesses and/or submitted written comments:

Carlson Young  
Mario Bandalan  
Bernie Hanog  
Lisa Kaniho  
Harry Yamamoto  
Kurt Matsumoto  
Steve Snow  
John Ornellas  
Rick Hokama  
Elizabeth Stone  
Goro Hokama  
Edward K. Sowers  
James Bartell  
Jerry Knight  
Matthew Bailey  
Lunakanawai Hauanio  
Cynthia Arruiza  
Samuel L. Kealoha, Jr.

5. On July 9, 1993, the Commission issued Order (Re: Submission Of Exhibits And Identification Of Witnesses) pursuant to which subsequent motions to supplement testimony, exhibit list and witness list were filed from time to time by certain parties and which motions were heard and approved by the Commission.

6. On December 15, 1993, at the Commission's hearing in Lanai City, Lanai, Intervenor filed a Motion To Compel Provision Of Information which was granted by the Commission on said date and by its Order Granting Intervenor's Motion To Compel Provision Of Information filed January 31, 1994.

7. On January 27, 1994, Petitioner filed its Response To Order For Provision Of Information pursuant to the Commission's Order Granting Intervenor's Motion To Compel Provision Of Information. On March 3, 1994, Petitioner filed Petitioner's Exhibits 80 and 81 in further response to the Commission's Order. On March 21, 1994, Petitioner filed affidavit of Tammy Sanches and affidavit of Mary Manuel covering

clarification and amendment to prior responses made by Petitioner to the Commission's Order.

8. On February 10, 1994, Intervenor filed a Motion For Order To Compel Petitioner To Supplement Its Environmental Impact Statement. Upon hearing the motion on March 2, 1994, the Commission issued its Order Denying Intervenor's Motion For Order To Compel Petitioner To Supplement Its Environmental Impact Statement filed on March 28, 1994.

9. The hearings on the petition were closed on March 3, 1994.

10. On May 2, 1994, Intervenor filed a Motion to Supplement Record, or Alternatively, to Reopen the Hearings and to Take Official Notice. On June 17, 1994, the Commission heard said motion at its meeting in Lanai City, Lanai, and orally granted the motion to supplement record in part and denied the motion to reopen.

11. On June 17, 1994, at the Commission's meeting at Lanai City, Lanai, a motion was made and seconded to approve reclassification, subject to twenty-four conditions, of approximately 174.462 acres of the property from the State Land Use Rural District to the State Land Use Urban District, and incremental reclassification of approximately 144.985 acres from the State Land Use Agricultural District to the State Land Urban District pursuant to section 15-15-78, HAR. The motion included proposed findings of fact and conclusions of law. Four Commissioners voted in support of the motion, and three Commissioners voted against the motion. Having failed to receive

the six affirmative votes required to effectuate a boundary amendment under sections 205-1 and 205-4, HRS, the Petition was denied. An Order covering the action of the Commission taken June 17, 1994, on the motion was subsequently issued on August 15, 1994.

12. On June 20, 1994, Petitioner filed a Motion For The State Land Use Commission's Reconsideration Of Its Action Taken On Petition On June 17, 1994 ("Motion for Reconsideration") pursuant to sections 15-15-70 and 15-15-84, HAR, and section 91-12, HRS.

13. On June 30, 1994, at its meeting in Waikapu, Maui, Petitioner's Motion for Reconsideration was heard by the Commission. The Commission, having considered the arguments and the representations by the Petitioner, both oral and written, from the parties, memoranda submitted in regards to Petitioner's Motion for Reconsideration, and upon consideration of an oral motion to reopen the hearing made by the Petitioner ("Motion to Reopen"), and further argument regarding the oral motion from the parties, and the record and files herein, and good cause appearing therefrom, granted Petitioner's Motion for Reconsideration and Motion to Reopen by Order dated July 11, 1994 per motion of the Commission on June 30, 1994.

14. On August 9 and 10, 1994, the Commission conducted the reopened hearing on this petition at Lanai City, Lanai, pursuant to the notices published on May 7, 1992 in the Maui News and the Honolulu Advertiser and pursuant to notice dated August 1, 1994 served upon the parties by U.S. mail.

15. The following persons appeared and testified as public witnesses and/or submitted written comments at the reopened hearing on August 9, 1994:

Jim and Edie Bartell  
Colbert Matsumoto  
Ernest Magoay  
Cynthia Arruiza  
Royalene Fernandez  
Romeo Caberto  
Garret Yoshikawa  
Constance Agliam  
James Fuchigami

DESCRIPTION OF PROPERTY

16. The Property is located west of and adjacent to the land within the existing Lanai Project District 1-Manele established under the Project Ordinance 1578 of the County of Maui ("Manele Project District") which is situated within the Urban District immediately north of and adjacent to Hulopoe Bay.

17. The Property is adjacent to lands within the Urban District that constitute the Manele golf course development which was the subject of LUC Docket No. A89-649 approved by the Commission by Findings of Fact, Conclusions of Law, and Decision and Order dated April 16, 1991. In July 1992, the Maui County Council amended the Lanai community zoning for these Urban lands to permit golf course development. The Property is approximately eight miles south of Lanai City.

18. The Property consists of eight parcels of land with an aggregate area of approximately 319.447 acres. Two of the parcels with an aggregate area of approximately 144.985 acres are classified within the State Land Use Agricultural District. The remaining six parcels with an aggregate area of approximately



174.462 acres are classified within the State Land Use Rural District.

19. The USDA Soil Conservation Service, Soil Survey of the islands of Kauai, Oahu, Maui, Molokai and Lanai identifies the soils at the area of the Property as Very Stony Land (rVS) and Rock Land (rRK). The rVS soil association occurs in areas characterized by a surface that is 50 to 90 percent stones and boulders. On Lanai, the area is underlain by soft, weathered rock and bedrock. A shallow clay-like soil can occur among the stones and boulders in a few places. The rVS land type is often used for homesites, pasture, and wildlife habitat, although pasture improvement is difficult due to the high percentage of stones. The soil capability classification for rVS is VIIIs (soils having very severe soil limitations because of unfavorable texture or because they are extremely rocky or stony). Erosion and soil loss is common during storm events. Small portions of soil on the Property are designated Rock Land (rRK), where 25 to 90 percent of such area is exposed rock.

20. The natural topography of the Property is characterized by rugged slopes varying from approximately 10% to 20%, with elevations ranging from 200 feet along the shoreline to approximately 620 feet.

21. The climate of the Manele region is dry and arid. Annual rainfall in the area of the Property is 15 inches and flood events are rare.

22. Dole Food Company, Inc., a Hawaii corporation, is the owner of the fee simple title in the Property. Petitioner is

the owner of a right to purchase the Property pursuant to an agreement between Dole Food Company, Inc. and Petitioner. Dole Food Company, Inc. has authorized Petitioner to submit the petition.

PROPOSAL FOR DEVELOPMENT

23. The Petitioner proposes to develop 425 resort-residential lots/units consisting of 325 single-family residential units (house and lot) and 100 multi-family residential units at Manele. The single-family residential units are planned as vacation or second homes and will be sited primarily mauka of the fairways of the adjoining Manele golf course development with lots interspersed, and mauka of the Manele Small Boat Harbor and east of Manele Road.

24. Petitioner proposes to develop its residential development at Manele on the Property and on portion of the land within the existing Manele Project District which is in the Urban District. With the proposed addition of the Property to the Manele Project District for residential use, the total number of units currently approved for Manele under existing County ordinances will increase.

25. Four hundred sixteen (416) residential units are currently authorized under the existing Manele Project District. As originally established under the Manele Project District, 416 residential units were to be comprised of 342 single-family homes over 137 acres (i.e., 2.5 units per acre) and 74 multi-family homes over 18.6 acres (i.e., 4 units per acre).

26. Under the Petitioner's proposed development, the 425 residential units would be comprised of 325 single-family homes over 379 acres (i.e., less than one (0.85) unit per acre) and 100 multi-family units over 30 acres of land (i.e., 3.3 units per acre).

27. All multi-family units are proposed to be located within the existing Manele Project District.

28. The single-family residential units are projected to sell at a price range of \$780,000 to \$3,000,000 (1990 dollars). The price of multi-family units are projected to begin at \$800,000 (1990 dollars).

29. Total construction cost of the infrastructure for the residential development at Manele is estimated at \$52.6 million (in 1990 dollars) with a potential cost of up to over \$100 million.

30. Development schedules for the residential development in the Manele area had been originally estimated at the time of filing of the Petition, as follows:

<u>Project</u>	<u>Duration</u>	<u>Original Estimated Start Date</u>
Infrastructure For Residential Development	1 - 5 years	1992
Multi-Family Units	1 - 5 years	1993
Single-Family Units	5 - 10 years	1993 - 2003

The development timetable assumed orderly processing of the necessary land use approval requests and avoidance of undue delay after filing of the Petition.

31. In addition to the 425 single-family and multi-family residential units, the development concept for the Manele area includes the Manele Bay Hotel, the golf course and clubhouse, commercial areas, a 66-acre beach park and open space. Since the establishment and subsequent amendment of the Manele Project District by the County, the Manele Bay Hotel and the Manele golf course have been completed.

PETITIONER'S FINANCIAL CAPACITY TO UNDERTAKE THE PROPOSED PROJECT

32. Petitioner's Unaudited Financial Statements as of December 28, 1991 reflect total current assets of \$4,636,000; net land, improvements, buildings, machinery and equipment of \$297,513,000; real estate projects of \$5,792,000; and deferred charges and other assets of \$1,035,000, for total assets of \$308,976,000. Total liabilities and equity of \$308,976,000 include total current liabilities of \$31,989,000; deferred credits of \$52,000; intra-company equity of \$325,955,000; ending retained earnings of \$(49,020,000).

STATE AND COUNTY PLANS AND PROGRAMS

33. Approximately 144.985 acres are located within the State Land Use Agricultural District and approximately 174.462 acres are located within the Rural District as reflected on the Land Use District Boundary Map of Lanai.

34. The Lanai Community Plan currently designates the 174.462-acre Rural District parcel of the Property to be for open space use and the 144.985-acre Agricultural District parcel for agricultural use.

35. Petitioner has filed applications with the County for amendments to the Lanai Community Plan, the Manele Project District Zoning Ordinance, and the Manele Project District performance standards ordinance, Chapter 19.70, Maui County Code. Said applications were heard by the Maui Planning Commission in November 1992 and recommended for approval to the Maui County Council. The applications are currently pending before the Maui County Council.

36. The Property falls within the Special Management Area ("SMA") and is subject to the SMA rules of the Lanai Planning Commission.

NEED FOR PROPOSED DEVELOPMENT

37. The residential development is proposed by Petitioner as an integral part of Petitioner's hotel-resort-residential development at Manele.

38. The hotel at Manele is intended to provide another economic base for Lanai as an object of the Manele Project District ordinance. The golf course is a necessary amenity to the hotel's attraction.

39. The Manele residential development of which the Property is proposed to be part is the component in the development equation which Petitioner has represented would help to cover operating losses incurred in connection with, or generate a return from, the hotel-resort-residential development at Manele. In this context, the residential development has been sought by Petitioner on the basis that it is essential for the

economic viability of the hotel-resort as an economic base for employment.

40. A market analysis of residential development opportunities at the Manele Bay Resort was conducted by Petitioner's consultant, Robert Charles Lesser & Co.

41. According to the market analysis, the design feature amenities and price positioning of Manele Bay Hotel (and the Lodge at Koele) place this hotel among the "premiere" or super luxury resorts in Hawaii. Premiere resorts command hotel room rates of \$300 per night and higher, and residential product prices about \$1,000,000 for completed units.

42. Lanai and its resort development enjoy several key attributes which, the market analysis concludes, give the resort the premiere potential such as the secluded, beautiful and small scale character and the limited scale of planned development. These attributes foster an exclusive, prestigious "limited edition" positioning unique even among the luxury resort housing market.

43. The market analysis indicates that a residential unit product over \$500,000 is usually not rented; that the Manele product will be over \$500,000; that Manele's demand will be mostly for owner occupied units; and that the product can be absorbed by the market in approximately 10 to 20 years.

44. The market analysis states that the proposed luxury residential development is expected to be well-received by the market given its proximity to a luxury resort, quality of development sites with golf and ocean views, and desire among

premier home buyers to have access to resort services while maintaining a sense of seclusion.

#### IMPACT UPON RESOURCES OF THE AREA

##### Agricultural Resources

45. Of the Property, approximately 144.985 acres are classified within the Agricultural District and approximately 174.462 acres are classified within the Rural District.

46. According to the USDA Soil Conservation Service, the soils of the Property are classified as Very Stony Land (rVS) and Rock Land (rRK).

47. The Property is not classified under the Agricultural Lands of Importance of the State of Hawaii ("ALISH") classification system. The soil is rated E19 and E22 by the Land Study Bureau Detailed Land Classification System indicating very poor potential for most agricultural uses.

48. No agricultural activity exists on the Property which is basically scrub land in its natural state with low vegetative cover.

49. The State Department of Agriculture acknowledges the generally poor suitability of the Property for agricultural uses, and the Property does not appear to be suitable or essential as an agricultural resource.

50. The State Department of Agriculture comments that given the generally poor suitability of the Property for agricultural uses, it has no objections to the reclassification of the Property from the Rural and Agricultural Districts to the Urban District.

## Water Resources

51. Lanai regional water resources are from two sources. One source is the brackish basal groundwater in hydraulic contact with saline groundwater at depth of seawater at the shoreline. The other source is water contained by dikes at high level.

52. The high level aquifer is comprised of numerous compartments separated and defined by dikes. Rainwater percolating into the highest compartments is Lanai's source of drinking water.

53. The high level aquifer underlies an area of approximately 24 square miles. It contains potable water except in the Palawai Basin. High level groundwater in the Palawai Basin is brackish.

54. Two comprehensive studies of water resources by hydrologists Keith Anderson and John Mink arrived at sustainable yield estimates of 6.22 million gallons daily ("MGD") and 6.00 MGD, respectively, for the high level aquifer.

55. In a petition to designate Lanai as a water management area, the State Commission on Water Resources Management ("CWRM") adopted a finding that the sustainable yield of the high level aquifer is 6 MGD and acted not to designate Lanai as a water management area. The finding of a 6 MGD sustainable yield of the high level aquifer has also been adopted by the CWRM for the Hawaii Water Plan.

56. The chairperson of the CWRM is authorized to reinstitute water-management-area designation proceedings to



re-evaluate groundwater conditions on the island of Lanai if and when certain events occur. The following events were identified as grounds to reinstitute designation proceedings:

(i) the static water level of any production well falls below one-half of its original elevation above mean sea level;

(ii) any non-potable alternative sources of supply contained in Lanai Company's water development plan fails to materialize and full land development continues as scheduled;

(iii) the requirement for monthly reporting of water use, monitoring of hydrologic situation, and formation of a water shortage plan have not been fulfilled; and

(iv) the actual annual average potable withdrawal exceeds 4.3 million gallons per day.

57. The 6 MGD sustainable yield estimate was derived from Petitioner's Water Resources Development Plan for the Island of Lanai, dated March, 1989, and was adopted by the Petitioner for planning purposes. This Development Plan provided that the estimate of sustainable yield is relative to the status of the water supply system (i.e., the configuration of pumps in the high level aquifer at the time the estimate is calculated).

58. The 6 MGD sustainable yield figure should not be equated exactly to what can be withdrawn from the high level aquifer but rather as a planning tool. The 6 MGD figure adopted by the CWRM in 1990 was based on very limited data and with the understanding that as pumping of water from the aquifer continues, additional information will be obtained to make a better estimate of sustainable yield.

59. The decreasing forested areas, removal of vegetative cover on soils, and a growing deer population will reduce the re-charge rate of water on the island of Lanai, which in turn would have an adverse impact on the estimated sustainable yield. Programs that address and manage these impacts are needed to protect Lanai's limited groundwater resources.

60. A thin basal lens of brackish water underlies the coastal perimeter of Lanai. Reclaimed wastewater of 0.40 MGD is also a source of non-potable water, 0.15 MGD of which will be available for the Manele golf course and residential irrigation.

61. A significant increase in demand for potable water resources is expected upon development of the Property.

62. Landscape irrigation is projected to be significant for the proposed Manele residential development. The hot and dry climate could require substantial irrigation water, depending upon the landscape features to be built by individual lot owners. The potential for landscape irrigation could be as high as 1,000 gallons per day ("GPD") per unit, considering the large lots associated with low-unit densities being planned for this project. Xeriscaping may significantly reduce the demand for irrigation water.

63. The irrigation requirement for the Manele residential development and the adjoining Manele golf course are 0.40 MGD and 0.65 MGD, respectively. The total of 1.05 MGD is proposed to be supplied by the following non-potable sources: 0.80 MGD from the wells in Palawai Basin which produce brackish water from this portion of the high level aquifer; 0.10 MGD from

brackish Well 12 of the basal lens; and 0.15 MGD of reclaimed wastewater.

64. Petitioner's consultant hydrologist, Tom Nance, conducted an extended pump test of brackish Wells 1 and 9 located in the Palawai Basin of the high level aquifer. The objectives of the extended pump test were (i) to determine water level and water quality responses in Wells 1 and 9, and (ii) to determine if any responses in the upslope, potable wells due to this extended simultaneous pumping could be detected. Based on results of eighteen days of simultaneous pumping of Wells 1 and 9 at a combined rate of 1.15 MGD, Tom Nance concluded and Petitioner represented as follows:

- a. No observable effects in the high elevation potable wells occurred.
- b. No interference effects between Wells 1 and 9 occurred.
- c. A very small decrease in salinity of the water pumped by both wells occurred.
- d. The proposed draft rates from Wells 1 and 9 in Palawai Basin will not adversely affect the quality of potable water sources in compartments of the high level aquifer above Palawai Basin.

65. Reforestation, watershed protection and feral deer management are necessary parts of water resources management for Lanai.

## Archaeological Resources

66. Archaeological surveys of the Property and adjoining lands comprising portion of the Manele golf course site were conducted and the data recovery and preservation plans therefor were prepared by Petitioner's archaeological consultant, Hallett H. Hammatt, Ph.D.

67. The surveys identified a total of 29 sites, including more than 75 features, within the Property and adjoining lands comprising portion of the Manele golf course site:

a. The majority of the sites are concentrated in the eastern, makai portion of the study area, along both sides of a gulch which empties into Kapihaa Bay.

b. The features identified include as many as 23 virtually continuous permanent habitation features, heiaus, fishing shrines, evidence of basalt extraction (i.e., quarrying), numerous small fishing shrines, numerous small fishing cave shelters, ground terraces (i.e., for possible planting), and burial platforms.

c. Two of the sites are located mauka of the majority of the sites. One site is a historic cattle wall and fenceline and the other is a habitation feature.

68. The archaeological surveys and the data recovery and preservation plans were submitted by Petitioner to and approved by the Historic Preservation Division of the Department of Land and Natural Resources ("HPD-DLNR").

69. At the request of HPD-DLNR, Petitioner's archaeological consultant conducted field work for all sites that required further research and filed a post field work summary report.

70. The data recovery and preservation plans have been approved for implementation by HPD-DLNR.

71. Petitioner has represented that it will preserve the archaeological sites as recommended by Petitioner's archaeological consultant and HPD-DLNR under the approved data recovery and preservation plan. These archaeological sites are to be preserved within preserve areas with appropriate buffer zones.

72. Petitioner has represented that it will immediately stop work and contact the HPD-DLNR should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the development of the project on the Property.

#### Flora and Fauna

73. Three biological surveys were conducted between 1985 and 1990 by Petitioner's consultant, Kenneth M. Nagata, to determine the floristic and faunistic composition of certain lands in the Manele-Hulopoe region including the Property.

74. No rare or otherwise critically significant plant or animal species exist on the Property.

75. The vegetation of the Property generally consists of scattered, scrubby kiawe trees and a well-developed shrub

layer of native ilima, hoary abutilon and uhaloa. Several grasses including feather fingergrass, buffel-grass and native pili grass, are present. Three vegetation types of Kiawe-Ilima Scrub (KIS), Kiawe-Ilima Forest (KIF) and Koa-Haole Scrub (KHS) were recognized in the surveys.

76. Two populations of Canavalia lanaiensis were discovered in the Manele-Hulopoe region. The larger of the two populations is located outside of the Property in the upper reaches of Manele Gulch. The smaller population is found at the makai edge of the Property along the coastline.

77. At the time of the surveys Canavalia lanaiensis was considered a Category I candidate for listing as a Federal Endangered Species. Recently, however, it was determined that Canavalia lanaiensis was identical to other species growing on Niihau, Kauai and East Maui. In the most recent treatment of the Hawaiian flora, it was reduced into synonymy with and is now called Canavalia pubescens the oldest published name for the plant.

78. Today the Canavalia pubescens is considered neither Rare nor Endangered, and in February 1990 it was downgraded to Category II status which classification covers plants which lack sufficient information to warrant listing as Endangered Species. The Petitioner, however, has agreed to preserve the colony of Canavalia pubescens which occur near the cluster of historic sites if deemed necessary by the Department of Land and Natural Resources, Division of Forestry and Wildlife.

79. Another plant, Boerhavia herbstii, has also been recorded in the area of the Property. Although it has never been considered Rare, Endangered or Threatened, it was once thought to be unique to the southern coast of Lanai. Subsequent to the biological surveys, however, its range has been extended to include Pearl and Hermes Atoll, Lisianski, Oahu, Maui, Kahoolawe and Hawaii.

80. The biological surveys indicate that there are no endangered animal species on the Property. The urban and field birds common to the Manele-Hulopoe area include the Kentucky cardinal, barred dove, Japanese white-eyes, lace-necked dove, common mynah, ricebird, and house sparrow. Two game birds--Indian gray francolin and turkey--have been observed in this region. Two seabirds--red-tailed tropicbird and Bulwer's petrel--were also observed. In addition, the biological surveys indicate that axis deer are abundant throughout the region.

#### ENVIRONMENTAL QUALITY

##### Water Quality and Marine Communities

81. The State Department of Health ("DOH") classifies the waters off of Hulopoe-Manele Bay as class AA waters. DOH's Water Quality Standards, HAR section 11-54-03, states that "it is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions."

82. The Property lies below the underground injection control ("UIC") line. Lands lying below the UIC line are

generally considered to contain exempted aquifers which are not intended to be an underground source of drinking water.

83. The waters of Manele and Hulopoe Bays are within the designated Manele Hulopoe Marine Life Conservation District.

84. Due to the extremely rocky and poor quality characteristics of the soils within the Property, gravel and topsoil will be imported from elsewhere of the island.

85. The proposed development may increase the potential for runoff during the construction phase when extensive earthwork is performed. Runoff would be greatest during the rainy season.

86. Long-term erosion impacts occur when silty soil is imported into the Property and not adequately covered with grass, vegetation, or with lack of other erosion protection measures.

87. To mitigate the potential for erosion, Petitioner represents that it would follow prudent construction practices and comply with all governmental requirements including requirements for construction of temporary catchment and settling basins.

#### Air Quality

88. Short term direct and indirect impacts on air quality could potentially occur from fugitive dust emissions during construction on the Property which is governed by the State of Hawaii Air Pollution Control Regulations. The impact on air quality from the fugitive dust emissions will be mitigated through watering.

89. Increased motor vehicle traffic generated by the proposed uses and activities on the Property is considered to be



an indirect air pollution source. Air quality modeling of carbon monoxide emissions from vehicular traffic, the long term projections of which are based in part on the traffic impact study for the Property, show that there will be relatively minimal impact and that no specific mitigative measures appear to be necessary.

90. Source of air pollutants arising out of the Manele golf course which adjoins the Property will be from chemical pesticides spray in the maintenance of the golf course. There is a potential for pesticide spray to drift beyond the target areas. The use of drift control devices and modern spray equipment will substantially reduce or eliminate the amount of wind drift which could enter into non-target areas or nearby surface waters.

91. Fugitive dust emissions from field operations of the pineapple cultivation activity and periodic burning of remains of past crops will be reduced and eliminated by the phase-out of pineapple cultivation on Lanai.

#### Aural Quality

92. Petitioner's noise consultant Y. Ebisu and Associates completed a noise study for the Manele golf course and residential project in September 1990.

93. The Property is removed from the island's highways and from the airport and is classified in the "Minimal Exposure, Unconditionally Acceptable" category.

94. The existing background ambient noise levels at the Property are estimated to be less than 45 Ldn (day-night average sound level).

95. Noise levels associated with flybys of propeller aircraft range from 55 to 65 decibels (maximum sound level or Lmax) over the Property. Existing aircraft noise levels over the Property are less than 30 Ldn and are considered compatible with residential uses.

96. By the year 2003 traffic volumes on Lanai are expected to increase from existing volumes with attendant increases in traffic noise. Traffic noise levels along Manele Road are expected to increase by 1.2 Ldn and 2.4 Ldn as a result of non-project and project traffic, respectively.

97. Noise sensitive developments are not located in close proximity to the high speed sections of Manele Road, and adverse traffic noise impacts from the proposed project on the Property are not expected to occur along Manele Road.

98. The noise level increases within Lanai City generated from the proposed project on the Property are less than 1 Ldn.

99. According to the noise study, the Development Plan for the proposed project allows for appropriate setback distances of noise sensitive properties from the project circulation roadways, and adverse noise impacts on future residents from project traffic are not expected.

100. Construction activity on the Property may generate noise temporarily during the construction period impacts from

which are not expected to be in the "public health and welfare" category due to the temporary nature of the work and the administrative controls available for its regulation.

#### Visual Resources

101. The proposed residential development on the Property and the adjoining Manele golf course would increase the extent of landscaped area and construction on the south shore of Lanai. Within a large portion of the public viewshed from Hulopoe Beach Park, various natural features and topography would remain within the planned open space, including:

- a. Cliffs and rocky coastline for the entire length of the project;
- b. All existing conditions and features within a 50-foot setback from the cliffs;
- c. Archaeological features, which preserve open space and topography;
- d. Drainage paths which conform to existing contours; and
- e. The shoreline cliff trail.

102. The western viewshed from Hulopoe Bay Beach Park would change from a horizon dominated by scrub vegetation and lava above the sea cliffs, to a vista containing a manicured golf course, some residential construction, and various natural features already present on the site.

#### Recreational Resources

103. The primary recreational activities on the Property and along the shoreline are hiking, hunting, shoreline

fishing, spear fishing, scuba diving and opihi gathering. The sea cliffs and the deep waters that front them limit in-water activities primarily to scuba diving and spear fishing from boats.

104. Petitioner has conducted a walk for a view of the Manele-Hulopoe coastal area with the Department of Land and Natural Resources ("DLNR"), the Na Ala Hele community group on Lanai, and the Intervenor to define the coastal trail and to incorporate mauka access pathways which may be tied to the golf course and residential pathways in order to provide alternative access routes to the accessible coastline areas with appropriate signs.

105. Petitioner, DLNR, Na Ala Hele and Intervenor have jointly identified the activity items which need to be addressed with respect to the coastal trail, mauka access and signage. The Petitioner has completed its obligations under many of the activity items and is continuing to address and fulfill the remaining items under its responsibility.

106. Hulopoe Beach Park and the Manele Small Boat Harbor are important public recreational areas. Petitioner's proposal to extend the Manele residential development onto the Property and reconfigure the residential units to be located farther away from, and reduce the density of units around, the Hulopoe Beach Park and the Manele Boat Harbor will lessen the impact on the recreational resources.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Transportation Facilities

107. A traffic impact assessment report for the proposed Manele golf course project dated May 1993 (Revised) was prepared by Petitioner's consultant, Pacific Planning & Engineering, Inc. The traffic impact assessment report included traffic forecasts from all known major land uses on Lanai until 2010, including the developments at Manele, Koele and Lanai City.

108. The traffic impact assessment report focused on the impacts at the four intersections of Kaunalapau Highway with Lanai Airport Road, Manele Road, Fraser Avenue and Lanai Avenue, and one intersection of Manele Road with the Manele golf course and residential access.

109. All study intersections in 1993 operated at Level of Service ("LOS") A which indicates little or no traffic delays. In 2010 without the project, the level of service remains at A for all study intersections. With the development of the Property and the adjoining golf course, in 2010, all of the study intersections remain at LOS A except at the intersection of Kaunalapau Highway and Fraser Avenue which will experience a decrease of LOS from A to B indicating change from free flow to stable flow.

### Water Service

110. The projected potable water requirement for the Manele residential development, of which the Property is proposed to become a part, is 0.25 MGD based on 425 units at the Maui

County standard of 600 GPD per unit. The potable water is intended to be drawn from the High Level Aquifer.

111. The irrigation for the Manele golf course is estimated to require 0.65 MGD for approximately 95 turf acres. The Manele residential development landscape irrigation requirement is estimated to be approximately 1000 GPD per lot or a total of 0.40 MGD. The 1.05 MGD total irrigation requirement is proposed to be supplied by the following three sources: brackish wells in Palawai Basin, 0.80 MGD; Well 12, 0.10 MGD; and reclaimed wastewater, 0.15 MGD.

#### Sewage Treatment and Disposal

112. The existing wastewater system is composed of 8-inch and 6-inch sewer lines, force mains, and three pump stations which transport the wastewater flow to a wastewater treatment plant ("WWTP"). The plant, designed to process 75,000 GPD and with the capacity to be expanded to 140,000 GPD, is located mauka of the Manele Project District at an elevation of 400 feet.

113. Wastewater anticipated is domestic sewage from the Manele residential units and from the golf course activities. The quantities of sewage generated from the residential development will be 0.19 MGD on an average day, based on 425 units, an occupancy rate of 75 percent maximum, and following the Department of Health's current regulation of 200 GPD/bedroom.

114. When fully built-up, the new residential development would be sewered by gravity flow lines to pumping stations at the lower elevations of the golf course. It is

anticipated that three pumping stations will be required; additionally, the WWTP would have to be expanded to accommodate expansion of the development. Wastewater would then be pumped to the WWTP through 8-inch lines.

115. The rate of residential development over the years is estimated to be less than 50 units/year. The corresponding incremental increase in flow would be 22,500 GPD per year for the maximum day flow and 7,500 GPD/year for the average day. These incremental rates are small and can be readily accommodated in the program of plant expansion originally intended for the Manele Project District.

#### Solid Waste Management

116. Lanai's only landfill is located approximately one mile south of the airport access road between the airport and Kaunapali Harbor. The Public Works Department of the County of Maui and Castle & Cooke, Inc. (now Dole Food Company, Inc.) are coordinating the effectuation of a landfill that will meet all current regulations and projected needs.

117. The State Department of Health recommends that provision of alternative systems, focusing on separate mechanisms for recycling and composting be included in plans for solid waste management.

#### Drainage

118. Petitioner represents that all sites, except those recommended for preservation, will be designed and constructed in full compliance with Maui County Department of Public Works and

State Department of Health standards for road ways, drainage and golf construction.

### Schools

119. Lanai Elementary and High School is the only school on the island of Lanai. School enrollment was 503 students with 36 teachers for the school year 1989-1990. Enrollment was expected to increase by approximately 70 students in the ensuing five years.

120. The State Department of Education ("DOE") estimates 35 students will be generated from the proposed development which will require an additional 1.4 classrooms.

121. DOE estimates that the school will eventually require approximately nine to fourteen additional classrooms in the next 20 years.

122. The Petitioner represents that the proposed project on the Property will not require additional services with respect to schools beyond those already planned.

### Electrical and Telephone Services

123. Electric power generation units and transmission facilities on Lanai are owned and operated by Maui Electric Company. Total island generation capacity is over 12,000 kilowatts. The electric power generation and transmission system on Lanai is more than adequate to provide for the projects planned to be operational in the near future.

124. Telephone service for the Manele area is provided by GTE Hawaiian Telephone Company. Cable television ("CATV") service for the resort area is also provided.



125. The electrical power, telephone and/or CATV systems have been planned as part of the Manele Resort Master Plan so that the additional demand from the residential development on the Property can be met by the existing system.

#### Police and Fire Protection

126. The Maui County Police Department has one police station on Lanai, with a force of seven officers. The existing police station is a one room facility with a separate confinement area on the same property. The existing station will be replaced with a larger one on land caused to be donated by Petitioner.

127. The Maui County Fire Department has one fire station on Lanai which operates 24 hours a day with a crew of four firemen. It was built in 1988 on land caused to be donated by Petitioner. In addition to fire protection duties, the firemen assist the island's ambulance service.

128. The Petitioner represents that the project proposed for the Property will not require services beyond those already planned which planned services are based on projected population levels which include the projected population from the Property.

#### Other Public Services

129. Manele Small Boat Harbor with 23 mooring spaces at Manele Bay adjacent to Hulopoe Bay is currently operated by the State of Hawaii. The Department of Transportation ("DOT"), Harbors Division, ("DOT Harbors") plans to construct a new marginal wharf which would create additional moorings at the

harbor, the facilities for which are used for recreational and commercial boating activities and fishing.

130. With the planned expansion of the harbor, no mitigation measure is recommended, but DOT recommends that Petitioner maintain coordination with DOT-Harbors to mitigate impacts, if any.

131. Petitioner has caused to be donated land for the expansion of the Lanai Airport and land for hospital purposes.

132. Petitioner has represented it will fund and install emergency siren units as required to service the Property to the satisfaction of the State Department of Defense.

#### SOCIO-CULTURAL AND SOCIO-ECONOMIC IMPACTS

##### Socio-Cultural

133. A study of social stress indicators on Lanai during both the plantation-pineapple era from 1970 and also all available years since resort construction on Lanai began in 1988 was conducted by Petitioner's consultant, Community Resources, Inc. ("CRI"). As measured by indicators such as crime, divorce, non-marital birth, or attempted suicide rates, stress levels on Lanai did show some temporary increases during or after 1988.

134. A survey conducted by the University of Hawaii School of Social Work indicated 10 percent had negative feelings about resorts coming to Lanai; 68 percent saw tourism as a good type of economic development for Lanai; 77 percent thought tourism would have a positive effect on Lanai's economy; and 18 percent thought development on Lanai would have a negative effect on overall quality of life.

135. A 1993 Lanai survey conducted by Dr. Jon Matsuoka included the question, "How do you feel about the development of 425 luxury homes and condominiums at Manele?" Results indicated split and uncertain attitudes: 30 percent favor; 33 percent oppose; 37 percent don't know. An ethnic breakdown indicated Caucasians were more likely to oppose than to favor the housing, while the island's largest ethnic group, Filipinos, were more likely to favor than to oppose the housing.

136. Dr. Matsuoka's 1993 survey also asked "How do you feel about the rate of change on Lanai over the last 3 years?" Most people (52 percent) answered "About Right," compared to 42 percent "Too Fast" and 7 percent "Too Slow."

137. A luxury home enclave of the size proposed in relationship to the population of Lanai is expected to result in adverse social and cultural impacts.

138. Employment information and data of Lanai Resort Partners and Lanai Company, Inc. based on Intervenor's restrictive definition of "Lanai resident" as charted and graphed by Intervenor included the following indications:

a. the 1989-93 percentage of total workers consisting of Lanai residents has ranged from 50 percent to 64 percent for Lanai Resort Partners and from 64 percent to 75 percent for the Lanai Company;

b. the percentage of managers consisting of Lanai residents has increased from about 15 percent in 1989 to about 25 percent in 1993 at Lanai Resort Partners, while somewhat

declining from about 68 percent to about 49 percent at Lanai Company;

c. the number of Lanai residents promoted into management at Lanai Resort Partners from 1989 to 1993 totaled 26, compared to 23 non-residents.

139. Since 1989, Petitioner has been conducting training and development programs for its employees, including training and development of supervisory and management skills.

140. The Office of State Planning and the Department of Hawaiian Home Lands ("DHHL") have determined that 50 acres should be selected and developed to establish Hawaiian Home Lands presence on Lanai.

141. Petitioner has represented that it shall provide 50 acres on Lanai to the DHHL for its purposes at a site which shall be mutually agreeable with DHHL, County of Maui and the Petitioner. Petitioner has further agreed that such site may be located upon or adjacent to the 115-acre site designated to be contributed to the County of Maui for low income housing purposes or adjacent to the agricultural park site to be contributed to the Department of Agriculture. Petitioner has also represented that it proposes to condition the conveyance so that native Hawaiians on Lanai shall have preference with respect to the 50 acres if such a condition is permitted under law.

142. Petitioner and the State have executed an Agreement to Convey dated June 28, 1994, under which Petitioner agrees to make available the 50-acre parcel to the Hawaiian Homes

Commission at no cost to the State as set forth in the agreement.

143. Petitioner has caused to be established, by two Instruments of Gift, the Lanai Community Benefit Fund ("Fund") as a designated fund within the Hawaii Community Foundation. The purpose of the Fund is to promote and enrich the life style of the residents of Lanai through the support of educational, cultural and recreational activities for the Lanai community, with special emphasis on youth, young adults and senior citizens. Petitioner represents that the Instruments of Gift for the Fund were intended to empower the community in all areas of community interests without restrictions.

144. The Instruments of Gift provide for grants and contributions to the Fund by the donors under the instruments as follows:

- a. Annual grants from 1994 to 2005 which in the aggregate over the period amount to \$770,000;
- b. Up to \$30,000 per year on a 4 to 1 matching basis with the community's contributions;
- c. \$2,000 for each Koele Unit and each Manele Unit which Petitioner sells and conveys to a third-party purchaser as a one-time contribution; and
- d. \$200 per year for ten consecutive years for each Koele Unit and each Manele Unit Petitioner sells and conveys to third-party purchase commencing the first year in which unit is conveyed to purchaser.

145. A Board of Advisors of the Fund, the membership of which is representative of various community groups and organizations on Lanai, reviews all grant requests submitted to the Fund and makes grant recommendations to the Board of Governors of the Hawaii Community Foundation.

146. The Fund and the Board of Advisors of the Fund provide community empowerment and self determination about community needs and projects and the funding therefor as well as providing a forum for dialogue between community leaders and Petitioner's company management to discuss issues of concern.

Socio-economic

147. The Manele residential development is expected to generate roughly 100 to 200 direct operational jobs within the Manele residential development.

148. CRI estimated the cumulative impacts of the combined Manele residential configuration, golf course development and associated hotel employment on government costs and revenues using an average cost method. Additional analyses were made, using a marginal cost approach and recasting the analysis in terms of net present value. The analysis incorporated impacts of the various changes on Lanai since 1988, including the shutdown of pineapple production. All the fiscal calculations showed net gains for the State and the County associated with project development.

149. CRI estimated the balance of State revenues over costs for the entire set of social changes on Lanai since 1990, using the average cost approach for State operations and a

marginal cost approach to capital improvements, which included many items for which funding has not yet been committed. The analysis showed balances of State revenues over costs ranging from \$50 million to \$245 million by 2010, depending on future scenario (successful vs. less successful resort) and assumptions about visitor spending and the size of workforce households on Lanai.

150. Follow-up analyses by CRI represented that Lanai resort-related revenues could cover the cost of extensive spending by the State for capital improvements on Lanai (along with State operating costs). When the "maximal-cost" approach (combining an average cost approach to operations and marginal cost approach to capital improvements) was recast as a present-value analysis, using discount rate of 8%, the balance of revenues over costs for the State associated with changes on Lanai was estimated as ranging from \$36 million to \$82 million for the period 1988-2010. A further calculation showed that even if the State provided Lanai with the capital improvements on the marginal cost list over and above the average level of capital improvement spending per capita found statewide, the State will still have a net balance of \$21 to \$67 million in revenues over costs associated with Lanai resorts.

151. Petitioner and the Department of Land and Natural Resources and the Department of Agriculture have executed a lease agreement dated July 15, 1994 covering lease by Petitioner to the State of 100 acres for a term of 55 years at annual nominal rent of \$100.00 for the establishment of the Lanai Agricultural Park

to provide diversified agriculture opportunities for Lanai residents.

152. Petitioner and the State have executed an Agreement to Convey dated June 28, 1994 under which Petitioner agrees to make available to the State at no cost, on a fee simple basis, a 10-acre parcel of land for commercial use and a 15-acre parcel of land for industrial use as set forth in the agreement.

CONFORMANCE WITH THE HAWAII STATE PLAN

153. The reclassification of the Property as an expansion of the Manele residential development conforms to the Hawaii State Plan, chapter 226, HRS, as amended, including the following goals, objectives, policies and guidelines:

a. Goals:

- (1) §226-4(1) "A strong, viable economy characterized by stability, diversity, and growth that enables the fulfillment of the needs and expectations of Hawaii's present and future generations."

With the termination of commercial production of pineapple on Lanai, the Manele resort-residential development, of which the project proposed for the Property is to be made an essential part, provides an economic substitute that Petitioner has represented will maintain the job levels existing during pineapple production, open new opportunities for better jobs, and create a stronger, more diverse, and stable economy.

- (2) §226-4(2) "A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people."



Tourism is a relatively clean, non-polluting industry that is not only compatible with, but also dependent upon, an unspoiled environment.

- (3) §226-4(3) "Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life."

Because Petitioner or its related companies has terminated pineapple production, the outlook for the economic well-being of individuals and families on Lanai was made unfavorable. The job opportunities provided by the Manele resort-residential development, of which the project proposed for the Property is to be made a part, would lessen the need for the mitigation of residents in search of employment and the corresponding breakup of families. The development would produce direct growth in tourist-related industries, provide future employment expansion opportunities, and enhance the economic well-being of the community as a whole.

b. Objectives and policies:

- (1) §226-5(b)(2) "Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires."
- (2) §226-5(b)(3) "Promote increased opportunities for Hawaii's people to pursue their socioeconomic aspirations throughout the islands."

The Manele Project District is the product of the Maui County approval processes with community participation toward a well-planned development consistent with community needs and

desires. According to the Petitioner, the Manele golf course and the Manele residential development of which the Property is to be a part is needed to enhance the viability of the hotel and other uses permitted in the Manele Project District and to maintain and promote employment opportunities for the residents of Lanai.

- (3) §226-6(a)(1) "Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people."
- (4) §226-6(a)(2) "A steadily growing and diversified economic base that is not overly dependent on a few industries."
- (5) §226-6(b)(10) "Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems."

The pineapple industry as a viable source of employment on Lanai has been closed by Petitioner or related companies. The residential development proposed for the Property is an integral part of Petitioner's plan for its hotel-resort-residential development at Manele pursuant to the Manele Project District ordinance.

c. Priority Guidelines:

- (1) §226-104(b)(2) "Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district."

The area of the Property has Land Study Bureau Overall Productivity Ratings of "E19" and "E22", designating an area of poor productivity potential for most agricultural uses. The

Property is not classified as agriculture lands of importance under the ALISH system. The soil contains severe agricultural limitations because of unfavorable texture and extremely rocky or stony conditions. Such marginal and non-essential agricultural lands are especially appropriate for the proposed residential project which is a component in Petitioner's development plan for a viable hotel-resort-residential development at Manele.

CONFORMANCE TO STATE LAND USE URBAN DISTRICT STANDARDS

154. The Property is contiguous to the Manele Project District, including the Manele golf course, which is in the State Land Use Urban District.

155. Basic services are or will be made available for the Property. Sewage from the Property will be disposed of through the wastewater system for the Manele Project District. The domestic water supply will be tapped off from the water distribution system constructed for the Manele Project District. Power requirements will be serviced by Maui Electric Company. Police and fire protection will be provided by the units at Lanai City. Health care services and school facilities are located in Lanai City. The County of Maui has been planning for the anticipated needs for basic services arising out of the proposed developments for Lanai.

156. The topography of the Property is satisfactory with slopes of 10 percent to 20 percent with elevations ranging from 200 feet along the shoreline to approximately 620 feet.

157. The natural drainage pattern toward the gulches

will be retained, and given the topography of the Property and annual rainfall of 15 inches, flood events are rare.

CONFORMANCE TO COASTAL ZONE POLICIES AND OBJECTIVES

158. The proposed reclassification of the Property for the development of residential units at Manele conforms to the policies and objectives of the Coastal Zone Management Program chapter 205A, HRS. Petitioner proposes to or has provided for:

a. Preservation of coastline generally fronting the Property in its natural state through a conservation easement and for public access along the coastline.

b. Preservation of archaeological and historical sites in coordination with the State Historic Preservation Division.

c. Appropriate setbacks from coastline for improvements on the Property to retain public views to the shoreline.

d. Monitoring program since 1989 to assess the marine communities and water quality in the Hulopoe-Manele Bay area fronting the Property.

159. If the reclassification is approved by the Land Use Commission and the Lanai Community Plan and Manele Project District amendments are approved by the County of Maui, the Petitioner will need to apply for a Special Management Area Use Permit from the County of Maui.

INCREMENTAL DISTRICTING

160. The proposed development concept of the Manele Project District would include the Manele Bay Hotel, the golf course and clubhouse, commercial areas, a 66-acre beach park,

open space, roads, and 425 single family and multi-family residential lots and/or units.

161. Since the establishment and subsequent amendments of the Manele Project District by the County, the Manele Bay Hotel and the adjoining golf course have been completed.

162. Petitioner has represented that build-out of the proposed residential development would be in the 15 to 20-year range.

163. Petitioner's market analysis consultant, Robert Charles Lesser & Company, represented that based on review of Petitioner's development plans, the proposed residential project for the Manele Project District is anticipated to take 10 to 20 years for absorption.

164. Petitioner's market analysis consultant represented that demand for the residential units will express itself slowly and that Petitioner acknowledges such demand. According to the consultant, the Petitioner is prepared for a sell-out timeframe of 10 to 20 years.

165. Petitioner's market analysis consultant represented that it is possible to phase the residential units in order to respond to the projected slow absorption rate.

166. Petitioner has not indicated the number of single family residential units to be developed within the Property, nor has Petitioner indicated a development timeframe for the proposed units within the Property.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the 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, HRS and the Hawaii Land Use Commission Rules under chapter 15-15, HAR, the Commission finds upon a preponderance of the evidence that the reclassification of the Property consisting of approximately 174.462 acres of land within the Rural District and 144.985 acres of land in the Agricultural District, situate at Manele, Island of Lanai, State of Hawaii, Tax Map Key: 4-9-02: portion of 49, to the Urban District, subject to the conditions in the Order, for a residential development, is reasonable, nonviolative of section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in chapter 226, HRS, and conforms to the Hawaii Land Use Commission Rules.

ORDER

IT IS HEREBY ORDERED that a portion of the Property, consisting of approximately 174.462 acres of land in the State Land Use Rural District situate at Manele, Island of Lanai, State

of Hawaii, identified as Tax Map Key No. 4-9-02: por. of 49, and approximately shown on Exhibit "A," attached hereto and incorporated by reference herein, and further identified as Increment I, shall be and is hereby reclassified to the State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

IT IS HEREBY FURTHER ORDERED that the portion of the Property consisting of approximately 144.985 acres in the State Land Use Agricultural District, situate at Manele, Island of Lanai, State of Hawaii, identified as Tax Map Key No. 4-9-02: por. of 49, and approximately shown on Exhibit "A," attached hereto and incorporated by reference herein, and further identified as Increment II, shall be and the same is hereby incrementally reclassified pursuant to section 15-15-78, HAR, and that redistricting from the State Land Use Agricultural District to the State Land Use Urban District may be granted upon receipt of an application by Petitioner for redistricting of Increment II upon a prima facie showing that Petitioner has made substantial completion of the offsite and onsite improvements and has complied with the conditions imposed herein.

IT IS FURTHER ORDERED that the reclassification of the portion of the Property from the Rural District to the Urban District (Increment I) and incremental districting of the portion of the Property (Increment II) shall be subject to the following conditions:

1. As Petitioner has represented, Petitioner shall provide 50 acres to the Department of Hawaiian Home Lands

("DHHL") at a site which is mutually agreeable with the DHHL, Petitioner and the County of Maui, which may include sites within or adjacent to the 115-acre site which has been contributed to the County of Maui for an affordable housing project, or adjacent to the 100 acres which has been or will be conveyed to the Department of Agriculture by the Petitioner. Petitioner, as represented, shall condition the conveyance of the 50 acres so that the native Hawaiian residents on Lanai shall be given first preference by DHHL.

2. Petitioner shall work with the State Department of Land and Natural Resources, the County of Maui and the Intervenor to incorporate mauka pathways for public access which may be tied to the golf course and residential area pathways providing alternate access routes to the accessible cliff coastline area. The pathways shall be designated no later than the beginning of construction of the residential units.

3. In developing and operating the golf course and any future development in the Manele Project District, Petitioner shall put their public access along the accessible cliff coastline.

(a) Petitioner shall dedicate a public easement along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area which will allow public pedestrian access in perpetuity without obstruction or interference with such use subject to reasonable rules and regulations for public safety provided that access shall be maintained.



(b) Petitioner shall cause to be established a setback zone of 50 feet from the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area within which there shall be no improvement of any kind other than improvements which may be reasonably necessary for purposes of public safety and where the Property will be left in its natural state; provided that the setback for the "signature hole" of the golf course may have a setback of less than 50 feet as constructed.

(c) Petitioner shall cause the area within 75 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the Property to remain in its natural state without improvements except with respect to the three signature holes of the golf course.

(d) Petitioner shall prohibit any vertical improvements other than landscaping and improvements allowed by county variances to be constructed or erected within 150 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline within the westernmost boundary of the project area.

(e) Petitioner shall adopt rules and provide mutually agreeable and appropriate signage which will protect the access along the public access areas and pathways.

(f) Petitioner shall provide Intervenor with plans for the access pathways, and of signage in advance of any final

approval of such plans by the appropriate governmental agencies.

(g) Petitioner shall record with appropriate governmental agency all necessary and appropriate instruments to accomplish the purposes of this paragraph.

4. Petitioner shall implement the data recovery and preservation mitigation plan included in the petition as Appendix C of Petitioner's Exhibit 10 approved by the State Historic Preservation Division, Department of Land and Natural Resources ("HPD-DLNR") prior to the start of any ground disturbing activities. Verification of its execution shall be made by the HPD-DLNR. In addition, Petitioner shall immediately stop work and contact the HPD-DLNR should any previously unidentified archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development.

5. Petitioner shall preserve the colony of Canavalia pubescens, which occur near the cluster of historic sites to be preserved, if deemed necessary by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR, DOFAW). Petitioner shall submit a mitigation plan (which shall include measures to ensure that these native species are not physically impacted, or their microclimate altered, including the incorporation of appropriate buffer zones) to DLNR, DOFAW for review and approval. Full execution of the mitigation plan shall be verified by DLNR, DOFAW prior to the start of any ground-disturbing activities.

6. The Petitioner shall only develop, construct, operate and maintain the golf course and any subsequent residential development at Manele Project District and take appropriate preventative measures so that it will not cause any deterioration in the Class AA water quality standards currently in existence for Hulopoe Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course, or any comparable standards as may be established by law in the future, taking into account, temporary perturbations from natural occurrences.

(a) The Petitioner shall fully mitigate any condition caused by its development activities which results in deterioration of the standards referred to in paragraph 6.

(b) The Petitioner shall retain Environmental Assessment Company or such other environmental monitor, as may be mutually agreed between the Petitioner and the Intervenor for the purpose of monitoring the water quality standards referred to in paragraph 6. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii.

7. Petitioner shall, before proceeding with the development of the Property, ensure that it has satisfied its preexisting commitments with respect to the source and supply of

water as reflected in Docket No. A89-649 and various other State and County proceedings and orders, including but not limited to water for the 100 acre agricultural park and for the affordable housing project.

Petitioner shall fund the design and construction of all necessary water facility improvements, including source development and transmission, to provide adequate quantities of potable and non-potable water to service the Property and the 50 acres referred to in Condition No. 1.

No water from the high level aquifer will be used for irrigation of landscaping for the Property. Petitioner shall develop for landscaping purposes new sources of water other than the high-level aquifer; provided, however, (i) that brackish water from Wells 1 and 9 within the high level aquifer may be used provisionally for a period not exceeding two years from the date of this Decision and Order, conditioned upon Petitioner's continuing good faith efforts to develop other non-potable water sources; and (ii) that the total amount of brackish water which may be provisionally drawn from Wells 1 and 9 may not exceed 150,000 gallons per day during any annual period.

Petitioner shall participate with the State Commission on Water Resource Management (CWRM) and the United States Geological Survey (USGS), in developing, a numerical groundwater flow model of the groundwater resources on Lanai, with particular emphasis on the availability and the effects of existing and proposed land use developments on the groundwater resources of the high level aquifer. This model should be agreed upon by the

above parties, and in operation within six months from the date of this decision and order.

In development of the numerical groundwater flow model, Petitioner shall provide to the CWRM and USGS any and all data, including but not limited to, data related to water quality, water levels, chloride concentrations, temperature, groundwater pumpage, pump test results, and hydrologic studies.

Additionally, Petitioner shall call and participate in quarterly progress meetings with the CWRM and USGS in regards to the Lanai groundwater flow model and data collection program.

Petitioner shall be allowed to drill two monitor holes to assist in development of the numerical groundwater flow model. The locations and depths of the monitor holes shall be determined by CWRM and USGS.

8. Petitioner shall establish a reforestation and watershed management program in coordination with the Department of Land and Natural Resources.

9. In order to contribute to the amelioration of the project's impacts, Petitioner shall participate, as represented in these hearings by it, in the Lanai Community Benefit Fund.

10. Non-potable water resources shall be used towards all non-consumptive uses during construction of the Project.

11. Petitioner shall fund the design and construction of all necessary drainage improvements to the satisfaction of the State Department of Transportation and the County of Maui.

12. Appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind and rain and ambient noise levels.

13. Petitioner shall fund the design and construction of all transportation improvements necessitated by the proposed development, identified by and to the satisfaction of the State Department of Transportation.

14. Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the project's development period as required by the State Department of Transportation.

15. Petitioner shall fund the design and construction of the appropriate wastewater treatment and disposal methods to the satisfaction of the State Department of Health and the County of Maui.

16. Petitioner shall manage solid waste to be generated by the proposed project to the satisfaction of the State Department of Health. Whenever possible, composting of green wastes for subsequent use as a soil conditioner or mulching material is encouraged. The composting and reuse should be confined to the golf course property to eliminate the necessity for off-site transport of the raw or processed material. During construction, the Petitioner should utilize locally-produced compost and soil amendments whenever available. Additionally, Petitioner shall specify the use of material that includes a percentage of recycled content crushed glass in asphalt or

asphalt-treated base course used in the road paving which will occur as a result of the proposed project.

17. Petitioner shall provide its pro rata share for school facilities as may be required by the proposed project to the satisfaction of the State Department of Education.

18. Petitioner shall fund and install the necessary number of emergency siren units within the Property as required for the service to the Property to the satisfaction of the State Department of Defense.

19. Petitioner shall provide for affordable housing either by donation of land or by other means to the State of Hawaii or the County of Maui to the satisfaction of the State Housing Finance and Development Corporation ("HFDC") or the County of Maui, as appropriate. The location and distribution of the acreage or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and HFDC or the County of Maui. To the extent allowed by law, current residents of Lanai shall be given preferential treatment in obtaining affordable housing provided by this condition.

20. The Property shall be included in the Lanai Community Plan as part of the Manele Project District.

21. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission including but not limited to its representations that (i) the development of the Property as part of the Manele resort residential redevelopment will maintain and promote employment

opportunities for the residents of Lanai, and (ii) that Petitioner shall develop, as stated in finding no. 23, no more than 325 single-family residential units and 100 multi-family residential units. Failure to so develop the Property as represented may result in reversion of the Property to its former classification or change to a more appropriate classification.

22. 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 project and Petitioner's progress in complying with the conditions imposed. Such reports shall also include a discussion as to the Property's continuing contribution as part of the Manele resort-residential development to the maintenance and promotion of employment opportunities for the residents of Lanai.

23. 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.

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

25. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.




26. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

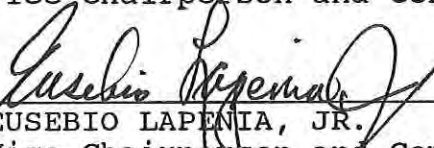
DOCKET NO. A92-674 - LANAI RESORT PARTNERS

Done at Honolulu, Hawaii, this 24th day of October 1994,  
per motion on October 6, 1994.


LAND USE COMMISSION  
STATE OF HAWAII

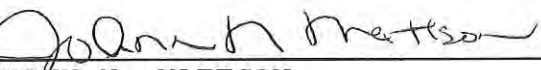
By   
ALLEN K. HOE  
Chairperson and Commissioner

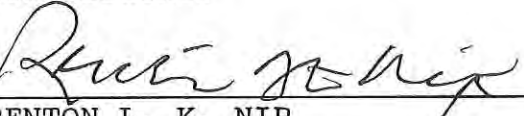
By (EXCUSED)  
ALLEN Y. KAJIOKA  
Vice Chairperson and Commissioner

By   
EUSEBIO LAPENIA, JR.  
Vice Chairperson and Commissioner

By (OPPOSED)  
M. CASEY JARMAN  
Commissioner

By   
LLOYD F. KAWAKAMI  
Commissioner


By   
JOANN N. MATTSON  
Commissioner

By   
RENTON L. K. NIP  
Commissioner

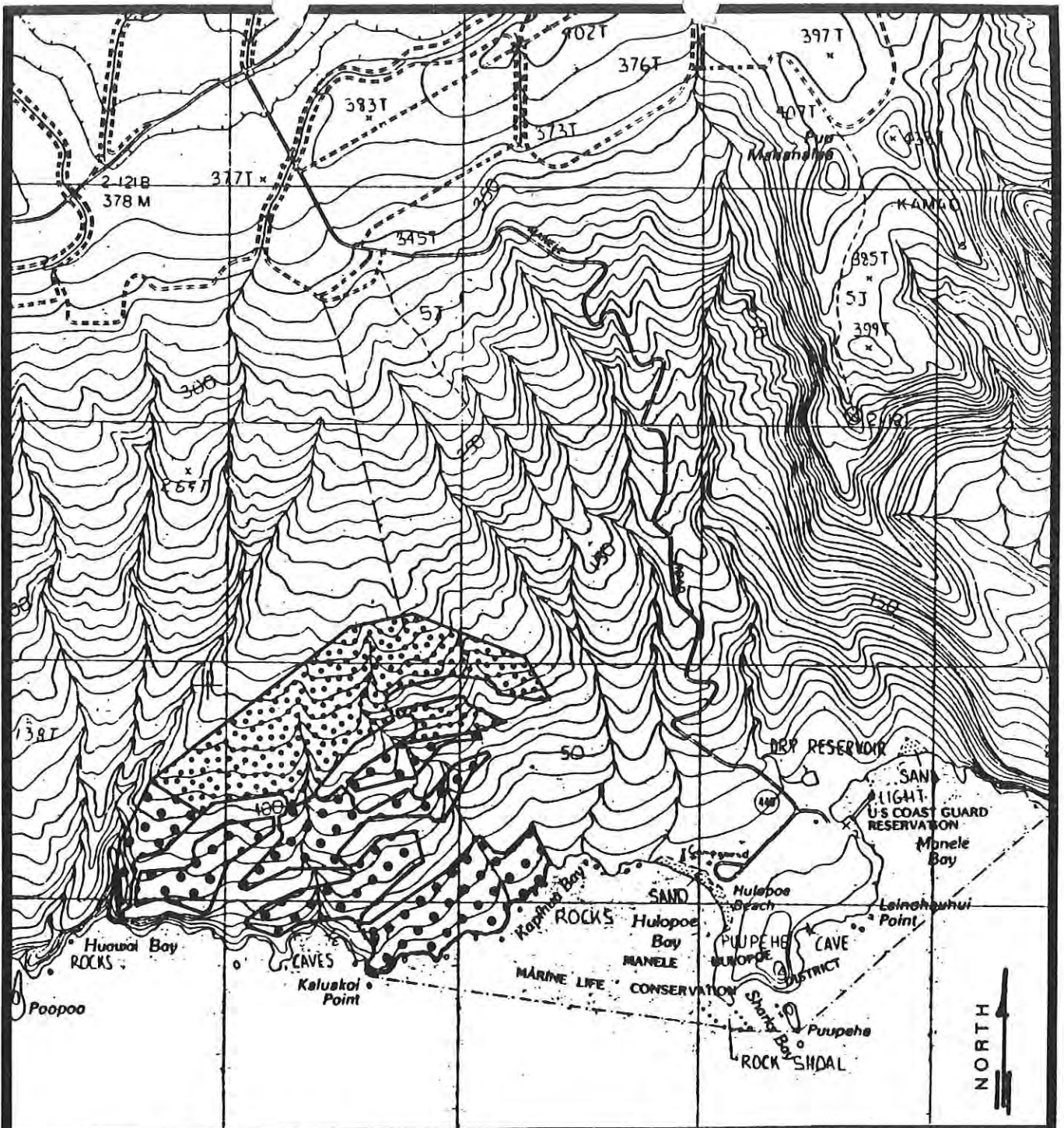
Filed and effective on  
October 24, 1994

Certified by:

  
Executive Officer

By   
TRUDY K. SENDA  
Commissioner

By   
ELTON WADA  
Commissioner



## LOCATION MAP

A92-674 / LANAI RESORT PARTNERS

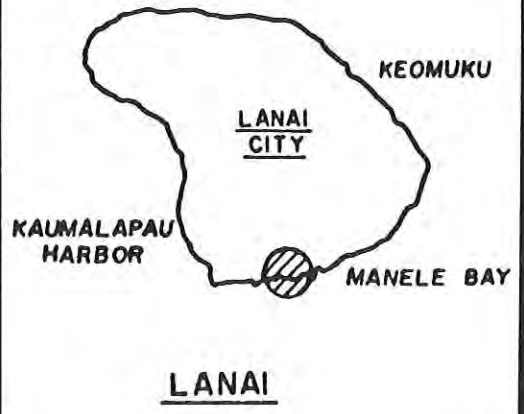
TAX MAP KEY : 4 - 9 - 2 : por. 49

MANELE, LANAI, MAUI

SCALE : 1" = 2,000 ft. ±

 INCREMENT I - RURAL TO URBAN

 INCREMENT II



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	Docket No. A92-674
	)	
LANAI RESORT PARTNERS	)	CERTIFICATE OF SERVICE
	)	
To Amend the Land Use District	)	
Boundary to Reclassify Approximately	)	
319.447 Acres of Land from the	)	
Agricultural District and Rural	)	
District into the Urban District	)	
at Manele, Lanai, Maui, State of	)	
Hawaii, Tax Map Key No.: 4-9-02:	)	
Por. 49	)	
<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:

NORMA WONG, Director  
Office of State Planning  
P. O. Box 3540  
Honolulu, Hawaii 96811-3540

CERT. BRIAN MISKAE, Planning Director  
Planning Department, County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

CERT. GUY A. HAYWOOD, ESQ.  
Corporation Counsel  
Office of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

CERT. JAMES T. FUNAKI, ESQ., Attorney for Petitioner  
Takushi Funaki Wong & Stone  
Suite 1400, Grosvenor Center  
733 Bishop Street  
Honolulu, Hawaii 96813

CERT. ALAN MURAKAMI, ESQ., Attorney for Intervenor  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, Hawaii 96813

CERT. LANAI PLANNING COMMISSION  
c/o Ms. Dolores Fabrao, Chairperson  
P. O. Box 398  
Lanai City, Lanai 96793

CERT. THOMAS C. LEPPERT, President  
Castle & Cooke Properties, Inc.  
650 Iwilei Road  
P. O. Box 2780  
Honolulu, Hawaii 96803

CERT. LANAI COMPANY, INC.  
Box L  
Lanai City  
Lanai, Hawaii 96763

CERT. RON MCOMBER, President  
Lanaians for Sensible Growth  
486 Akolu Place  
Lanai City, Hawaii 96763

DATED: Honolulu, Hawaii, this 24th day of October 1994.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer