

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of)
)
 PALAUEA BAY PARTNERS)
)
 To Amend the Agricultural Land)
 Use District Boundary into the)
 Urban Land Use District for)
 approximately 669.387 acres at)
 Paeahu, Palauea and Keauhou,)
 Makawao District, Maui, Hawaii,)
 TMK Nos.: 2-1-08: 43, 56 (por.),)
 71)

DOCKET NO. A93-689

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

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

SEP 20 1994 by *[Signature]*
Date Executive Officer

FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND DECISION AND ORDER

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LAND USE COMMISSION
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FINDINGS OF FACT,

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PALAUEA BAY PARTNERS, a Hawaii limited partnership, ("Petitioner"), filed a Petition for District Boundary Amendment on August 6, 1993, and a First Amendment to the Petition on June 29, 1994, (cumulatively "Petition"), pursuant to chapter 205, Hawaii Revised Statutes, ("HRS"), and chapter 15-15 Hawaii Administrative Rules ("HAR"), to amend the Land Use District Boundary to reclassify approximately 669.387 acres of land at Paeahu, Palauea and Keauhou, Makawao District, Island and County of Maui, State of Hawaii, specifically identified as Tax Map Key Nos. 2-1-08: parcels 43, portion of 56 and parcel 71, ("Property" or "Petition Area") from the Agricultural District to the Urban District, to develop a planned residential community, commercial area, two (2) golf courses, parks, open space, roadways and an electrical substation ("Project"). The Land Use Commission ("Commission") having examined the testimony and evidence

presented during the hearings, having heard the arguments of counsel, and having reviewed Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the Stipulation on Proposed Findings of Fact, Conclusions of Law, and Decision and Order by the Petitioner and the Office of State Planning and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Petition for District Boundary Amendment was filed with the Commission on August 6, 1993. An Amendment to the Petition was filed on June 29, 1994.

2. The Commission conducted a prehearing conference on October 18, 1993, at the Department of Business Economic Development and Tourism's Conference Room, 11th Floor, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii with representatives of the Petitioner, County of Maui Planning Department ("County"), and the Office of State Planning ("OSP"), present, and at which time the parties exchanged exhibits and witness lists.

3. Public hearings upon notice published on September 27, 1993, in the Honolulu Advertiser and the Maui News were conducted on November 17, 1993, January 28, 1994 and June 29, 1994.

4. Entering appearances at the hearings were David Z. Arakawa, Daniel K. Ide and Edward S. Kushi for Petitioners, Guy Archer, Gary W. Zakian, Keoni Fairbanks and Clayton Yoshida for

the County of Maui, and Rick Eichor, Abe Mitsuda and Lorene Maki for the Office of State Planning, State of Hawaii.

5. The County supported the Petition and filed a Statement of Position of the Maui County Planning Department in Support of the Petition on October 8, 1993. The County also filed Testimony of the Maui County Planning Department in Support of the Petition on November 12, 1993, and Addendum Testimony of the Maui County Planning Department in Support of the Petition on January 24, 1994.

6. The Office of State Planning supported the Petition and filed a Statement of Position of the Office of State Planning in Support of the Petition on October 5, 1993. The Office of State Planning also filed Testimony of the Office of State Planning in Support of the Petition With Conditions on November 3, 1993.

7. The Commission received written statements from Rae Loui, John Porter, James Williamson, Hiroshi Hirose, Clark Champion, Dorothy Williams, Richard Joseph Lafond, Jr., Masaru Yokouchi, Ed Bello, Joseph N. Donaghy, Al Gustavson, William M. Woods, Lunakanawai Hauanio, Al Boteilho, C. Pardee Erdman, David Jones, and John Louis Miller.

DESCRIPTION OF THE PROPERTY

8. On November 17, 1994, the Commission received public testimony from James Williamson, David Jones, John Porter, Diane Shepherd, Buck Joiner, John Miller, Dorothy Williams, John Connelly, Steve Suyat, Robert Stewart, James Rust, Nelson Armitage, Ray Skelton, Chris Takitani, Mickey Hewitt, Susan

Armitage, Ray Skelton, Chris Takitani, Mickey Hewitt, Susan Bradford, Dana Naone Hall, and Lesley Ann Bruce.

9. No requests for intervention were filed.

10. The Property is located in Maui, consists of approximately 669.387 acres, and is identified for planning and regulatory purposes as "Wailea Ranch". The Property is specifically identified as Tax Map Key No. 2-1-08: parcel 43, portion of 56, and parcel 71.

11. The Property is adjacent to the existing Wailea Resort to the west, Seibu Makena Resort to the south, Ulupalakua Ranch to the east, and Maui Meadows subdivision to the north.

12. Fee simple ownership of the Property is vested in the Petitioner, and approximately one (1) acre is owned by Maui Electric Company.

13. The Property encompasses two parcels approximately 370 acres mauka of Pi'ilani Highway, and 300 acres makai of Pi'ilani Highway. The Property is bisected by a narrow strip of land owned and reserved by Ulupalakua Ranch and the State of Hawaii respectively, for a possible extension (Increment III) of the State's Pi'ilani Highway to the up-country Kula region.

14. Primary access to the Property is to be at the Wailea Ike-Pi'ilani Highway access point. It is also expected that secondary access to the Property will be provided by Kaukahi Street.

15. The Property is presently located entirely in the Agricultural District, and except for the electrical substation,

is vacant, unimproved, and not cultivated or used for any agricultural or other productive purpose.

16. The Property is contiguous to the Urban District to the northwest, adjacent to the Rural District to the north and the Agricultural District to the east, south, and southwest.

17. The Petitioner has obtained approvals from the County for two (2) 18-hole golf courses, related facilities, and a six (6) acre public park, construction of which began in 1993.

18. Two brackish wells have been developed on site and well pumping permits have been obtained for non-potable irrigation water for the two 18-hole golf courses and other landscaped areas.

19. The site runs from an elevation of 300 to 650 feet to the upper limits of the Property, and is characterized by generally even slopes of 10 to 12 percent with some variation on some of the knolls and gullies in excess of 14 to 16 percent. The slope is relatively uniform. The Project is located in Zone C, area of minimal flooding, and the median annual rainfall in the Project area is approximately 15 inches.

20. The petition area is generally characterized by kiawe scrub land with a heavy cover of Buffalo Grass.

21. The Property soils, under the Land Study Bureau Classification system are rated E which is the lowest soil rating. On the Agricultural Lands of Importance to the State of Hawaii (ALISH) system, the Property is unclassified, not considered important agricultural land. In the past, the Property was occasionally used for grazing.

PROPOSAL FOR RECLASSIFICATION

22. The Wailea Ranch Project has been represented to be a master-planned residential community with single-family and multi-family residential units, village mixed-use, commercial area, two (2) championship golf courses, parks, open space, roadways, and an electrical substation.

23. The single-family residential portion of the Project has been represented to include approximately 450 to 570 units with a proposed density of 3.1 to 4.2 units per acre over approximately 138 acres. The size of the lots has been represented to range from 5,000 to 20,000 square feet. It has been represented that sales prices are expected to start at approximately \$250,000 for an 8,500 square foot lot in 1993 dollars.

24. The multi-family portion of the Project has been represented to be developed with approximately 1250 to 1435 multi-family units, at densities of 10 to 13 units per acre over approximately 111 acres. It has also been represented that the multi-family units, which would primarily include two and three bedroom units will be offered for sale at prices estimated from approximately \$204,000 to \$240,000 per unit in 1993 dollars.

25. The 24-acre Village Mixed Use component of the Project has been represented to provide a mixture of uses, including multi-family units, the golf clubhouse and support commercial related services to primarily support the recreational activities of the community.

26. The proposed commercial area has been represented to cover nine (9) acres, primarily to support Wailea Ranch community, and will be developed in phases. Leasable area shall consist of 70,000 to 90,000 square feet. Primary service area is to be the immediate project and surrounding communities such as Maui Meadows, Wailea and Makena residential communities.

27. The community plan for Wailea Ranch indicates that there will be a variety of housing types at Wailea Ranch. Moderate-income and gap group product will be included on site. The Petitioner will address the entire range of affordable housing needs through programs in cooperation with the State's Housing Finance and Development Corporation ("HFDC") and Maui County as part of its Project District Zoning pursuant to Section 19.45.050.A.1 of the Maui County Code. This procedure is consistent with the Maui County zoning process.

28. Petitioner intends to provide affordable housing as determined under standards defined by HFDC and the County of Maui. Alternatives which may be approved by HFDC include, but are not limited to affordable housing units onsite and offsite, in lieu contributions and any combination of those alternatives.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

29. The preliminary estimate for the cost of constructing the golf courses, park clubhouse, and on-site and off-site infrastructure improvements is approximately \$150,000,000.00 in 1993 dollars.

30. The County's land use entitlement procedure will take approximately two (2) years after approval at the state land use level. The development framework is about 15 to 17 years; in total, 19 years.

31. Petitioner has represented that the Project will be substantially completed within five (5) years after final county zoning approval, to include all infrastructure for the Project including roadways, utilities (including offsite sewer and effluent), two (2) golf courses, golf clubhouse, parks, maintenance facilities, comfort stations, and approximately 650 residential units.

32. The remaining portions of the Project will be built-out to satisfy market needs. The residential units within the Project are expected to be absorbed within the marketplace over a 16 to 19 year period, at rates averaging approximately 75 to 150 units a year for multi-family components, and approximately 45 units for single-family lots.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

33. Petitioner, is a Hawaii limited partnership, the general partner of which is BEAM 670 MAUI DEVELOPERS, a Hawaii general partnership, which in turn, is comprised of the following general partners: McCORMACK 670 MAUI, LTD., a Hawaii corporation and BRADLEY 670 MAUI, LTD., a Hawaii corporation. Petitioner's limited partners are: DAIICHI MAUI DEVELOPMENT, INC., a Hawaii corporation; and OKUSIG INVESTMENT PARTNERS, a Hawaii limited partnership which is an affiliate of ITOCHU CORPORATION. The

general partner of Okusig is J.C. WEST, INC., a California corporation. Mitsui Trust Bank is the lead lender and SL Capital Corp., a California Corporation, a wholly owned subsidiary of Showa Leasing, is a participating lender.

34. Petitioner has represented that it is in good standing with the State of Hawaii Department of Commerce and Consumer Affairs ("DCCA"), as are all of the Petitioner's general and limited partners. The Petitioner's financial statements submitted to the Commission show that the Petitioner has \$174 million in total assets and \$120 million in partners' equity.

35. Petitioner proposes to finance the Wailea Ranch Project with the assistance of Itochu, which as a large, multinational corporation with annual revenues over \$165 billion, has the capacity to use its own funds, or to borrow funds to develop and construct the Project improvements.

36. Itochu is a major capital participant in the Wailea Ranch Project through its affiliate, Okusig Investment Partners, which is a limited partner of the Petitioner.

37. The Petitioner's financial statement prepared as of June 30, 1993, were accurate and prepared in accordance with generally accepted accounting principles. The Petitioner has been applying these principles on a consistent basis since the Partnership's inception. The Petitioner's books have been audited by Arthur Anderson, independent, certified public accountants, during this period.

38. The "Development in Progress" balance was arrived at by including the land purchase price, land carrying costs,

construction, architectural, engineering and other related project development costs. The "Development in Progress" balance of \$174,390,085.85 as reflected in the June 30, 1993, Petitioner's financial statement is accurate.

39. The Petition area was purchased for cash and the purchase price was paid in full in May 1990. There are no amounts outstanding for the acquisition of the Petition Area.

40. As of June 30, 1993, the Petitioner's financial statement revealed that the difference between Current Assets and Current Liabilities was \$54,890. It is common for cash and working capital to fluctuate based on the timing of the loan draws received. Prior to the receipt of loan draws, working capital will appear to be low. Similarly, working capital will be very high upon the receipt of funds from the lender.

41. As of June 30, 1993, the general partner's capital account was approximately \$14,000. The Partnership agreement called for the limited partners to provide for all of the initial Partnership capital, and the general partners to provide project development and management expertise. The general partner's capital account balance is simply a reflection of the Partnership agreement.

42. A litigation that was ongoing at the time the Commission initiated its hearings in this docket was a lawsuit by Mr. Peter R. Morris against the limited partners ("lawsuit"). As part of a settlement, the lawsuit was dismissed and the receiver discharged.

43. As a result of the settlement of the lawsuit, there are no changes that affect the Petition Area. Petitioner still owns the entire Petition Area, with the exception of the 1 acre site of the Maui Electric substation, and still intends to develop the Petition Area as shown in the Petition.

44. There have been changes to other properties owned by the Petitioner as a result of the lawsuit. As part of the settlement in the lawsuit, Mr. Peter R. Morris (who previously had a working interest in the Partnership) received an option to acquire part of the Petitioner's makai property at Palauea Bay. On June 23, 1994, that property was conveyed to escrow for the benefit of Mr. Peter R. Morris, and the Petitioner no longer owns that portion of the makai property at Palauea Bay. Petitioner retains ownership of 36 acres of land at Palauea Bay including 1.5 to 2 acres on the sandy beach portion.

STATE AND COUNTY PLANS

45. The entire Property is located within the State Land Use Agricultural District as depicted on the State Land Use District Boundary Map, M-9 Makena. Each of the uses proposed in the Project is consistent with the Maui County General Plan, the Kihei-Makena Community Plan for Project District 9. The Maui County zoning for the Property is "Project District", "Agricultural", and "Open". The golf courses and clubhouse areas, comprised of 404 acres of the Property, is already in Project District zoning which allows such use and is in full conformance with Maui County Zoning. The balance of the Property needs rezoning to Project District designation upon redistricting

to the Urban District. The approval of the State Land Use District Boundary Amendment is required to permit development of the urban land uses envisioned by the Petitioner and the Maui County Community Plan. The Project is located outside of the County's Special Management Area ("SMA").

NEED FOR THE PROPOSED DEVELOPMENT

46. Petitioner's real estate and market analyst consultant, James E. Hallstrom, Jr., evaluated the Kihei-Wailea area relative to long-term demand prospects and qualitative attributes of the site, and based on those considerations, it was determined that there was a near and long-term demand for the Project and that it could compete successfully in the marketplace.

47. The Project could be absorbed within the marketplace over a 16 to 19 year period of time with absorption rates typically averaging somewhere in the neighborhood of 75 to 150 units a year for the multi-family component and approximately another 45 units for single family lots.

48. Total housing provided within the Project and the variety of housing types proposed would support the projected need of new residences within the Kihei and Wailea area over the long term.

49. Prices for residential units within the Project are projected to be as follows: Single family lot: starting from \$250,000 (1993 dollars) for average size of 8500 square feet. Multi-family unit: starting at \$204,000 to \$240,000 (1993

dollars) for moderate-income priced units, which would be 120% to 140% of median family income.

50. It is expected that the nine acres of commercial area can be supported primarily by the Project itself and residents therein. The secondary market would be from the area immediately around or adjacent to the Project such as Maui Meadows and Wailea Resort.

51. When fully built out, the consumer power of the Project will generate direct demand for upwards of 80,000 to 100,000 square feet of commercial (retail, restaurant and service) space or circa 8-10 acres of developed net site area.

52. The development of the Project's two golf courses has already been approved by the County. Apart from the quantitative demand the two proposed facilities are integral to enhancing the market acceptance levels of Wailea Ranch. The courses are significant in terms of enhancing the market potential of the Project.

ECONOMIC IMPACTS

53. Based on calculations by Petitioner's consultant James Hallstrom, Jr., there will be no net loss to either the County or State as a result of the Project. Cost of providing services to the community will be more than offset by property, income and excise taxes that will be generated onsite as a result of the mixed use nature of project.

54. Aggregate net benefits of the Project total approximately \$102 million. Gross public revenues are projected to be \$290 million. Total cost to the State and County is

estimated at approximately \$188 million. Figures are based on 1993 dollars, over a 20 year build-out period.

IMPACTS UPON RESOURCES OF THE AREA

55. During the initial development phasing there will be significant construction employment. Petitioner's consultant estimates employee job counts for Wailea Ranch, including all employment types, will total approximately 35,000 man year employment over a 20 year period. The annual man years created by the Project is expected to be 1,000 to 1,300 man years. Upon the Project's completion, Petitioner's consultant estimates that approximately 1953 permanent employment opportunities will be generated, 608 of which will be onsite, with the balance of 1,300 plus elsewhere on the island or in the State.

56. During construction over 20 years - 35,000 man years of employment both on and offsite, including about 12,000 onsite and 22,000 offsite will be generated. After construction there will be nearly 2,000 man years with 600 man-years onsite in job opportunities including golf course and project maintenance and retail shops.

SOCIAL IMPACTS

57. If the Project is built up to 2,000 units with an occupancy rate of 2.7 persons per unit, factoring in the second home type of owners and other factors that may create vacancies in the community, stabilized de facto population at any given time after total build-out will be approximately 3,960 persons.

58. Agricultural suitability of the Property is very low based on its generally arid conditions and poor quality of

the soils. The Project is expected to have minimal or no adverse impact on the agricultural resources of the State.

RECREATIONAL RESOURCES

59. The Project will significantly increase the level of recreational facilities in the Wailea-Makena area. The Petitioner has offered to dedicate approximately 13 acres to the County of Maui for park use. These 13 acres exceed Maui County's park dedication requirement.

60. Six of the 13 acres planned for park use are to be developed by the Petitioner as a little league baseball field. The field is to be improved and landscaped at Petitioner's cost, with backstops, score boards, comfort stations and similar facilities.

61. In addition to the 13 acres of community parks, two 18-hole golf courses, and practice range, private recreational facilities are anticipated to be developed by the Petitioner within various components of the Project. With the combined recreational resources that are planned, any potential impacts would be offset by the amount of recreational facilities provided onsite.

SCENIC AND VISUAL

62. Visual development of the Project will be consistent with the character of the Wailea area. Extensive landscaping both in common and developed areas would be characterized as landscaping similar to Wailea Resort. There will be prominent vistas throughout the site and of the surrounding coastline.

FLORA AND FAUNA

63. The Project will not have any significant adverse impact on birds and mammals. There will be no significant negative impact on botanical resources. Petitioner is propagating appropriate native species to be used in the landscaping of the Project.

ARCHAEOLOGICAL ASSESSMENT

64. Archaeological surveys have been done on site dating back to 1972. Two full reconnaissance surveys have been completed on the Property and no significant surface archaeological features were found. In previous reviews, the State has concluded that there would be no effect on significant archaeological or historic resources of the area.

65. Prior to filing of the zoning change application, an archaeological inventory survey of the southern portion of the Property which is covered with a'a (labelled as very stony land in Figure 7 of the Petition) shall be conducted to identify significant historic sites. A final report shall be submitted to the Department of Land and Natural Resources, State Historic Preservation Division for review and comments. If significant historic sites are identified, an acceptable mitigation plan shall be submitted to the State Historic Preservation Division for approval and shall be implemented prior to any construction activities.

FERTILIZER AND PESTICIDE USE

66. Through compliance with the approved Integrated Golf Course Management Plan ("IGCMP") and the practice of

responsible turf management, the Project is not expected to have any significant adverse impact on the basal aquifer, nearshore organisms or residents.

67. In July 1993, the Department of Health gave final approval to the IGCMF for the Project, which specifically addresses how golf courses should be developed and managed in a manner to minimize any potential impacts related to fertilizers or pesticides.

NATURAL HAZARDS

68. The Project is not susceptible to potential natural hazards such as tsunami, flood, volcanic events and earthquake. The Project site is not within the shoreline area, does not have any intermittent or perennial streams that would be cause for flooding concerns, and is outside volcanic event hazard areas.

ENVIRONMENTAL QUALITY

NOISE

69. The Project will have no significant noise impacts. Potential noise impacts include increased traffic volumes and construction activities. Possible mitigation measures include limiting construction activities to daytime hours, providing maximum setbacks, use of air conditioning, or sound attenuating walls.

AIR QUALITY

70. The Project will meet state and federal air quality standards. Air quality is expected to be affected by increased vehicular activity primarily by increased population;

increased demand for offsite electrical generation; offsite solid waste disposal and short term construction activities. Based on development of 2,000 units, the primary mobile source of air pollutants, carbon monoxide, would meet federal and state air quality standards. Exhaust emission generated by additional construction vehicles would not violate state and federal air quality standards. Short term construction impacts would be minimized by compliances with applicable State Department of Health air quality standards, dust control measures employed during construction periods, installation of 24-hour hot line by Petitioner, and establishment of new landscaping.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

HIGHWAYS AND ROADWAYS

71. The Project will generate an increase in traffic as it is developed. Projected regional highway improvements either forecasted or planned would mitigate the increase in traffic and no significant adverse impact is expected.

72. Access to the Project will be through a new roadway developed with an entry mauka of the existing Wailea Ike Drive/Pi'ilani Highway intersection.

73. The traffic report prepared by Petitioner's traffic consultant, Parsons Brinkerhoff, indicates that the improvements planned by the County and State, include:

(1) traffic signals at the Pi'ilani Highway/Kilohana Drive/Mapu Place intersection; (2) the proposed north-south collector road; (3) widening of the South Kihei Road; and (4) widening of Pi'ilani Highway. Assuming all of these improvements, the

intersections and highway will all operate under capacity during both peak hours, in the year 2010 (assuming total build-out). These planned improvements will be required with or without the Wailea Ranch Project.

74. Based on the traffic generated by the Project, the Petitioner's Traffic Engineer has recommended certain laneage improvements to Wailea Ike Drive/Pi'ilani Highway intersection, and traffic signalization when warranted by increased traffic counts.

WATER RESOURCES

75. Potable water demand for the Project at full build-out is estimated to be approximately 1.35 million gallons per day ("mgd"). Residential and commercial uses will require potable water at a rate of approximately 1.29 mgd, while golf course and clubhouse related facilities, including park would utilize potable water at approximately 60,000 gallons per day.

76. Adequate potable water to meet Project demands is expected to be available from the County of Maui water system based on County Department of Water Supply ("DWS") plans to develop additional sources of water, transmission lines and storage facilities, and the phased development schedule of Wailea Ranch.

77. It is expected that there will be adequate non-potable water for the irrigation needs of the Project. Plans call for utilization of treated effluent from the Kihei Wastewater Reclamation Facility which is currently undergoing improvements to upgrade the level of non-potable water available

to make it suitable for golf course irrigation purposes. Effluent quality upgrade and completion of transmission mains are expected to be completed by 1997. Petitioner has completed two onsite wells to support the irrigation water needs for the initial development of the golf course until such time that effluent water is available to the Project site and for future irrigation needs.

78. The Petitioner will coordinate closely with DWS and monitor the progress of ongoing improvements to the County water system. The Project's water improvements will be phased to coincide with the future availability of water.

WASTEWATER TREATMENT AND DISPOSAL

79. The project will be connected and serviced by the municipal wastewater system, the planned expansion of the Kihei Wastewater Reclamation Facility would be the regional facility that services the Property. As the Project is built out, the average wastewater volumes generated is expected to be accommodated within that facility. The Project is expected to generate approximately 768,150 gallons per day. If the Kihei Wastewater Reclamation Facility is unable to accommodate initial project development of the golf courses and a clubhouse, a temporary on-site private sewage treatment plant will be developed in consultation with the Department of Health.

DRAINAGE

80. The proposed Project is not expected to increase runoff or to cause significant adverse impact to the existing drainage of the area. The overall drainage in the area will

generally be improved through utilization and integration of the golf course's drainage system. Design of the drainage system and improved vegetation and retention basins and storage areas, such as within the golf courses would minimize or reduce runoff and improve drainage control.

SOLID WASTE DISPOSAL

81. On June 22, 1993, the County of Maui Department of Public Works approved a solid waste minimization plan for the Project area ("Solid Waste Plan"). The approved Solid Waste Plan addresses ways to minimize generation of waste and encourage recycling programs within the community.

82. The solid waste generated during construction will primarily be organic matter, including the clearing of shrub vegetation, most of which will be disposed of onsite. As the Project is developed, the community will utilize the county's landfill sites for disposal of materials.

ELECTRICITY AND TELEPHONE SERVICE

83. A Maui Electric Company substation is within the Property. With proper notification and scheduling, it will be able to accommodate the Project. Telephone services would be made available at the Property.

SCHOOLS

84. Petitioner has agreed to participate with the State Department of Education ("DOE") to provide its proportionate fair share of needed assistance to the school system. Petitioner has agreed to pay \$850 per unit (based on 2,000 proposed units) to the DOE as the developer's school

facilities fair share contribution, with 20 percent paid at the time a building permit is obtained, and 80% paid, through escrow, at the time of closing on each unit. A quarterly report will be provided to the DOE by developer's escrow company listing the units sold and total amount of funds transferred to the DOE during that period. No monies paid to the DOE under this condition are to revert to the Petitioner or developer.

POLICE AND FIRE PROTECTION

85. Police and fire services will be provided from existing county facilities. Petitioner has agreed to provide at no cost, up to one acre for a future County fire station on-site. The Petitioner and County have agreed that the exact location and parcel size will be determined during the county zoning process.

HEALTH CARE FACILITIES

86. Maui Memorial Hospital serves as the primary hospital for the region and would be able to meet future needs of the community as it is developed and the population is increased.

87. Emergency facilities are located in Wailea Shopping Village, a medical clinic, and an emergency ambulance service which is available in Kihei, would be able to serve the Project.

88. Additional civil defense sirens may be required or installed onsite as standard provisions as the communities expand. There are adequate roadways to provide for evacuation routes. The Petitioner has agreed to fund and construct adequate civil defense measures as determined by the State and County of Maui civil defense agencies.

CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

89. The Property is contiguous to existing Urban Districts, including the existing urban development at Wailea Resort, the adjacent planned development of Seibu Makena Resort and the existing Maui Meadows subdivision. The Proposed Project is consistent with Maui County's Community Plan and could be characterized as an "infill" development. The Project would have minimal impact to agriculture and would create additional commercial centers of employment.

90. The Project also provides for extensions to existing and planned infrastructure systems. Public Services either exist or will be expanded to correspond with the projected population expansion for the area.

91. The study prepared by Petitioner's real estate and market analyst consultant has shown a significant demand and market for the proposed Project. The Wailea Ranch Project would serve as an appropriate expansion for the urban growth areas adjacent to the Wailea-Makena resorts destination area.

CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

92. The proposed Wailea Ranch Project supports and is consistent with the applicable objectives, policies and priority guidelines of the Hawaii State Plan and the State Functional Plans.

ORDER

IT IS HEREBY ORDERED that the Property being the subject of Docket No. A93-689 by Palauea Bay Partners consisting of approximately 669.397 acres situated at Paeahu, Palauea and Keauhou, Makawao District, Island of Maui, and being more particularly described as Tax Map Key Nos. 2-1-08: parcel 43, and portion of parcel 56 and parcel 71, shall be and the same is hereby reclassified from the Agricultural District to Urban District, and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, with an addendum dated January 1, 1994, and as periodically amended. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the State Housing Finance and Development Corporation and the County of Maui pursuant to Section 19.45.050.A.1 of the Maui County Code.

2. Petitioner shall implement effective soil erosion and dust control measures during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

93. The Project is consistent with applicable objectives and policies of the Hawaii Coastal Zone Management Program.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding adopted 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 State Land Use Commission Rules, under chapter 15-15, HAR, this Commission finds upon the clear preponderance of evidence that the reclassification of approximately 670 acres, which is the subject of this Petition, from the Agricultural District to the Urban District, subject to the conditions stated in the Order below, is reasonable, not violative of section 205-2, HRS and consistent with the Hawaii State Plan as set forth in chapter 226, HRS, and the Coastal Zone Management Program as set forth in chapter 205A, HRS.

3. Petitioner shall cooperate with the State Department of Health and the County Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

4. Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works. When feasible, Petitioner shall contribute its pro-rata share and be required to connect to the County wastewater system and the Petitioner's temporary Sewage Treatment Plant shall be abandoned and dismantled.

5. Petitioner shall comply with the environmental health conditions from the State Department of Health, dated January, 1992 (Version 4), and entitled "Twelve (12) Conditions Applicable to All New Golf Course Development."

6. Petitioner shall participate in an air quality monitoring program, under such terms as may be mutually agreeable between the Petitioner and the State Department of Health.

7. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County of Maui civil defense agencies.

8. Pursuant to the Agreement with the Department of Education ("DOE"), Petitioner shall contribute to the development, funding and/or construction of school facilities, by paying \$850 per unit (based on 2,000 proposed units) to the DOE

as the developer's school facilities fair share contribution, with 20 percent paid at the time a building permit is obtained, and 80% paid, through escrow, at the time of closing on each unit. A quarterly report will be provided to the DOE by developer's escrow company listing the units sold and total amount of funds transferred to the DOE during that period. No monies paid to the DOE under this condition are to revert to the Petitioner or developer.

9. Petitioner shall fund, design, and construct its pro-rata share of the necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall revise the traffic study to re-examine the required mitigation measures if the roadway improvements cited in prior studies were not assumed to be in place. The revised report shall also specify the improvements the developer will be committed to provide. The Petitioner shall contribute his pro-rata share to traffic improvements to be determined by the State Department of Transportation and County of Maui.

10. Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawaii residents.

11. Petitioner shall fund and construct its pro-rata share for adequate water source, storage, and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be

coordinated and approved by the appropriate State and County agencies.

12. Petitioner shall fund the design and construction of its pro-rata share of the drainage improvements required as a result of the development of the property in compliance with appropriate State and County agency requirements.

13. Petitioner shall contribute its pro-rata share to a nearshore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

14. Prior to filing of an amendment to the Project District Zoning Ordinance for Project District 9, an archaeological inventory survey of the southern portion of the Property which is covered with a'a (labelled as very stony land in Figure 7 of the Petition) shall be conducted to identify significant historic sites. A final report shall be submitted to the Department of Land and Natural Resources, State Historic Preservation Division for review and comments. If significant historic sites are identified, an acceptable mitigation plan shall be submitted to the Historic Preservation Division for approval and shall be implemented prior to any construction activities.

15. Petitioner shall provide at no cost to the County one (1) acre of land along Piilani Highway for a future fire station at a location satisfactory to the County.

16. Petitioner shall develop the Property in substantial compliance with the representations made to the

Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

17. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

18. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

19. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

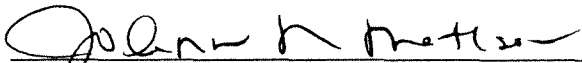
20. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the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

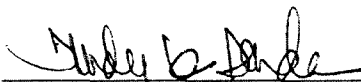
21. The Commission may fully or partially release the conditions provided herein as to all or any portion of the

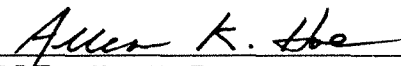
Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

Done at Honolulu, Hawaii, this 20th day of September 1994,
per motion on September 8, 1994.

LAND USE COMMISSION
STATE OF HAWAII

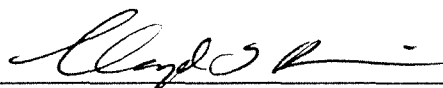
By 
JOANN N. MATTSON
Chairperson and Commissioner

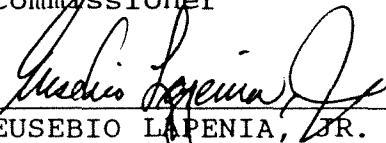
By 
TRUDY K. SENDA
Vice Chairperson and Commissioner

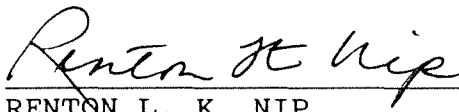
By 
ALLEN K. HOE
Commissioner

By (abstain)
M. CASEY JARMAN
Commissioner

By (abstain)
ALLEN Y. KAJIOKA
Commissioner

By 
LLOYD F. KAWAKAMI
Commissioner

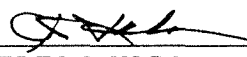
By 
EUSEBIO LAPENIA, JR.
Commissioner

By 
RENTON L. K. NIP
Commissioner

Filed and effective on
September 20, 1994

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A93-689
PALAU EA BAY PARTNERS)	
To Amend the Agricultural Land)	FINDINGS OF FACT,
Use District Boundary into the)	CONCLUSIONS OF LAW, AND
Urban Land Use District for)	DECISION AND ORDER
approximately 669.387 acres at)	
Paeahu, Palauea and Keauhou,)	
Makawao District, Maui, Hawaii,)	
TMK Nos.: 2-1-08: 43, 56 (por.),)	
71-)	

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
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CERT. DAVID Z. ARAKAWA, ESQ., Attorney for Petitioner
Penthouse 1, Oceanview Center
707 Richards Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 20th day of September 1994.


ESTHER UEDA
Executive Officer