



RULES OF PRACTICE AND PROCEDURES OF THE PLANNING COMMISSION



LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 04 PM '88

**COUNTY OF
KAUAI**

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RULES OF PRACTICE AND PROCEDURE
OF THE KAUAI COUNTY PLANNING COMMISSION

Chapter I. General Provisions.

1-1-1 Purpose. The intent and purpose of the Rules of Practice and Procedures of the Kauai County Planning Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open and orderly manner.

1-1-2 Definitions. As used in these Rules, except as otherwise required by context:

- (1) "Agency" means the Planning Department of the County of Kauai or its authorized representative.
- (2) "Commission," "Chairman," and "Commissioner" means the Planning Commission of the County of Kauai, State of Hawaii, its Chairman and a member thereof, respectively.
- (3) "Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
- (4) "Director" means the Planning Director of the County of Kauai.
- (5) "Declaratory Ruling" means a ruling by the Commission determining the rights of a party on a question of law or any rule or order of the Commission.
- (6) "Ex parte communication" means private communications or arguments with members of the Commission or its hearing officer as to the merits of a proceeding with a view towards influencing the outcome of the cause.
- (7) "Hearing"
 - a) "Agency hearing" refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kauai and other applicable laws.
 - b) "Public hearing" means a quasi-legislative hearing regarding the adoption, repeal, and amendment of rules and ordinances and a means to solicit general public input on matters before the Commission pursuant to the HRS and County Codes of Ordinances.
- (8) "Hearing Officer" means any person or persons designated and authorized by the Commission to conduct a hearing for the purpose of taking testimony and to report his or their findings of facts and conclusions of laws with his or their recommendations to the Commission on matters that are within the jurisdiction of the Commission.
- (9) "HRS" means Hawaii Revised Statutes.
- (10) "Intervenor" means a person who petitions to intervene in a contested case proceeding and is admitted as a party.

- (11) "Meetings" means the convening of the Commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Commission has supervision, control, jurisdiction, or advisory power.
- (12) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.
- (13) "Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies and federal, state and county departments or agencies.
- (14) "Petitioner" means a person who seeks permission or authorization which the Commission may grant under statutory or other authority delegated to it; and a person seeking relief not otherwise designated in these Rules.
- (15) "Presiding Officer" means and shall include any member of the Commission or a hearing officer duly designated as such. Unless otherwise designated, the Chairman shall be the presiding officer.
- (16) "Proceeding" means any matter that is brought before the Commission in which it has jurisdiction.
- (17) "Public Record" means the same as defined in Chapter 92, HRS, and shall include maps, rules and regulations, written statements of policy or interpretation formulated, adopted or used by the Commission in its functions, all decisions, orders, minutes of Commission meetings and records of any docket on file with the Commission but shall not include records which invades the right of privacy of an individual.
- (18) "Rules" means the Rules of Practice and Procedure before the Commission.

CHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

1-2-1 Organization. At the regular January meeting of each year, the Commission shall elect a Chairman and Vice-Chairman from among its members. They shall serve for a term of one year from January to December 31st of each year or until their successors are duly elected. The terms of any committee chairperson and members shall coincide with the term of the Commission Chairman who appointed them.

1-2-2 Meetings. (a) Regular meetings of the Commission shall be held on the second and fourth Wednesdays of each month, or on such day as the Commission may designate, if such Wednesday is untimely. The place of meeting shall be the Council Room of the County Building in Lihue, or such other place as may be designated by the Commission.

(b) A regular meeting need not be held when the agency determines that forthcoming hearing workloads and agenda items can be otherwise accommodated at an ensuing meeting.

(c) Subject to the conditions prescribed by these rules, special meetings may be called at any time by the chairperson, the director, or a majority of the Commission who shall state the subject thereof, and the acts and business of the Commission at such special meeting shall be confined to such matters.

(d) Each member shall be given an oral or written notice at least one (1) day prior to a special meeting, unless waived by such member.

(e) The Commission shall prepare and post an agenda for all meetings of the Commission and its committees identifying the date, time, place and subjects to be considered in compliance with the provisions of Chapter 91 and 92, HRS.

1-2-3 Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be to the next meeting of the Commission.

1-2-4 Quorum and Number of Votes Necessary for a Decision. Unless otherwise provided by law, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the Commission is entitled (four (4)) shall be necessary to make a Commission decision valid, failing which there shall have been no valid action taken.

1-2-5 Continuation of Decision Making. Any matter which fails to be validated by a majority concurrence of the Commission may be continued to any subsequent regular meeting, at which time it shall be made the special order of the day.

1-2-6 Effective Date of Commission Decision. Unless a specific effective date is set forth, the effective date of a decision rendered by the Commission shall be the date of the meeting at which such valid decision was made.

1-2-7 Minutes and Transcripts. (a) Meetings. In accordance to HRS 92-9, the Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members.

- (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the Commission;
- (10) Take into consideration such matters as shall not be within the scope of the duties or powers of any standing committee of the Commission; or as may be referred by the Commission, and to report thereon, together with such recommendations relative thereto as deemed advisable; and
- (11) Represent the Commission in all functions, not otherwise directed by the Commission, as the titular head of the Commission.

(b) Clerk. The Planning Director shall serve as Clerk of the Commission and shall be directly responsible, or through staff members, to provide the following services:

- (1) To receive, submit, and coordinate all matters properly brought before the Commission in consultation with the Chairman;
- (2) To provide the agenda support materials for all meetings;
- (3) To read bills, resolutions, and other matters to the Commission, if so required;
- (4) To forward at once to the proper parties all communications and other matters, either directly or through a committee, as the case may be;
- (5) To deliver immediately to the chairperson of the appropriate committee all petitions, resolutions, bills or other matters, as may be duly referred to such committee;
- (6) To serve in all matters as ex-officio clerk of the Commission and to do and perform all clerical duties and services pertaining to such position as the Commission shall from time to time direct, and such as shall by law or these rules, or rules hereafter adopted, be assigned or such as properly pertain to such position;
- (7) To have charge of all records of the Commission and be responsible for the same.

1-2-9 Committees. There shall be two kinds of committees:

1. Standing Committees, which shall not exceed three (3) members each.
2. Select Committees, which shall not exceed three (3) members each.

1-2-10 Committee Organization. (a) All committees of the Commission, contemplated under these rules, shall be appointed by the Chairman subject to confirmation by a majority vote of the members of the Commission.

(b) The first person named on a committee shall be the chairperson unless otherwise designated. The Committee Chairman shall call and preside over committee meetings and may designate temporary alternate members in order to achieve a quorum and to take action in cases where members are absent.

(c) No member shall serve as chairperson of more than one Standing Committee of the Commission.

(d) No committee shall meet while the Commission is in session.

(e) Committees shall be under the control and subject to the orders and appropriate rules of the Commission, and shall faithfully carry out such orders.

(f) Vacancies on the standing committees shall be filled by the Chairman of the Commission unless otherwise designated in subsection (b) above and no member of the standing committee shall resign therefrom without the consent and approval of the Commission.

(g) A majority of the entire membership to which the committee is entitled shall constitute a quorum and the majority vote of the membership present shall be necessary to take any action.

1-2-11 Standing Committees. The Commission may appoint the necessary standing committees to further the responsibilities and functions of the Planning Commission. There shall be a Subdivision Committee whose purpose shall primarily be to check all applications for subdivision and submit to the Commission its recommendations thereon.

1-2-12 Select Committees. The Select Committee shall consist of three (3) members, unless otherwise ordered by the Commission and shall be appointed from time to time as the occasion requires, serving until discharged after finally reporting on the special matter referred to it.

1-2-13 Committee Reports. (a) All reports of committees shall be submitted in writing.

(b) Standing Committees shall report from time to time upon all matters referred to them.

(c) Select Committees shall report as required by the Commission upon all matters referred to them, unless further time is allowed by vote of the Commission.

(d) Whenever any matter is referred to a committee, it shall be the duty of such committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, witnesses may be summoned and examined, documents and records searched, and everything done to bring all facts pertaining to such matter before the Commission.

(e) The report of the committee on any matter shall provide an evaluation and recommendation as to the disposal of such matter.

1-2-14 Voting. (a) There shall be three methods of ascertaining the decision of the Commission upon any matter:

1st, by a call of the roll of the members and a record made by the Clerk of the vote of each member;

2nd, by viva voce vote;

3rd, by unanimous consent.

(b) Whenever the Commission is ready to vote on any question, the Chairman, after stating the question, shall put such question to a vote,

then announce the result of the vote to the Commission. Upon the request of any member of the Commission, the Clerk shall call the role. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote.

(c) No member shall refrain from voting unless excused by the Commission.

(d) Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

1-2-15 Disclosure of Interest. Whenever a possible direct personal financial interest on any matter pending before the Commission or any of its committees becomes apparent, the affected member shall promptly make a disclosure to the Commission. When a member has made a disclosure of interest and is deemed by the Commission to have a conflict of interest, such conflict shall apply to all subsequent actions relating to said matter. A member with a conflict of interest shall refrain from voting except where the member's vote is required to constitute a quorum to act in which event he shall be permitted to vote.

1-2-16 Petitions and Submittals to the Commission. (a) Any person may petition the Commission. Petitions and other submittals shall be in writing, signed by the petitioners or persons presenting them.

(b) All petitions, submittals and other matters addressed to the Commission shall be appropriately disposed of by the Chairman including the referral to the proper committee, unless otherwise directed by the Commission.

(c) Every petition, submittal or other matter must be filed pursuant to Chapter 91, Administrative Procedures Act and Chapter 92, Sunshine Law, HRS, and all other applicable State and County laws and provisions established herein. All Commission business may be filed either with the Clerk or the Chair.

1-2-17 Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing if requested by the Chair, and shall be read from the Clerk's desk, if so desired.

1-2-18 Motions and Priorities. (a) No motion shall be received and considered by the Commission until the same has been seconded.

(b) After a motion is stated or read by the Chair, it shall be deemed in the possession of, and shall be disposed of by vote of the Commission. However, it may be withdrawn by the mover with the consent of the second at any time before a vote or amendment.

(c) Whenever any question shall be under discussion, the motions in order relative thereto prior to a vote shall be: first, to table; second, to previous question; third, to modify debate; fourth, to postpone definitely; fifth, to commit or recommit; and sixth, to amend; which motions shall have precedence in the order named. The first four (4) motions shall be decided without debate, and shall be put as soon as made.

(d) When any of said motions shall be decided in the negative, the same shall not be revived at the same meeting relative to the main question under discussion. If all are negative as aforesaid, the only remaining question shall be as to the passage or adoption of the application or any other main question.

(e) No member shall speak longer than five (5) minutes, nor more than twice on the same question without leave of the Commission, unless the member is the mover of the question pending, in which case the member shall be permitted to speak in reply, but not until every member choosing to speak shall have had an opportunity to speak.

1-2-19 Reconsideration. When a motion has been once made and carried in the affirmative or negative, only a member who voted with the prevailing side may move, at the same meeting, or at the next meeting, to reconsider it, and such motion shall take precedence over all other questions except a motion to adjourn.

1-2-20 Order and Decorum. (a) No person shall sit at the desk of the presiding officer or clerk, except by permission of the Chairman, or at the desk of any commissioner, except by permission of that commissioner.

(b) While the Chair is putting any question or addressing the Commission, no one shall walk out of the meeting room or across the floor; nor shall anyone entertain a private discourse, or pass between the member and the Chair while the member is speaking.

(c) When members are about to speak, they shall address themselves to the Chair, and shall confine their comments to the question under discussion, avoiding personalities.

(d) If any member, in speaking or otherwise, transgresses these rules of procedure, the Chair, or any member, may call him to order, and when so called to order, he shall immediately quiet down. The Chair shall then decide the question of order without debate, subject to an appeal to the Commission. In addition, the Chair may call for the sense of the Commission on any question of order.

(e) Whenever any person shall be called to order while speaking, the member shall be deemed to be in possession of the floor when the question of order is decided, and may proceed with the matter under discussion within the ruling made on the question of order.

(f) No unauthorized person shall enter the floor of Commission, except by permission of the presiding officer. The term "floor of Commission" shall mean that portion of the meeting room generally occupied by the Commission and as may be specifically designated by the presiding officer.

(g) Any person or persons who willfully disrupt a meeting or hearing to prevent and compromise the conduct of the hearing may be removed from the room.

1-2-21 Order of Business. (a) After roll-call and the approval of the agenda and minutes, the Presiding Officer shall call for business in the following order:

1. General business matters before the Commission and announcements
2. Communications
3. Committee Reports
4. Unfinished Business
5. Hearings
6. New Business

(b) The Commission may, by previous motion, direct that any matter be made a special order of business, which shall take precedence as indicated in the order.

(c) The unfinished business in which the Commission was engaged at the time of the last adjournment shall have the preference in the order of the day except for general business and announcements, communications, and committee reports, and no other business shall be received until such unfinished business is disposed of, unless by special leave of the Commission.

(d) All questions relating to priority of business to be acted upon by the Commission shall be decided without debate.

(e) Hearings may be scheduled at any time of the agenda pursuant to due notice requirements.

1-2-22 Question of Order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. Such question shall be decided by the Chair, without debate, subject to an appeal to the Commission.

1-2-23 Computation of Time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the close of business of the next day which is not a Saturday, Sunday, or holiday.

1-2-24 Attendance. No member shall be absent from the service of the Commission, unless the member has so advised the Chair prior to the meeting or be sick and unable to attend.

1-2-25 News Reporters. News reporters wishing to take notes of the business of the Commission may be assigned such places by the Chair without interfering with the convenience of the Commission.

1-2-26 New Rules and Amendments. No rule of the Commission shall be altered or rescinded, nor shall any new rules be adopted without the affirmative vote of at least four (4) members of the Commission.

1-2-27 Suspension of Rules. For good cause, the Commission may waive or suspend by a majority vote any rule or procedure established herein.

1-2-28 When Rules Are Silent. Except for any applicable provisions of the laws of the State of Hawaii, the Robert's Rules of Order, as revised, shall govern the Commission when not inconsistent with these Rules.

CHAPTER 3

GENERAL REQUIREMENTS IN PROCEEDINGS BEFORE THE PLANNING COMMISSION

1-3-1 Appearance Before The Commission. (a) Who may appear. Any party to a proceeding before the Commission may appear in his own behalf or as an authorized representative of a partnership, corporation, trust or association, and an officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the Commission. If a party is to be represented by an attorney, any attorney who appears before the Commission shall be in good standing before the Hawaii Supreme Court.

(b) Code of Ethics. Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he is legally authorized to do so and shall comply with the laws of this State and the several Counties, and the rules and regulations of this Commission, and further, he shall maintain the respect due to the Commission and shall never deceive or knowingly present any false statements of fact or law to the Commission. The Commission may at any time require any person appearing before the Commission in a representative capacity to show proof of his authority and qualification to act in such capacity.

1-3-2 Requirements for Filing of Documents. (a) Time and Place. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda and other legal papers required to be filed with the Commission in any proceeding shall be filed at the office of the Commission at 4280 Rice Street, Lihue, Hawaii, within the time limit prescribed by statute, Rules and Regulations, or by order of the Commission. Unless otherwise ordered, the date on which the papers are accepted shall be regarded as the date of filing.

(b) Format. All submittals shall be clearly and permanently legible and in such form as may be prescribed by the Commission (8-1/2 x 13 or 8-1/2 x 11). The original shall be signed in ink by each party or his counsel and show the address of such person.

(c) Copies. Unless otherwise required by these Rules or the Commission, there shall be filed with the Commission an original and twelve (12) copies of each submittal thereof. Additional copies shall be promptly provided if the Chair or the Director so requests.

(d) Extensions of Time. Whenever a party is required to file a pleading within the period prescribed or allowed by these Rules, by notice given thereunder or by an order or regulation, the Chairman, or in the absence of the Chairman, the Director may (1) for good cause before the expiration of the prescribed period, with or without notice to the parties, extend such period; (2) pursuant to a stipulation between all of the parties, extend such period; and (3) permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion, unless it is made during the course of a hearing.

(e) Amended Pleadings. All pleadings may be amended at any time prior to hearing. Amendments offered prior to hearing shall be served on all parties and filed with the Commission. All parties shall have the opportunity to answer and be heard on amendments filed after hearing commences, and the Commission shall decide whether such amendments shall be allowed.

1-3-3 Service of Process. (a) By Whom Served. The Commission shall serve copies of all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

(b) Upon Whom Served. All papers served by either the Commission or any party shall be filed and served upon all parties or their counsel and shall contain a certificate of service attesting to such service. Any counsel entering an appearance subsequent to the initiation of such proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(c) Service Upon Parties. The final decision and order, letter of approval, and any other paper required to be served by the Commission upon a party, shall be served upon such party, or his counsel of record.

(d) Method of Service. Service of papers shall be made personally or, unless otherwise provided by law, by certified mail to the last known address of the party or his counsel of record.

(e) When Service Complete. Service upon parties, other than the Commission, shall be regarded as complete upon mailing unless otherwise specifically directed by the Commission.

CHAPTER 4

INTERVENTION PROCEEDINGS BEFORE THE PLANNING COMMISSION

1-4-1 Who May Intervene. (a) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed project that their interest in the proceeding is clearly distinguishable from that of the general public, shall be admitted as parties-intervenors upon timely written application for intervention.

(b) All other persons may apply in writing to the Commission for leave to intervene as parties.

1-4-2 Intervention; Grounds for Denial. Leave to intervene may be granted, except in matters over which the Commission exercises only advisory functions, provided that the Commission or its hearing officer, if one is appointed, may deny an application to intervene when in the Commission's or hearing officer's sound discretion it appears that:

- (1) the position of the applicant for intervention concerning the proposal is substantially the same as the position of a party-intervenor already admitted to the proceeding; or
- (2) the admission of additional parties-intervenors will render the proceedings inefficient and unmanageable; or
- (3) the intervention will not aid in the development of a full record and will overly broaden issues.

1-4-3 Method of Filing; Timing. Petitions to intervene shall be in writing and in conformity with these rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

1-4-4 Contents of Petition. The petition shall state:

- (1) The nature of petitioner's statutory or other right.
- (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property.
- (3) The specific issues to be raised or contested by the petitioner in the contested case hearing.
- (4) The effects of any decision in the proceeding on petitioner's interest.

If applicable, the petition shall also make reference to the following:

- (5) Other means available whereby petitioner's interest may be protected.
- (6) Extent petitioner's interest may be represented by existing parties.

- (7) Extent petitioner's interest in proceeding differs from that of the other parties.
- (8) Extent petitioner's participation can assist in development of a complete record.
- (9) Extent petitioner's participation will broaden the issue or delay the proceeding.
- (10) How the petitioner's intervention would serve the public interest.

1-4-5 Consolidation of Parties. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single party represented by a single counsel or agent.

1-4-6 Filing Fees. Petitions for intervention shall be accompanied by a filing fee of \$15.00. In the event the petition for intervention is denied, such fees shall be reimbursed.

1-4-7 Arguments For or Against Intervention. The petitioner for intervention shall be given an opportunity to argue on behalf of the petition to the Commission. The other parties shall then be given an opportunity to comment on or oppose the petition. If any party opposes the petition for intervention, the party shall file objections thereto as soon as practicable or state the objections for the record.

1-4-8 Action. All petitions to intervene or in opposition to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the hearing.

1-4-9 Denial of Intervention. Upon denial of an intervention petition by the Commission, the Commission shall issue a written decision.

CHAPTER 5

PUBLIC HEARING PROCEDURES

1-5-1 Presiding Officer. The public hearing for the adoption, amendment, or repeal of rules and regulations, or ordinances shall be heard before the Commission and presided over by the Chairman of the Commission, or, in his absence by another member designated by the Commission or by a hearing officer. The hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to assure the orderly conduct of the hearing.

1-5-2 Continuance of Public Hearing. Each such public hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the Presiding Officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

1-5-3 Order of Public Hearing. At the commencement of the hearing, the presiding officer may acknowledge the notice(s) of hearing and shall then conduct the proceeding in the following manner:

- (a) Staff Findings. The Department shall present its findings.
- (b) Questions on Staff Findings. Staff findings shall be subject to questioning by Commissioners.
- (c) Open Hearing to Public. The presiding officer shall suspend the rules and the hearing shall then be opened to the public. Members of the public wishing to testify shall be subject to questioning by the Commission and the Department. The applicant or his authorized representative shall be given the first opportunity to present testimony.
- (d) Reconvene Meeting. Upon completion of all testimony presented, the presiding officer shall close the hearing and call the meeting back to order.
- (e) Department Conclusion and Recommendation. The Department shall present its conclusion and recommendation based on the findings presented and after evaluating all pertinent testimony.
- (f) Motion on Application. The presiding officer shall entertain a motion on the public hearing matter. A motion to postpone definitely may be made prior to presentation of the Department's conclusion and recommendation should findings of fact or testimony received warrant further study.

1-5-4 Submission of Testimony. (a) Each witness before proceeding to testify shall state clearly into the microphone his name, address, and whom he represents at the hearing, and shall give such information respecting his appearance as the presiding officer may request. (b) The presiding officer shall confine the testimony to the matters for which the hearing has been called. Testimony to be presented should be concise, factual and to the point. (c) In order to allow persons to have an equal amount of time to testify, or to prevent cumulative unnecessary, unduly repetitive or irrelevant testimony, the presiding officer may limit the amount of time for testimony per individual. If more time is needed, testifiers may continue

speaking after the last speaker is completed. In cases where a speaker is in agreement with testimony previously given, the speaker need not repeat the similar testimony but may state that he or she supports the testimony made previously. (d) Every witness may be subject to questioning by the members of the Commission or by any other representative of the Commission; questions by persons or agencies shall be permitted only at the discretion of the presiding officer.

1-5-5 Oral and Written Presentation at Public Hearing. All interested persons or agencies will be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. An original and twelve (12) copies are required when submitting written comments, recommendations, replies, or exhibits. The Chair may waive the reading of written testimony provided such was received by the Commission seven (7) days prior to the hearing. The presiding officer shall allow the submission of additional written testimony up to seven (7) days after the close of the hearing in cases where the Commission does not take action on the same day the hearing was held.

1-5-6 Modification of Rules. The presiding officer may modify any of the foregoing rules to assure a fair hearing in the event circumstances of the hearing make such modification desirable.

CHAPTER 6

AGENCY HEARING PROCEDURES

1-6-1 Presiding Officer. (a) In all agency hearings before the Commission, the Chairman, or one of the Commissioners, or a hearing officer duly appointed and designated shall preside at the hearing.

(b) The presiding officer shall control the course of hearings, administer oaths, receive evidence, hold appropriate conferences before or during hearings, rule upon all objections or motions, receive offers of proof, fix the time for the filing of submittal, dispose of any other matter that normally and properly arises in the course of a hearing, and take all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.

1-6-2 Parties. The Planning Department, admitted intervenors and the petitioner shall in every case be parties to such proceedings.

1-6-3 Continuance. The presiding officer may, for good cause, postpone or continue any hearing from day to day, or to a later date, or to a different place without notice other than the announcement thereof at the hearing.

1-6-4 Ex Parte Communication. No person whether or not a party to a proceeding before the Commission shall communicate ex parte regarding any subject matter of the proceeding with any member of the Commission or hearing officer who will be a participant in the decision-making process.

1-6-5 Notice of Hearing. (a) The notice of hearing will be served upon all parties and persons on the mailing list for this purpose at their last recorded address at least fifteen (15) days prior to the hearing date, unless otherwise provided by law. Further, the notice will be filed at least six (6) days prior to the hearing with the county clerk's office.

(b) The notice shall contain the appropriate information as required in HRS, 91-9.

1-6-6 Waiver of Procedure. Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, settlement, agreement, consent order, or default.

1-6-7 Prehearing Conference. A presiding officer or designated representative may hold a prehearing conference with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding.

1-6-8 Requests for Transcripts. Any party may request transcripts according to the provisions set forth in Section 1-2-6 (b). Requests shall be made in writing at least seven (7) days prior to the hearing.

1-6-9 Limiting Testimony. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

1-6-10 Stipulation as to Findings of Facts, Conclusions of Law. Nothing in these rules shall prohibit parties from entering into appropriate stipulations as to findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.

- (1) A petitioner who desires to enter into a stipulation shall prepare a stipulation as to any or all findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.
- (2) All parties shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, and conditions, and a proposed decision and order, if at all, and shall submit such stipulation to the Commission seven (7) days prior to the hearing date, unless otherwise permitted by the presiding officer.
- (3) The Commission may require the parties to submit additional evidence concerning the stipulation and proposed decision and order.
- (4) The Commission may approve the proposed decision and order by amending or adopting the proposed decision and order.

1-6-11 Order of Hearing Procedure. At the commencement of the hearing, the presiding officer may read the notice of hearing and then briefly outline the procedures to be followed, which shall be in the following manner:

- (a) Entertain Requests for Intervention. All persons seeking to intervene as parties shall be asked to identify themselves and their counsels. The presiding officer shall proceed in accordance with Chapter 4 herein.
- (b) Presentation of Evidence. The Department shall first present evidence and shall be subject to questioning by all parties and the Commission. The petitioner may then make a presentation and be subject to questioning by all parties and the Commission. In cases where intervention is allowed and a timetable for evidentiary proceedings for the parties has been established, any questioning by the parties and the Commission may be suspended until such time as designated by the presiding officer.
- (c) Public Testimony. The presiding officer shall then suspend the rules and open the hearing to the public as required by law and apply the appropriate hearing rules and guidelines contained in Chapter 5. Cross-examination of public witnesses shall not be allowed of the petitioner and intervenors.
- (d) Close Public Hearing. Upon the admission of all public evidence, the presiding officer shall close the public hearing portion.
- (e) Additional Testimony. The presiding officer shall allow the submission of additional written evidence from public witnesses up to seven (7) days after the close of the hearing in cases where the Commission does not take action on the same day.
- (f) Request To Submit Proposed Findings Of Fact, Conclusions Of Law, Decision And Order When There Is No Intervention. In cases when there is no intervention, the petitioner may, after the evidentiary portion but prior to the decision-making portion of the meeting (when a duly-made motion by the Commission to act on the docket is made), request the opportunity to submit a proposed Findings of Fact, Conclusions of Law, Decision of Law.

Should the petitioner not submit a request at such time, the petitioner's right to submit such document shall be deemed waived and the Commission may commence with appropriate decision-making action. If a request is made, the presiding officer may continue the docket and set a timetable for the conduct of the post-hearing proceedings pursuant to Section 1-6-18.

- (g) Reconvening of Contested Case Hearing Portion. In cases where there are intervenors or adverse parties and a hearing is reconvened to complete the presentation of evidence, the presiding officer may explain the proceedings, note and discuss objections to the proceedings from each party, if any are submitted, and then administer the oath to witnesses.
- (h) Order of Presentation. The petitioner's presentation shall be first, followed by the Department and then the intervenors. In cases where there are more than one intervenor, the presiding officer shall establish the order of the intervenors' presentations.
- (i) Cross-Examination. Each party shall have the right to conduct such cross-examination of other parties and their witnesses as may be required for a full and true disclosure of the facts. The order of cross-examination and re-cross shall be determined by the presiding officer. The Commission shall have the right to question each party after completion of re-cross by the other parties.
- (j) Rebuttal Evidence. Each party shall be afforded the opportunity for rebuttal in the same order as item 1-6-11 (h) above.
- (k) Close Contested Case Hearing. Upon completion of all testimony and evidence submitted by each party and their witnesses, the presiding officer shall close the contested case portion of the hearing.

1-6-12 Co-Counsel. No more than two (2) counsels may appear for any party at any proceeding before the Commission. Where a party is represented by more than one counsel, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.

1-6-13 Requests for Subpoenas. (a) Subpoenas of Witnesses. Requests for the issuance of subpoenas requiring the attendance of a witness for the purpose of taking oral testimony before the Commission shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or a Commissioner may request the issuance of a subpoena.

(b) Every subpoena shall state the title of the proceeding for which it is to be issued, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(c) Subpoenas Duces Tecum. Requests for the issuance of subpoenas for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.

(d) Who May Issue Subpoenas. Subpoenas may be issued by the Chairman or in his absence, any Commissioner. No subpoena shall be issued unless the party requesting the subpoena has complied with the provisions herein and

gives the name and address of the desired witness. Signed and sealed blank subpoenas will not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall show at whose instance the subpoena is issued. The parties at whose instance a subpoena is issued shall arrange for service thereof, and shall file a return and acknowledgment of service thereon.

(e) Fees and Mileage. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in Circuit Courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose instance the witness appear.

(f) Oath. Witnesses shall be sworn under oath or affirmation prior to testifying.

1-6-14 Consolidation. The Commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

1-6-15 Substitution of Parties. Upon motion and for good cause shown, the Commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.

1-6-16 Motions. (a) Timing. Motions may be made before or during a hearing. Motions made after a hearing shall be made at least fourteen (14) days prior to the date set for final argument on the matter, unless final arguments are heard on the same day of the hearing. Untimely motions may be made for good cause shown.

(b) Form; Contents. All motions other than those made during a hearing shall be made in writing to the Commission or hearing officer, and shall state the relief sought and shall be accompanied by an affidavit or legal memorandum setting forth the grounds upon which they are based.

(c) Service of motions. The moving party shall serve a copy of all motions on all other parties and shall file with the Commission the original with proof of service.

(d) Memorandum in opposition. A memorandum in opposition or counter affidavit shall be served on all parties and the original and proof of service shall be filed with the Commission within seven (7) days after being served with motion. The presiding officer may order the memorandum in opposition to be filed earlier than the seven (7) day period.

(e) Waiver. Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion. A party who does not oppose the motion shall notify the executive officer and opposing counsel or party promptly.

1-6-17 Evidence. (a) Form and Admissibility. The Commission shall not be bound by the Hawaii Rules of Evidence relating to the admission or rejection of evidence, but may exercise its own discretion in such matter with a view towards insuring that justice is served.

(b) Burden of Proof. Except as otherwise provided by law, the party initiating Commission consideration shall have the burden of proof, including the burden of producing evidence as well as the burden of

persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

(c) Exclusion of Irrelevant Material. As a matter of policy, the Commission shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(d) Ruling. The presiding officer shall rule on the admissibility of all evidence. Such ruling may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Commission is necessary to promote justice, the presiding officer may refer the matter to the Commission for determination.

(e) Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the ground relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(f) Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

(g) Prepared Testimony. With the approval of the presiding officer, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the clerk reporter, and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the Commission to permit proper cross-examination of the witness on matters contained in said prepared testimony.

(h) Documentary Evidence. If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

(i) Exhibits.

- (1) Form-Size. Exhibits shall be clearly and permanently legible and in such form as may be prescribed by the Commission. Exhibits shall be bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.
- (2) Copies. When exhibits are offered in evidence, and when practicable the original and twelve (12) copies shall be furnished to the presiding officer with a copy to each party to the proceeding other than the Commission, unless such copies have been previously furnished or the presiding officer directs otherwise.

(j) Commission Records. The file kept by the Department on the matter pending before the Commission shall constitute evidence for the purposes of an agency hearing.

(k) Official Notice of Facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(l) Additional Evidence. No supplemental evidence shall be accepted into the record after the hearing is closed. However, the presiding officer may, at the hearing, require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission reserving exhibit number therefor.

1-6-18 Post Hearing Procedures for Hearing Conducted By Commission.

(a) Correction of Transcripts. In cases where transcripts are provided, motions to correct a transcript shall be filed with the Commission within fourteen (14) days after receipt of the transcript unless otherwise directed by the presiding officer, and shall be served on all parties. Motions to correct transcripts shall certify the date when the transcript was received. Any objections to proposed corrections must be served on all parties and received by the Commission at least seven (7) days after date of service of the corrections. If no objections are received, the transcript will, upon approval of the Commission, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing.

(b) Submittals of Proposed Decisions and Orders. Each party to the proceeding may submit a proposed decision and order to the Commission which shall include findings of fact. Said proposals shall be served to each party to the proceeding.

(c) Timing of Submittals. Unless otherwise directed by the presiding officer, in proceedings where transcripts are not required, submittal of a proposed decision and order shall be made within thirty (30) days from the date of closing of the hearing; and, in proceedings whereby transcripts are required, submittal shall be made within fourteen (14) days from the date of service of the transcript.

(d) Submittal of Exceptions to Decision and Order. Submittal to the Commission of exceptions to a proposed decision and order shall be made within seven (7) days from the date of service of said proposed decision and order, or within such period of time specified by the presiding officer. Such submittal shall be served on all parties.

(e) Final Arguments. The presiding officer shall establish the date for presentation of final arguments which shall occur in the following order, unless otherwise directed by the presiding officer:

- (1) Entertainment of submitted motions, exceptions or corrections to the transcript, if any, by the Commission;
- (2) Presentation of oral arguments by the petitioner, Department, then intervenor. In cases where there is more than one intervenor, the presiding officer shall determine their order of presentation.
- (3) Closing arguments or rebuttal by the petitioner.

The presiding officer may set appropriate time limitations for oral argument provided that not more than one (1) hour on each side of the proceeding will be allowed for argument without special leave of the Commission.

(f) Issuance of Decision and Order. A proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the presentation of such oral argument as may have been prescribed by the presiding officer or hearing officer. The Commission may:

- (1) Adopt a decision and order as submitted by any of the parties, with or without revisions;
- (2) Take action on the matter and may require the Department or a party to the proceeding to submit a written decision and order which conforms with the evidence; or
- (3) If no proposed findings of fact, conclusions of law, decision and order have been submitted by any party, take action on the matter and require the Director to notify the parties.

(g) Service of Decisions. Decisions shall be served in writing by the director by mailing copies thereof (return receipt) to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party.

(h) Withdrawal of Application. In cases where an application is withdrawn by the petitioner after an adverse decision is rendered by the Planning Commission and prior to the ratification or effective date of such final decision and order, the application or substantially similar application shall not be resubmitted sooner than one (1) year following the withdrawal.

(i) Appeals. Any person aggrieved by a final order and decision of the Planning Commission may obtain judicial reviews thereof in the manner pursuant to HRS 91.

1-6-19 Post Hearing Procedures for Hearing Conducted by Hearing Officer. (a) Recommendation of hearing officer:

- (1) Upon completion of taking of the evidence, the hearing officer shall prepare a report setting forth the proposed findings of fact, conclusions of law, the reasons therefore, and a recommended order, and shall submit the report of the proceeding to the Commission.
- (2) The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, if required, documentary evidence, stipulations, proposed findings, or other documents submitted by the parties, objections to the conduct of the hearing and the report of the hearing officer and all other matters placed in evidence.
- (3) The hearing officer shall cause a copy of the report to be served upon all parties to the proceedings.

(b) Exception to Hearing Officer's Report and Recommendations.

(1) Prior to seven (7) working days after service of the report and recommendations by the hearing officer, a party may file with the Commission, exceptions to the report. Such party shall serve copies of exceptions upon each party to the proceeding.

(2) The exceptions shall:

- (A) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;

- (B) Identify that part of the hearing officer's report and recommended order to which objections are made;
- (C) Designate by page citation to the portions of the record relied upon;
- (D) State all the grounds for exceptions to a ruling, finding, conclusion or recommendation. The grounds not cited or specifically urged are waived.

(c) Support of Hearing Officer's Report and Recommendations. (1) Prior to seven (7) working days after service of the exceptions taken to the hearing officer's report, any other party may file with the Commission arguments in support of the hearing officer's recommendations. Such party shall serve copies upon each party to the proceeding.

(2) The submittal shall:

- (A) Answer specifically the points of procedure, fact, law or policy to which exceptions were taken;
- (B) State the facts and reasons why the report and recommendations must be affirmed;
- (C) Designate by page citation the portions of the record relied upon.

(d) Oral Argument Before the Commission. (1) If a party desires to argue orally before the Commission, a written request with reasons therefore shall accompany the exceptions filed. The Commission may grant the request.

(2) The Commission may direct oral argument on its own motion.

(e) Commission Action. (1) In the event no statement of exceptions is filed, the Commission may proceed to reverse, modify, or adopt the recommendations of the hearing officer.

(2) Upon the filing of the exceptions and support documents, the Commission may:

- (A) Render its decision upon the record;
- (B) If oral argument has been allowed, the Commission may render its decision after oral argument; or
- (C) Reopen the docket and take further evidence or may take such other disposition of the case that is necessary under the circumstances.

CHAPTER 7

PUBLIC RECORDS, INSPECTION AND AVAILABILITY

1-7-1 Inspection of Public Records. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that, except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or County is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

1-7-2 Where Available. (a) The public may obtain information on matters within the jurisdiction of the Planning Department and Commission for the County of Kauai, by inquiring at the principle place of business of the Planning Department. All rules, orders or opinions of the agency are on file and available for public inspection at this office during business hours, or at the County Clerk's Office at 4396 Rice Street, Lihue, Kauai 96766.

(b) Inquiry may be made in person at the agency during business hours or by submitting a request for information in writing to the Planning Director, Planning Department, County Building Annex II-A, 4280 Rice Street, Lihue, Hawaii 96766.

1-7-3 Copies of Public Records. Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the applicable fees or costs for publication and postage are paid.

1-7-4 Denial of Inspection. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the Circuit Court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records.

CHAPTER 8

CENTRAL COORDINATING AGENCY

1-8-1 Authority. Pursuant to the authority of Section 46-18, Hawaii Revised Statutes, and Ordinance No. 375 of the County of Kauai adopted pursuant thereto, these rules and regulations are established. The rules and regulations shall apply within the County of Kauai, State of Hawaii.

1-8-2 Purpose. The purpose of these rules and regulations is to improve the coordination and efficiency of land use and development control systems.

1-8-3 Definitions. For the purpose of these rules and regulations, the following words or phrases shall have the meaning given in this rule unless it shall be apparent from the context that a different meaning is intended:

- (a) "Control or Regulatory Powers" are any and all forms of written consent, sanction, or recommendation required by any government agency before implementation of a land development project. This includes, but is not limited to, permits, certificates, approvals, and clearances, whether discretionary or ministerial.
- (b) "Cooperating agency" means each federal, state, or county board, commission, department, or officer with control or regulatory powers over land development projects undertaken in the county.
- (c) "Land development project" means the performance of any building or mining operation, the making of any material change in the use or appearance of any structure or land, the division of land into two or more parcels, and the creation or termination of rights of access or riparian rights.
- (d) "Master file" means an up-to-date list of all active applications for building permits, subdivisions, zoning permits, special management area permits, variance permits, use permits; petitions for changes in state land use districts, general plan, development plan, and zoning amendments; and special permit requests within the county.
- (e) "Repository" means an up-to-date collection of all laws, rules and regulations, procedures, permit requirements and review criteria of all federal, state, and county agencies having any control or regulatory powers over land development projects within the county.

1-8-4 Maintenance and Administration of the Repository. (a) Responsibilities of the agency. The agency shall maintain and update the repository, and shall make it available during business hours to any person requesting information about the applicability of the repository to any proposed land development project.

The agency shall refer interpretations of a legal or complex technical nature, questions concerning the extent of a cooperating agency's discretionary authority, and judgments concerning the acceptability of application materials to the appropriate cooperating agency. Copies of the repository shall be made available to the public at a price to be fixed by the agency to cover mailing and publication costs.

(b) Responsibilities of Cooperating Agencies. It shall be the responsibility of each cooperating agency to ensure that the agency is in receipt of all laws, rules and regulations, procedures, permit requirements, and review criteria pertaining to land development projects within its jurisdiction. Cooperating agencies shall also be responsible for keeping the agency promptly informed of revisions to the above and for providing information to the applicant on matters directly related to the cooperating agency's jurisdiction.

1-8-5 Maintenance and Administration of the Master File. (a) Responsibilities of the agency. The agency shall maintain and update the master file in accordance with a reasonable schedule as agreed to by the Agency and the appropriate cooperating agencies. Questions concerning the status of an application listed in the master file shall, to the extent practicable, be responded to by the Agency before referring them to the appropriate cooperating agency.

(b) Responsibilities of Cooperating Agencies. It shall be the responsibility of the appropriate cooperating agencies to ensure that the required applications within their jurisdiction are listed in the master file maintained by the agency. Each cooperating agency shall provide the agency with updated information for the master files in accordance with a schedule deemed reasonable by both.

1-8-6 Other Coordination Services. (a) When requested by the applicant, the agency shall endeavor to schedule and coordinate, to the extent practicable, any referrals, public informational meetings or any public hearings with those held by other federal, state and/or county commissions or agencies pursuant to existing laws pertaining to the County.

(b) It shall be the responsibility of each cooperating agency to designate a representative of its staff who is authorized to speak on its behalf and who is knowledgeable in those controls or regulatory powers within its jurisdiction to serve as liaison with the Agency in this and all other functions mandated by Section 46-18, Hawaii Revised Statutes, and Ordinance No. 375 of the County of Kauai.

CHAPTER 9

APPEALS FROM ACTIONS OF THE PLANNING DIRECTOR

1-9-1 Applicability. A person may appeal an action of the Planning Director in the administration of the zoning and subdivision ordinances as provided for in Chapter 8, Articles 18 and 19, and Chapter 9, Article 3 and 5 of the Revised Codes of Ordinances, as amended.

1-9-2 Submission of Appeal. The appeal shall be submitted to the Planning Commission, County of Kauai, Lihue, Kauai, Hawaii and shall be filed within twenty-one (21) days for appeals as provided for in the Comprehensive Zoning Ordinance and fifteen (15) days for appeals as provided for in the Subdivision Ordinance after the adverse decision. The petition shall contain the following:

- (1) The name, address and telephone number of the appellant.
- (2) The identification of the property and the appellant's interest therein.
- (3) The particular provision of the zoning ordinance or subdivision ordinance or regulation in question.
- (4) All pertinent facts.
- (5) The action of the Director.
- (6) The reasons for the appeal, including a statement as to why the appellant believes that the Director's action was based on an erroneous finding of a material fact, or that the Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

1-9-3 Hearing and Notice. The Director shall place the matter on the Planning Commission agenda and the Commission shall afford the appellant and all other parties an opportunity to be heard. Such hearing shall be conducted in conformity with the applicable provisions established herein for contested case hearings before the Commission.

1-9-4 Commission Action. (a) In cases where appeals are pursuant to the provisions of the Comprehensive Zoning Ordinance, the Planning Commission shall consider the same and render its decision thereon within sixty (60) days of the filing of the notice of appeal.

(b) In cases where appeals are pursuant to the provisions of the Subdivision Ordinance, the Planning Commission shall consider the same and render its decision thereon within forty-five (45) days of the filing of the notice of appeal.

(c) A longer period to rendering any decision in Sections 1-9-4 (a) and (b) may be permitted by agreement of the applicant.

1-9-5 Decision and Order. The Director shall promptly notify the appellant of the decision of the Commission. If the Commission affirms the action of the Director, such order shall be accompanied by separate findings of fact and conclusions of law. A copy thereof shall be sent, return receipt, immediately to the appellant.

CHAPTER 10
DECLARATORY ORDERS

1-10-1 Who May Petition. (a) Petition by person or agency. On petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Commission.

(b) Declaratory order on the Commission's own motion. Notwithstanding the other provisions of this section, the Commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty.

1-10-2 Form and Contents. The petition shall conform to the requirements for filing documents before the Commission and shall contain the following:

- (1) Name;
- (2) Address;
- (3) Telephone number of each petitioner;
- (4) The signature of each petitioner;
- (5) A designation of the specific statutory provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
- (6) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (7) A statement of the petitioner's position or contention;
- (8) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention.

1-10-3 Commission Action. Within forty-five (45) days after the submission of a petition for declaratory ruling, the Commission shall either deny the petition in writing, stating the reasons for such denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, however, that if the matter is set for hearing, the Commission shall render its findings and decision within forty-five (45) days after the close of the hearing.

1-10-4 Dismissal of Petition. The Commission may, without notice or hearing, dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this part.

1-10-5 Refusal to Issue Declaratory Order. The Commission may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the Commission may so refuse where:

- (1) the question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) the petitioner's interest is not of the type that would give him standing to maintain an action if he were to seek judicial relief;

(3) the issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise;

(4) the matter is not within the jurisdiction of the Commission.

1-10-6 Request for Hearing. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petition or to a party in interest, the Commission may in its discretion order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in his request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and, to the extent that such request for a hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts and shall deposit with the County such amounts as deemed necessary to cover applicable publication costs. In the event a hearing is ordered by the Commission, the rules relating to hearing procedures before the Commission shall govern the proceeding.

1-10-7 Applicability of Order. An order disposing of a petition shall be applicable only to the factual situation described in the petition or set forth in the order.

CHAPTER 11

RULE ADOPTION, AMENDMENT, OR REPEAL PROCEDURES

1-11-1 Initiation of Rule-Making Proceedings. (a) Motion by Commission. The Commission may, at any time on its own motion, initiate proceedings for the adoption, amendment, or repeal of any rule or regulation of the Commission.

(b) Petition by Person or Agency. Any interested person may petition the Commission for the adoption, amendment, or repeal of any rule or regulation of the Commission. Petitions for rule making filed with the Commission will become matters of public record.

1-11-2 Form and Contents. Petitions for rule making shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; a statement of the reasons in support of the proposed rule, amendment, or repeal and shall deposit with the County funds sufficient to cover appropriate hearing publication costs.

1-11-3 Action on Petition. The Commission shall, within forty-five (45) days after the filing of a petition for rule making, either deny the petition in writing, stating its reasons for its denial or initiate proceedings in accordance with Section 91-3 HRS.

(a) Denial of Petition. Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of public rule-making proceedings will not be considered by the Commission. The Commission shall notify the petitioner in writing of such denial, stating the reasons thereto. Denial of a petition shall not operate to prevent the Commission from acting, on its own motion, on any matter disclosed in the petition.

(b) Acceptance of Petition. If the Commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rule making to justify the institution of rule-making proceedings, the following procedure set forth and applicable statutes and law shall apply.

1-11-4 Notice of Public Hearing. (a) Publication and Mailing. When, pursuant to a petition therefor or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation which is published and issued within the County of Kauai; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rulemaking proceedings at their last recorded address. The notices shall be published at least twenty (20) days prior to the date set for public hearing. The notice of hearing will also be filed with the County Clerk's Office.

(b) Form. A notice of the proposed adoption, amendment, or repeal of a rule or regulation shall include:

- (1) A statement of the date, time and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule or regulation is proposed;

(3) A statement of the substance of the proposed rules.

1-11-5 Commission Action. The Commission shall consider all relevant testimony and documents of record before taking final action in a rule-making proceeding. Final action should be taken within forty-five (45) days after the end of period for submission of written comments or recommendations.

1-11-6 Effective Date. All rules shall be filed and take effect pursuant to HRS 91-4.

1-11-7 Emergency Rule Making. Notwithstanding the foregoing rules, the Commission may adopt emergency rules in accordance to the provisions of HRS 91-3 and 4 if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than twenty (20) days notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the County Clerk.

RULES OF PRACTICE AND PROCEDURE OF THE
COUNTY OF KAUAI, PLANNING COMMISSION

These rules and regulations shall become effective ten (10) days after filing with the County Clerk of the County of Kauai and shall thereon supersede all rules and regulations in effect prior to the effective date of these rules, except for the Shoreline Setback Rules and Regulations, Special Management Area Rules and Regulations, and Road Widening Policy.

The foregoing Rules of Practice and Procedure were adopted by a 5 - 0 - 2 vote of the members of the Planning Commission of the County of Kauai at its meeting held on this 8th day of July, 1987, as follows:

FOR: Pablo
Contrades
Sialana
Dela Cruz
Matsumura

AGAINST: None

ABSENT: Costa
Fujita

BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI, STATE OF HAWAII.

BY Betty T. Matsumura
BETTY T. MATSUMURA, CHAIRPERSON

APPROVED AS TO FORM:

Spurd A. Oshimitau
DEP. COUNTY ATTORNEY

APPROVED THIS 2nd DAY OF September, 1987.

Tony T. Kunimura
TONY T. KUNIMURA, MAYOR
COUNTY OF KAUAI

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN MY OFFICE THIS 2nd DAY OF September, 1987.

Jerome Hew
JEROME HEW, COUNTY CLERK

PUBLIC NOTICE: April 20, 1987
PUBLIC HEARING: May 13, 1987



OFFICE OF STATE PLANNING

Office of the Governor

JOHN WAIHEE, Governor

STATE CAPITOL, HONOLULU, HAWAII 96813 TELEPHONE: (808) 548-5893

August 26, 1988

LAND USE COMMISSION
STATE OF HAWAII
AUG 29 2 41 PM '88

Ms. Elizabeth Wilcox
P. O. Box 3636
Lihue, Kauai 96766

Dear Ms. Wilcox:

Thank you for your recent letter to Governor Waihee regarding the land uses proposed for the Mahaulepu area of Koloa. The Governor has directed this Office to review the land use proposals for this area.

The concerns you raised about the resource values of the area and the allocation of good agricultural lands for resort use are valid ones. Please be assured that this Office will carefully consider the many points you and others in the community have raised.

Sincerely,


Harold S. Masumoto
Director

bcc: Hon. John Waihee, Governor
Hon. Yukio Kitagawa
Hon. William W. Paty
Mr. Ralston Nagata
✓ Ms. Esther Ueda



EXECUTIVE CHAMBERS

HONOLULU

JOHN WAIHEE
GOVERNOR

August 24, 1988

SEP 1 3 00 PM '88
LAND USE COMMISSION
STATE OF HAWAII

Ms. Barbara Childers
P. O. Box 332
Lawai, Hawaii 96765

Dear Ms. Childers:

Thank you for your recent letter regarding the development of the Mahaulepu area of Koloa, Kauai.

I recognize the natural, scenic, and cultural values of this area and share your concern about the future course of development along this coastline. Please be assured that your reviews, and those of others who have written me about Mahaulepu, will be given serious consideration. The desire you expressed to have this area retained in its natural state is understandable.

I have directed the Office of State Planning (OSP) to take a close look at the land use proposals for this area. Your letter has been forwarded to OSP for their information in formulating the State's response when the development proposals are presented for State review and approval.

With kindest regards,

Sincerely,

A handwritten signature in cursive script that reads "John Waihee".

JOHN WAIHEE

bcc: Hon. Yukio Kitagawa
Hon. William Paty
Hon. Harold Masumoto
Mr. Ralston Nagata
✓ Ms. Esther Ueda

9/6/88
LUC, E+R

Govenor Waihee
Washington Place
Honolulu, Hi. 96813

8/6/88
'88 AUG 10 PM 12:02

OFFICE OF THE GOVERNOR

Dear Gov. Waihee,

Being an employee of two golf courses going on ten years here on Kauai, I feel very strongly against the proposed golf course at Mahalepu. We, along with many, enjoy the surf, fishing, and beauty of the cliffs and dunes. The Westin golf courses will be opening soon this month and with the small amount of traffic we generate on our golf course overall, I don't see the justification. Our local papers are filled with help wanted ads and lacking on houses for rentals.

Please give some thought to this situation before it's pushed through. The three hundred acres allowed for urban developement because of this proposal will only house the investor not the locals.

Mahalo for your time

Barbara Childers
Barbara Childers

bc

cc: Phil Takeyama
cc: Ester Ueda

Childers
P.O. Box 332
Lawai, Hi. 96765

TO: Director, OSP
☐ PLEASE COORDINATE with _____
FOR:
☐ Comment/Recommendation (required)
☐ Appropriate attention
☐ Direct reply (cc/bcc: Governor)
☐ Your information/file
☒ Draft reply for Governor's signature
☐ Follow up/report
☐ Submit copy of response (if any)
☐ Keep enclosures
☐ Return enclosure(s)
☐ Other

DUE seven working days from Aug 10 1988
(If delay is encountered in meeting suspense date, please advise by telephone immediately)
In reply, please refer to: 88:527-05

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 Rice Street Lihue, Hawaii 96766

M E M O R A N D U M

TO: Planning Commission

DATE: August 10, 1988

SUBJECT: Additions to Agenda

FROM: Secretary

- B-1a Motion to Correct Transcript and Memorandum in Support of Motion.
- 1b Applicant's Proposed Findings of Fact, Conclusions of Law, Decision and Order.
- 1c Planning Department's Proposed Findings of Fact, Conclusions of Law, Decision and Order.
- 1d Intervenors Proposed Finds of Fact, Conclusion of Law, Decision and Order.
- 1e Applicant's Objections to Intervenor's Proposed Findings of Fact, Conclusions of Law, Decision and Order.
- 1f Stipulation and Joint Proposed Findings of Fact, Conclusions of Law, Decision and Order.

Aug 29 12 32 PM '88
LAND USE COMMISSION
STATE OF HAWAII

TONY T. KUNIMURA
MAYOR



TOM H. SHIGEMOTO
Planning Director

ROLAND D. SAGUM, III
Deputy Planning Director

Telephone (808)245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766
August 26, 1988

Ray Young
State Land Use Commission
Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

Subject: Special Permit SP-88-6
Ainako Resort Associates & Grove Farm Properties, Inc.
TMK 2-9-01: por. 1, Pa'a, Koloa, Kauai

AUG 29 12 30 PM '88
LAND USE COMMISSION
STATE OF HAWAII

Enclosed are the following items requested on August 24 & 25, 1988 that will serve as replacement pages or documents contained in the above referenced file. Said items should not be construed to supplement the file, rather, replace missing or marked up pages. All items exist in the original complete file at the County of Kauai Planning Department.

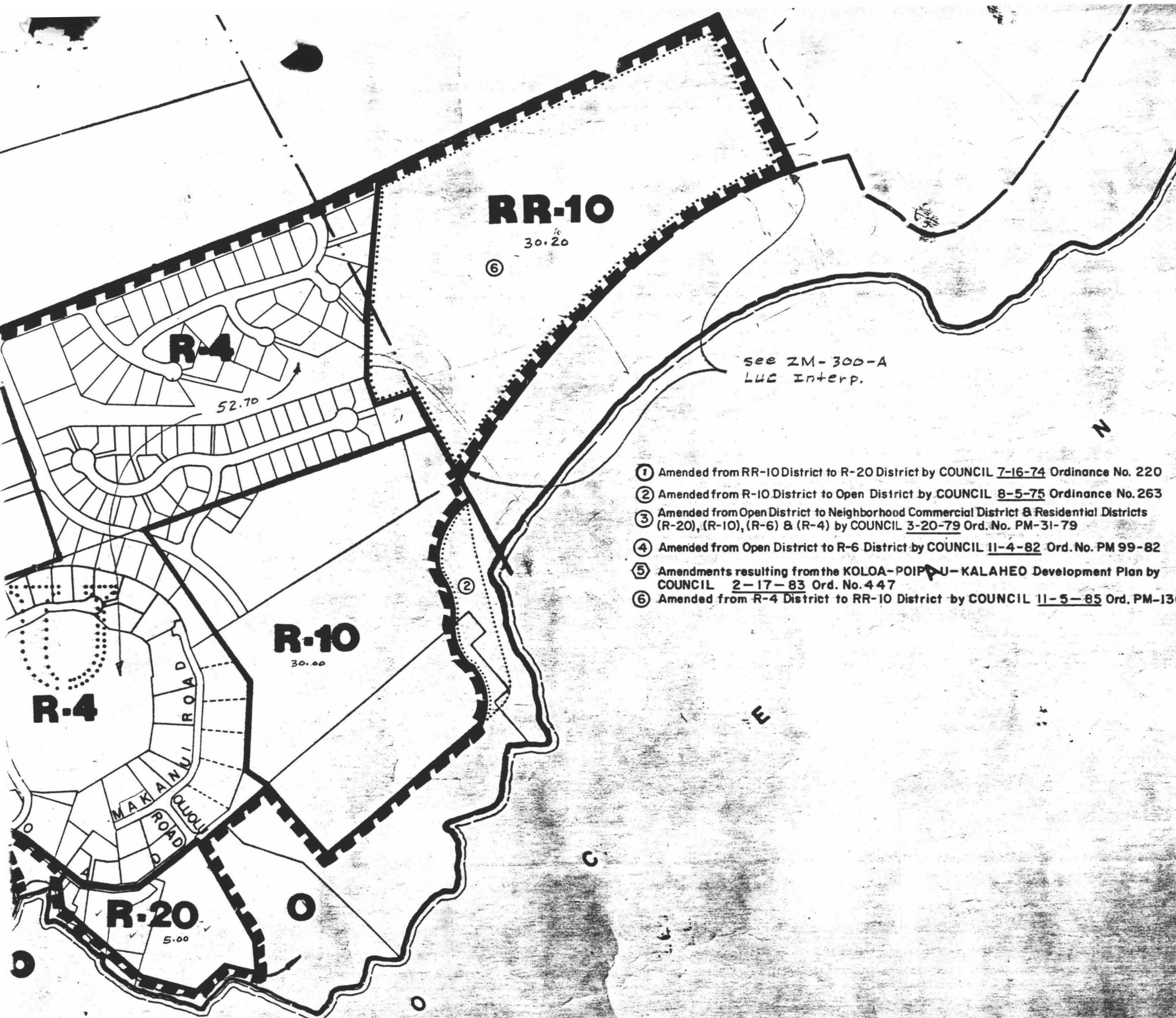
1. June 24, 1988 transcript (entire document)
2. authorization letter
3. Zoning map ZM-PO 300 (relevant portion)
4. Intervenor's Memorandum In Support of the Review of the Grove Farm Master Plan (entire document, pages unnumbered)
5. Pages 13 and 16 of 11" x 17" Grove Farm master plan maps
6. Documents B-1-G to B-1-J, inclusive, August 10 memo to Planning Commission
7. Page 1, corrected version of stipulation
8. Findings of Fact (entire document), stipulation
9. Page 3, Petition to Intervene, Ohana

Relative to the cultural sensitivity map that exists as an exhibit, that document is as submitted. A larger version was never submitted, although one does exist.

Other than the golf course layout map, no other documents by Robert Trent Jones were introduced into evidence as to the design or parameters of the course or individual holes.

Should you need additional information, please contact me.

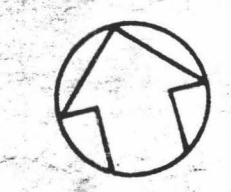
Michael Laureta
Planner



LEGEND

TIME SHARE BOUNDARY

- ① Amended from RR-10 District to R-20 District by COUNCIL 7-16-74 Ordinance No. 220
- ② Amended from R-10 District to Open District by COUNCIL 8-5-75 Ordinance No. 263
- ③ Amended from Open District to Neighborhood Commercial District & Residential Districts (R-20), (R-10), (R-6) & (R-4) by COUNCIL 3-20-79 Ord. No. PM-31-79
- ④ Amended from Open District to R-6 District by COUNCIL 11-4-82 Ord. No. PM 99-82
- ⑤ Amendments resulting from the KOLOA-POIPU-KALAHED Development Plan by COUNCIL 2-17-83 Ord. No. 447
- ⑥ Amended from R-4 District to RR-10 District by COUNCIL 11-5-85 Ord. PM-136-85



ZM-PO 300

POIPU

PLANNING DEPARTMENT

COUNTY OF KAUAI
LIHUE, KAUAI, HAWAII

DECEMBER, 1959

LATEST REVISION _____

THE PREPARATION OF THIS MAP WAS FINANCED IN PART THROUGH AN URBAN PLANNING GRANT FROM THE HOUSING AND HOME FINANCE AGENCY, UNDER THE PROVISIONS OF SECTION 701 OF THE HOUSING ACT OF 1954, AS AMENDED.

LAND USE COMMISSION
STATE OF HAWAII
AUG 29 12 31 PM '88

R-4	85.58
R-6	35.50
R-10	160.07
R-20	71.09
RR-10	30.20
RR-20	53.91
C-N	8.40
O/ST-P-C	20.60
O/ST-P	10.89
	538.36

A

C

RR-10

30.20

⑥

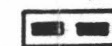
R-4

52.70

see ZM-300-A
LUC Interp.

N

LEGEND



TIME SHARE BOUNDARY

LAND USE COMMISSION
STATE OF HAWAII
Aug 29 12 31 PM '88

- ① Amended from RR-10 District to R-20 District by COUNCIL 7-16-74 Ordinance No. 220
- ② Amended from R-10 District to Open District by COUNCIL 8-5-75 Ordinance No. 263
- ③ Amended from Open District to Neighborhood Commercial District & Residential Districts (R-20) (R-10) (R-6) & (R-4) by COUNCIL 8-22-77 Ordinance No. 277



LAND USE COMMISSION

Room 104, Old Federal Building, 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

COMMISSION MEMBERS:

Sharon R. Himeno
Teofilo Phil Tacbian
Allen Kajioke
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. HoeESTHER UEDA
Executive Officer

August 26, 1988

Mr. Tom H. Shigemoto
Planning Director
Kauai County Planning Department
4280 Rice Street
Lihue, Hawaii 96766

Dear Mr. Shigemoto:

Subject: LUC Docket No. SP88-369/Ainako Resorts
Associates and Grove Farm Company Incorporated

This is to confirm the August 24, 1988 telephone conversation between Raymond Young of our staff and Michael Laureta, that the following items (which we understand are part of the official record of the County proceedings on the subject docket) need to be provided:

- 1) A copy of the Kauai County Zoning Map No. ZM-P0-300 as referenced in the Findings of Fact, Conclusion of Law and Decision and Order
- 2) A complete version of Intervenor's Memorandum in Support of the Review of the Grove Farm Master Development Plan as Required by Statute.
- 3) Complete copies of the following items as listed in the Memorandum to Planning Commission from the Secretary dated August 10, 1988:
 - lg - Intervenor's Motion to Defer Final Argument to Permit Exceptions to Late Filed Proposed Findings of Fact
 - lh - Planning Commission's Order Ruling on Findings of Fact Proposed by Intervenor
 - li - Certification as to Transcripts of the Proceeding
 - lj - Applicant's Memorandum in Opposition to Motion to Defer Final Argument

Mr. Tom H. Shigemoto
August 26, 1988
Page Two

- 4) Corrected version of Page 1 of the Joint Findings of Fact, Conclusions of Law and Decision and Order as attached to Certificate of Service dated August 4, 1988
- 5) Pages 6 and 13 of Intervenor's Exhibit E entitled "Paa-Mahaulepu Beaches"
- 6) A complete and legible copy of the transcripts for June 24, 1988 beginning 8:30 a.m., Volume II and marked as No. 6
- 7) An unmarked copy of the Stipulation and attached Findings of Fact, Conclusions of Law and Decision and Order dated August 3, 1988 marked B-1f

Please submit the above materials as soon as possible so that we may include it with our transmittal to the Commission. If you have any questions, please call me or my staff at 548-3039.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to

Govenor Waihee
Washington Place
Honolulu, Hi. 96813

8/6/88

LAND USE COMMISSION
STATE OF HAWAII

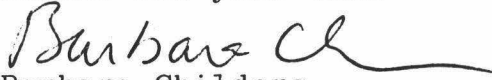
AUG 10 12 17 PM '88

Dear Gov. Waihee,

Being an employee of two golf courses going on ten years here on Kauai, I feel very strongly against the proposed golf course at Mahalepu. We, along with many, enjoy the surf, fishing, and beauty of the cliffs and dunes. The Westin golf courses will be opening soon this month and with the small amount of traffic we generate on our golf course overall, I don't see the justification. Our local papers are filled with help wanted ads and lacking on houses for rentals.

Please give some thought to this situation before it's pushed through. The three hundred acres allowed for urban developement because of this proposal will only house the investor not the locals.

Mahalo for your time


Barbara Childers

bc

cc: Phil Takeyama
cc: Ester Ueda

8/12/88
LUCIE

Box 3636
Lihue, HI 96766

LAND USE COMMISSION
STATE OF HAWAII
AUG 8 12 37 PM '88

Dear Governor Waihee,

On behalf of Malama Mahalapeu I ask your careful consideration of the question of land use planned in the Mahalapeu-Paa on the south shore of Kauai.

The proposed use is for a golf course which is not allowed on land zoned "Agricultural B". Also neither the General Plan nor the Regional Plan for this area show this to be golf course land. Further the land beyond the proposed golf course is agricultural land, zoned for use as such, and includes the habitat of two endangered species and some of the last untouched coastline on Kauai, as well as archaeological sites and the highest sand dunes in the state.

We ask your consideration of this situation, and your support for the preservation of this land in its natural state.

Thank you for your consideration.

Sincerely,


Elizabeth Wilcox

cc: Phil Tacbian - Land Use Commission
Renton Nip - Land Use Commission
335 Merchant St.
Room 104
Honolulu, HI 96813

July 31, 1988

LAND USE COMMISSION
STATE OF HAWAII

Ester Ueda
Aug 4 11441 PM 888

Please use your influence
in helping to stop the Golf
Course planned for the
Maha'ulepu area, east of
Keoneloa Bay in Poipu, Kauai.

A majority of this land
is agriculture land rated
B by the State. The State
statute flatly and unequivocally
prohibits golf course develop-
ment on land rated A or
B.

We thank you for your
time

Fred + Diane Jager
1951 Muku Pl
Koloa, HI 96756
742-6600

Copy to Gov. Waihee

STATE OF HAWAII

DEPARTMENT OF BUSINESS
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION



Room 104, Old Federal Building, 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

JOHN WAIHEE
Governor

RENTON L.K. NIP
Chairman

LAWRENCE F. CHUN
Vice Chairman

COMMISSION MEMBERS:

Sharon R. Himeno
Teofilo Phil Tacbian
Allen Kajioke
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

August 15, 1988

Mr. & Mrs. Fred Jager
1951 Muku Place
Koloa, Hawaii 96756

Dear Mr. & Mrs. Jager:

We have received your July 31, 1988 letter expressing your concerns on the proposed Maha'ulepu golf course project at Poipu, Kauai. At this time, the special permit application has not come before the Commission however, copies of your letter will be transmitted to the Commission members for their information.

If you have any questions, please call me or my staff at 548-3039.

Sincerely,

ESTHER UEDA
Executive Officer

EU:to

July 31, 1988

Phil Tackian,

Please use your influence
in helping to stop the golf
course planned for the
Maha'ulepu area, east of
Keoneloa Bay in Poipu, Kauai

A majority of this land is
agriculture land rated B by
the state. The state statute
flatly and unequivocally
prohibits golf course develop-
ment on land rated A or B.

Thank you

Fred + Diane Jager
1951 Muku Pl.
Koloa, 96756

742-6600

8/12/88
LUC+E

Copies to

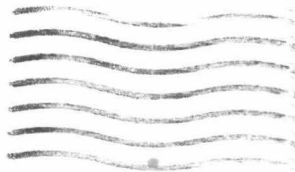
Gov. Waihee

Esther Ueda LUC

Rep. Bertha Kawakami



FRED JAGER
1951 Muku Pl. Kona III 96756



Jack London

Phil Tachian
Land Use Commission
PO Box 3149
Lihue, HI

Hold
for
Golf course
Sup in
Kaka'i



LAND USE COMMISSION

Room 104, Old Federal Building, 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

COMMISSION MEMBERS:

Sharon R. Himeno
Teofilo Phil Tacbian
Allen Kajlaka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. HoeESTHER UEDA
Executive Officer

August 23, 1988

Mr. Tom H. Shigemoto, Planning Director
Kauai County Planning Department
4280 Rice Street
Lihue, Kauai, Hawaii 96766

Dear Mr. Shigemoto:

This to acknowledge receipt of the record for the following
special use permit transmitted with your letter dated
August 22, 1988.

DOCKET NO./PETITION: SP88-369/Ainako Resort Associates
and Grove Farm Properties, Inc.TAX MAP KEY: 2-9-01: por. 1LOCATION: Pa'a, Koloa, KauaiUSE REQUESTED: Golf CourseDATE FILED: August 18, 1988

In accordance with Section 205-6, Hawaii Revised Statutes,
the Land Use Commission will act on this petition within 45
days of receipt of the complete record on this request.

If you have any questions on this matter, please feel free
to contact us.

SINCERELY,

ESTHER UEDA
Executive Officer

cc: Petitioner

TONY T. KUNIMURA
MAYOR



TOM H. SHIGEMOTO
Planning Director

ROLAND D. SAGUM, III
Deputy Planning Director

Telephone (808)245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766
August 22, 1988

Aug 23 9 19 AM '88
LAND USE COMMISSION
STATE OF HAWAII

Esther Uyeda, Executive Officer
State Land Use Commission
Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

Subject: Special Permit SP-88-6
Ainako Resort Associates & Grove Farm Properties, Inc.
TMK 2-9-01: por. 1, Pa'a, Koloa, Kauai

As sent to you on August 18, 1988 under separate cover, the entire file for the above referenced matter is transmitted for consideration by the Land Use Commission.

For ease of reference, the file has been broken down into "subject areas" rather than a chronological file (except for master files 1 and 2): Transcripts; Correspondence For the Project; Correspondence Against the Project; Master Files 1 and 2; and Information collected during the Public Hearing. Additionally, as requested, a copy of the Rules of Practice and Procedures of the Planning Commission, County of Kauai, adopted September 1987, are also included.

Please contact me should any additional information be necessary.


Michael Laureta
Planner

COUNTY OF KAUAI
OFFICE OF THE COUNTY ATTORNEY
4396 RICE STREET
LIHUE, KAUAI, HAWAII 96766

Mailing Address:
4444 Rice Street, Room 230
Lihue, Kauai, Hawaii 96766

August 15, 1988

[illegible]

Mr. Marvin T. Miura
Director
Office of Environmental
Quality Control
State of Hawaii
465 South King Street, Room 104
Honolulu, Hawaii 96813

Dear Mr. Miura:

Re: In re Ainako Resort Associates and Grove Farm Properties, Inc., Special Permit SP-88-6, Use Permit U-88-31, Special Management Area Permit SMA(U)-88-10 and Class IV Zoning Permit Z-IV-88-39 (Before the County of Kauai Planning Commission)

Pursuant to Section 11-200-11(b) of the Administrative Rules which were promulgated by the Environmental Council in November 1985, please find enclosed a copy of the Findings of Fact, Conclusions of Law, Decision and Order which was issued by the Planning Commission of the County of Kauai on August 10, 1988, regarding an application the gist of which is to develop a golf course at Poipu, Kauai.

Also enclosed, pursuant to the Administrative Rules, is a copy of the Environmental Assessment which was filed by the developers in the above-captioned matter, and which, during the course of the proceedings, has been reviewed and considered by the Planning Commission.

As you can see from the document itself, the Planning Commission has determined that an Environmental Impact

Aug 18 3 36 PM '87

LAND USE COMMISSION
STATE OF HAWAII

COPY

Mr. Marvin T. Miura

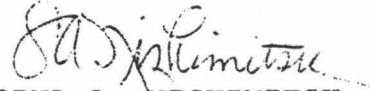
-2-

August 15, 1988

Statement is not required (at page 36, paragraph 4); therefore, the document constitutes negative declaration and hence, is being filed with your Office.

Should you require anything further, or should you have any questions regarding the foregoing, please feel free to call me at 245-3688.

Very truly yours,



LORNA A. NISHIMITSU
Deputy County Attorney

LAN:bkm

Enclosures

cc: Sunshyne Costa, Chairperson, ✓
Planning Commission
Dennis M. Lombardi, Esq.
Bruce L. Lamon, Esq.
Teresa S. Tico, Esq.
Stephen Levine, Esq.

TONY T. KUNIMURA
MAYOR



TOM H. SHIGEMOTO
Planning Director

ROLAND D. SAGUM, III
Deputy Planning Director

Telephone (808)245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766

August 11, 1988

Ainako Resort Associates and
Grove Farm Properties, Inc.
4334 Rice Street, Suite 203
Lihue, Hawaii 96766

Subject: Special Permit SP-88-6
Use Permit U-88-31
Special Management Area Use Permit SMA(U)-88-10
Class IV Zoning Permit Z-IV-88-39
TMK: 2-9-1: Por. 1

LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 36 PM '88

The Planning Commission, at its meeting held on August 10, 1988, approved the subject permits to establish an 18-hole golf course and to construct and establish accessory uses and structures subject to the conditions contained within the attached Findings of Fact, Conclusions of Law, Decision and Order of the Planning Commission dated August 10, 1988.


TOM H. SHIGEMOTO
Planning Director

cc: Mayor
Public Works Dept.
Water Dept.
Health Dept.
Fire Dept.
Real Property Division.

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

0318A/6390-11

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 1988, copies of the FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER were served upon the following by hand delivery:

Stephen Levine, Esq.
4365 Kukui Grove Street, Suite 103
Lihue, Kauai, Hawaii 96766

A.Z. 11 Aug 1988

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3016 Umi Street, Suite 211B
Lihue, Kauai, Hawaii 96766

ST 8/11/88

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psk 8/11/88

DATED: Lihue, Kauai, Hawaii, August 11, 1988.



TOM H. SHIGEMOTO
Planning Director

Aug 18 3 16 PM '88
LAND USE COMMISSION
STATE OF HAWAII

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

080388/2643K/0309A/6390-11

FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER

INTRODUCTION

The Applicants AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. filed an application (the "Application") with the Planning Department of the County of Kauai on April 18, 1988 for a Special Permit, SP-88-6, a Use Permit, U-88-31, a Special Management Area Use Permit, SMA(U)-88-10 and a Class IV Zoning Permit, Z-IV-88-39. The Application seeks authorization to develop a golf course and to construct certain proposed improvements related to the golf course (sometimes the "Project"), which are ancillary to the development of the Hyatt Regency Kauai Hotel, on that certain real property situate at Pa'a, Island and County of Kauai, State of Hawaii, bearing tax map key no. 2-9-1, portion 1 consisting of approximately 210 total acres (hereinafter sometimes referred to as the "Property" or "Project Area" or "Project Site"). The Planning Commission of the County of Kauai (hereinafter the "Commission") acting in accordance with the Revised Code of Ordinances of the County of Kauai (hereinafter the "RCO"), the Special Management Area Rules and Regulations of the County of Kauai (the "SMA Rules"), the Rules of Practice and Procedure of the Planning Commission for the County of Kauai (the "Commission Rules"), the Hawaii Land Use Commission Rules, Chapter 15-15, et seq., Hawaii Administrative Rules (the "Land Use Rules"), the Administrative Procedures Act of the State of Hawaii (the "APA") and Hawaii Revised Statutes, Chapters 205 and 205-A, as well as other applicable statutory provisions, having heard the testimony and examined the evidence presented at the hearings held in connection with the Application, and having considered the total record, including the proposed findings of fact and conclusions of law submitted by the parties, hereby makes the following findings of fact,

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STATE OF HAWAII

conclusions of law, decision and order (hereinafter sometimes the "Decision and Order"):

FINDINGS OF FACT

A. PARTIES

1. AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. (hereinafter sometimes collectively described as the "Applicant" and all reference to Applicant shall describe both Ainako Resort Associates and Grove Farm Properties, Inc.) have applied for the issuance of the authorizations hereinbefore mentioned to permit the development of a golf course and related facilities (including a clubhouse, restaurant, pro-shop, cart barn, field nursery and maintenance facility) ancillary to and associated with the resort facility currently approved for construction on property adjacent to the Project Area.
2. Grove Farm Company, Incorporated, is the legal owner of the Property and has, pursuant to a letter, dated February 2, 1988, a copy of which has been lodged with the Planning Department of the County of Kauai, authorized Grove Farm Properties, Inc., to apply in the name and stead of Grove Farm Company, Incorporated, to the appropriate agencies of the County of Kauai and of the State of Hawaii for those permits, variances, approvals and authorizations that are appropriate, advisable or necessary in order to develop the Property as a championship golf course with related facilities. Ainako Resort Associates is the proposed lessee of the Property.
3. Ohana O Maha'ulepu and Malama O Maha'ulepu are unincorporated associations who have sought and have been granted intervention in connection with this proceeding.
4. The Planning Department of the County of Kauai (hereinafter the "Department") is the County agency responsible, pursuant to State statute, the RCO, the SMA Rules, the Commission Rules and the Land Use Rules for coordinating the Commission's review of applications of the kind currently pending before the Commission and for preparing reports for the Commission's consideration concerning approval of the permits requested.

B. PROCEDURAL MATTERS

5. The Applicant has made the necessary filings and provided the notice necessary and required under the RCO, Chapter 205-A of the Hawaii Revised Statutes (sometimes the "Coastal Zone Management Act"), the SMA Rules, the Commission Rules and the Land Use Rules related to special permits, use permits, special management area permits, and class IV zoning permits.
6. A public hearing in respect of the Application was duly noticed, scheduled and occurred on May 25, 1988. A transcript of that proceeding consists of two volumes with consecutively numbered pages. References to the transcript of the public hearing shall be to volume and page which shall be cited in the following format: "T., V. __, Pub. Hrg., Pg. __".
7. Prior to the public hearing Malama O Maha'ulepu ("Malama"), Ohana O Maha'ulepu ("Ohana") and the Kauai Windsurfing Association each timely filed petitions to intervene in the application process.
8. At the public hearing the Kauai Windsurfing Association voluntarily withdrew its proposed petition for intervention and Malama and Ohana reaffirmed their requests. After conducting a hearing concerning the basis for the proposed intervention of Malama and Ohana (hereinafter sometimes the "Intervenors"), the Commission granted to each the status of intervenor, subject to the requirement that Intervenors consolidated their claims with respect to similar issues raised by the Intervenors in their petitions for intervention. T., V. I, Pub. Hrg., Pgs. 22-24.
9. On June 7, 1988, the Applicant, through its counsel, and the Intervenors, through their counsel, together with Deputy County Attorney, Lorna Nishimitsu, attended a meeting chaired by Rick Tsuchiya, hearings officer for the Planning Commission in connection with the Application. No transcript of that meeting is available. At the meeting the parties were requested to prepare and to submit to the Commission on or before June 16, 1988 their proposed list of witnesses and list of exhibits, together with any motions or requests that the parties might have relating to the conduct of the proceeding. Pursuant to that request, the parties prepared and each filed its respective witness and exhibit lists. Intervenors further filed on June 14, 1988, a Motion for Declaratory Order and on June 16, 1988, a Request for the Issuance of Subpoenas. Intervenors' Motion for Declaratory Order

was opposed by written Memorandum in Opposition to Intervenor's Discovery Request, filed by Applicant on June 16, 1988.

10. On June 16, 1988, the Commission, Sunshyne Costa, the Chairwoman, and Commissioners, Thomas Contrades, Art Fujita and Rebecca Sialana, sitting, conducted a pre-hearing in advance of the contested case portion of the proceeding. The transcript of the pre-hearing portion of the proceeding consists of a single volume and references thereto shall be cited as follows: "T., V. I, Pre-Hrg., Pg. ____."
11. The transcript with respect to the contested case portion of the Application proceeding consists of three volumes (of which volume I is two parts consisting of consecutively numbered pages) and references thereto shall be cited as follows: "T., V. __, CCH, Pg. ____."
12. The transcripts referred to in this Section B have been certified by the Planning department as correct.
13. After considering the Intervenor's Request for Issuance of Subpoenas and the representations and oral argument of parties' counsel in respect of the same, the subpoenas requested by Intervenor were issued, but for the subpoena proposed to be issued to Avery Youn, the former County Planning Director, which the Commission refused to issue for the purposes of providing testimony regarding the "legislative" intent of the Commission, the Kauai County Council and Mayor of the County in formulating and adopting the Koloa-Poipu-Kalaheo Development Plan requested by Intervenor. Intervenor's request to permit the submission of written testimony by George Cooper and Anthony Romo, under circumstances where those individuals would not be available for cross-examination by Applicant, was denied. T., V. I, Pre-Hrg., Pgs. 162, 164-166.
14. After considered review of the Intervenor's Motion for Declaratory Order, the Memorandum filed in support thereof, the Memorandum filed by Applicant in opposition thereto, and the representations and arguments made by counsel on the record, the Commission granted Intervenor's Motion for Declaratory Order and directed the production of certain documents by Applicant to Intervenor in accordance with Commission's written Order Granting Motion for Declaratory Order, which Order was ratified by the Commission at its hearing conducted on June 23, 1988,

and entered at that time. See T., V. I, Pre-Hrg., Pgs. 148-161. See also T., V. I, CCH, Pgs. 48-51. See also, Order Granting Motion for Declaratory Order.

15. The documents the Commission directed Applicant to produce to Intervenor were produced in accordance with the order of the Commission.
16. Among the materials submitted either in connection with the Application in respect of the Project or during the contested case portion of the proceeding are various surveys and studies prepared on behalf of Applicant in support of the Project as well as the Planning Department's Staff Report (the "Staff Report"). The materials included the Environmental Assessment, dated April 1988 ("Environmental Assessment" or "E.A.") prepared by Belt Collins and Associates, a Botanical Survey, dated January 1988 (the "Botanical Survey"), prepared by Char and Associates, Botanical/Environmental Consultants, Winona P. Char and George K. Linney, a Survey of the Avifauna and Feral Mammals at Grove Farm Properties, Poipu, Kauai, dated January 20, 1988 (the "Fauna Survey"), prepared by Phillip L. Brunner, Assistant Professor of Biology, Director of the Museum of Natural History, BYU Hawaii, a letter, dated April 27, 1988 by Phillip Brunner to Belt Collins and Associates updating the Avifauna Survey (referred to collectively with the Fauna Survey), a Golf Course Demand Study, dated March 2, 1988 (the "Demand Study"), prepared by Robert E. Yoxall, Inc., Recreation Consultant, a marine research report, dated June 18, 1988 (the "Marine Biology Report"), prepared by Marine Research Consultants, Steven Dollar, Ph.D., an Interim Report: Summary of Findings and General Significance Assessments and Recommended General Treatments, Archaeological Reconnaissance Survey, Hyatt Regency Kauai Proposed Golf Course Project Area, dated May 1988 (the "Interim Archaeological Survey"), the Revised Interim Report/Archaeological Reconnaissance Survey, dated June 1988 (the "Revised Archaeological Survey"), and Memorandum Regarding Recommended Preservation Measures for Identified Archaeological Sites, dated June 20, 1988 (the "Preservation Measures Memo"; referred to collectively with the Interim and Revised Archaeological Surveys as the "Archaeological Surveys") each prepared by Phillip H. Rosendahl, Ph.D., Inc., Consulting Archaeologist. The preparer of each of the foregoing reports (Joseph Vierra on behalf of Belt Collins & Associates) testifying at the contested case portion of the proceeding were qualified as experts in their respective fields as

well as David Pratt in the field of Agronomy. Also Dr. William Kikuchi, Archaeologist, Donald Heacock, Marine Biologist, David Boynton on avifauna, and Dorothy Tao on flora, were each called by the Intervenor as witnesses and so qualified. The Commission accepts for the record all attachments to the Applicant's Application, including the Environmental Assessment and any studies or surveys or letters or memoranda submitted in connection therewith. Further, the Commission accepts for the record Applicant's Exhibits 1-10, inclusive, Intervenor's Exhibits B, C, D, E and F, the Staff Report and County Zoning Map No. ZM-PO-300. Taking into consideration the availability of the authors of the reports for cross-examination during the contested case portion of the proceeding, the Commission accepts as written testimony each of the reports contained among Applicant's exhibits and incorporates herein by this reference the Commission's written order in respect of the Intervenor's Motion for Declaratory Order.

C. DESCRIPTION OF PROJECT AND PROPERTY

17. The Project Area is located in the District of Pa'a and is, in part, contiguous to the site of the proposed Hyatt Regency Kauai Hotel, which is located in the State Land Use Urban District. The proposed configuration and boundaries of the Project Site are reflected in figure 2 of the Environmental Assessment filed in connection with these proceedings. E.A., Pgs. 1-2.
18. The proposed golf course will consist of eighteen holes, a driving range, putting green, clubhouse, field nursery and maintenance building. The clubhouse will be located near the planned Hyatt Regency Kauai and will include parking and access from the extension of Poipu Road via the beach access road. The clubhouse will include a golf pro-shop, restaurant, golf club storage room and golf cart maintenance area. The building will articulate an architectural style that will blend with the Hyatt Regency and the architecture of the area. The golf course maintenance building and temporary field nursery will be located within the golf fairways (adjacent to fairways 10 and 5) as reflected in figure 2 of the Environmental Assessment. E.A., Pg. 3; T., V. I, Pub. Hrg., Pgs. 39-60.
19. The golf course layout will be configured to consist of three holes mauka of the Hyatt Regency with the

remainder of the course in an area east of the clubhouse generally following the coastline, but mauka of the Conservation District. The makai holes are intended to take advantage of the area's scenic amenities as well as preserve the shoreline's open-space environment. E.A., Pg. 3.

20. The course is designed essentially as a "core course", i.e., a course where fairways adjoin one another rather than planned residential areas, with its first tee leaving from the proposed golf clubhouse and its eighteenth tee returning to the clubhouse. No fairways or holes of the course are proposed on the oceanside of the State Land Use Conservation District boundary. A shoreline access trail approximating the location of the existing trail is reflected makai of the Conservation District boundary and will be maintained as part of the development of the Project. E.A., Fig. 2; T., V. I, CCH, Pg. 273.
21. The Project Area is within the State Land Use Agricultural District. The Project Area is also within the County's zoning Agriculture District and Open District. A portion of the Project Site is within the Special Management Area defined by the County of Kauai. The Kauai County General Plan ("General Plan") and the Poipu-Koloa-Kalaheo Development Plan ("Development Plan") designations for the Project Area are Agriculture and Open. E.A., Pg. 7. See County Zoning Map and Staff Report.
22. The cost of the improvements proposed to be made to that portion of the Property within the Special Management Area in connection with the development of the golf course exceed \$65,000.00. See Staff Report.
23. The Project Area consists primarily of former sugarcane lands and adjacent areas. Approximately, 50 acres of the site remain planted in sugarcane at this time. T., V. I, CCH, Pgs. 408-411.
24. The Applicant intends and proposes to develop an 18-hole championship-caliber golf course and proposes to operate it in association with the planned 605-room Hyatt Regency Kauai at Keonelo Bay. The proposed development will be operated as a resort oriented facility but will be open to the public. The golf course will be developed also to accommodate an increasing demand for golf play in the Poipu area of Kauai and Kauai generally and to make south Kauai more competitive among other visitor destination areas. E.A., Pgs. 7-9; T., V. I, Pub. Hrg., Pgs. 39-60; T., V. I, CCH, Pgs. 100-120.

25. The Project Site is located on the eastern perimeter of the resort community of Poipu in south Kauai. Unlike master planned destination areas developed by single entities, Poipu is comprised of a number of independent resort and hotel developments, including Kiahuna Plantation, Sheraton Kauai and the Stouffer Waiohai. E.A., Pgs. 7-9.
26. Only recently has Poipu become a major destination area. Prior to 1960, Poipu was an isolated and remote settlement occupied by a small number of beachfront homes which were primarily associated with the sugar plantation that still operates a mill today about 1.5 miles to the north. Today, Poipu has more than 1,800 hotel rooms and apartment condominiums, together with various commercial facilities, residences and beach parks. E.A., Pg. 9.
27. The Project Site is located on coastal and former agricultural lands. A portion of the Project Area is leased to McBryde Sugar Company, Limited (sometimes "McBryde" or "McBryde Sugar"), for planting and harvesting of sugarcane. The portion of the land which remains subject to the McBryde lease is subject to withdrawal by Grove Farm under the terms of a 1974 lease. E.A., Pg. 10; T., V. I, CCH, Pgs. 408-410.
28. Bordering the Project Area on the west is the resort community of Poipu which stretches approximately 2.3 miles along Kauai's southern coast. Immediately to the west are several resort-residential projects, including Bayview, a 40 lot residential subdivision, Lanai Villas Makai, a 47 lot residential subdivision, and Poipu Sands, a resort-residential condominium. Immediately adjacent to the Project Site is the site of the planned 605-room Hyatt Regency Kauai Hotel which is scheduled to commence construction in 1988. E.A., Pg. 10; see also Staff Report and T., V. I, CCH, Pgs. 100-120.

Physiography

29. The overall terrain of the Property gradually rises from a 30-foot elevation at its most makai boundary to approximately 125 feet at the site's mauka boundary. The average site slope is about 4%. E.A., Pg. 10.
30. There are no distinguishable drainage ways on the Property and the topography is relatively even. Site runoff is primarily by sheet flow towards the ocean. E.A., Pg. 10.

31. At the coastline, outside the Project Site, are formations of limestone and lithophyte, as well as calcareous sand dunes of approximately 30-120 feet in elevation. There are no sand beaches in the Project Area or on the oceanside of the Project boundary. The nearest sand beach is at the Hyatt Regency Kauai Hotel site. E.A., Pg. 10.

Soils

32. According to the Soil Conservation Service of the U.S. Department of Agriculture, the Project Site contains predominantly Waikomo stony silty clay. Also present are Koloa stony silty clay, Mamala stony silty clay loams and jaucas loamy fine sand in smaller amounts. E.A., Pgs. 12-13.
33. Waikomo stony silty clay consists of well-drained stony and rocky material developed in matter weathered from basic igneous rock. The permeability of the soil is moderate, its runoff is slow and its erosion hazard characteristic is slight. E.A., Pgs. 12-13.
34. Inland sections of the Property contain Koloa stony silty clay soil types. This soil too is well-drained and generally found on old volcanic vents in upland ridges. Hard rocks usually underlie this soil at a depth of 20-40 inches. Runoff is medium to severe and the erosion hazard is moderate. E.A., Pgs. 12-13.
35. The Project Area generally encompassed by Waikomo stony silty clay and Mamala stony silty clay loam soils is within the other important agricultural land classification of the Agricultural Lands of Importance of the State of Hawaii (ALISH) Agricultural Land Evaluation System. Except for approximately 11 acres classified prime agricultural land at the mauka boundary of the Project Site, the remainder of the 210 acre Project Site, generally mauka of the shoreline area, is not classified. E.A., Pgs. 12-13.
36. Within the Project Site, the Land Study Bureau of the University of Hawaii classifies the mauka land (essentially the same area shown on the ALISH map as other important agricultural land and prime agricultural land) as having a normal (master) productivity rating of "B". In the makai portions of the Project Site, "B", "D", and "E" classifications predominate. E.A., Pgs. 12-13, 16.

Hydrology and Drainage

37. There are no surface water features on the Property. The site's topography and soil characteristics provide an extremely well-drained condition suitable for development. A man-made retention and sedimentation basin exists in a low-lying area adjacent to the site makai of Pu'u Ainako. E.A., Pg. 16.
38. Runoff from the Project Site will be maintained in the current manner. No increase in surface water discharge or ground water discharge will result from the development. E.A., Pg. 16; T., V. I, CCH, Pgs. 443-446.
39. The Project Site's offshore waters are classified by the State Department of Health as Class A Waters, the second highest class of water rating under the Department's rating system. Discharge into these waters is permitted only upon having the best degree of treatment or control compatible with the criteria established by the Health Department for this class. The proposed Project will not involve discharge of any wastewater, commercial pollutants or industrial waste into the ocean. Surface runoff generated by the proposed development is planned to be contained within the golf course or to be limited to that which currently flows into the ocean. Indeed, with increased landscaping at the Project Site, surface runoff will be reduced by premitting more ground percolation to take place and consequently less flow into coastal waters will occur. E.A., Pg. 16; T., V. I, CCH, Pgs. 443-446.
40. Sewage generated by the proposed clubhouse facilities and on-site restroom facilities will be collected and conveyed to a planned wastewater treatment facility proposed for the new Hyatt Regency Kauai Hotel. E.A., Pg. 16; T., V. I, CCH, Pgs. 107-108.

Fauna

41. A variety of bird species have been observed and recorded at the Project Site. No endangered species have been identified as currently frequenting or nesting in the Project Area. Mammal ground species identified include dogs, cats, rats and mice. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 358, 364.
42. The Project Area and its surrounding environs provides a fairly diverse range of habitats which are utilized by the typical array of exotic birds and migratory

shorebirds expected in this location. No endemic species have been identified on the Property. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 359-364.

43. The native indigenous bird species identified at and adjacent to the Project Site fall predominantly into migratory types of birds including the Pacific Golden Plover and seabirds such as the Wedge-tailed Shearwater. The plover prefers a low grassland type of habitat and as a result the development of the golf course will likely increase the presence of the plover in the area. The importation of trees into the area as part of the golf course development will create a greater diversity of living spaces and habitats than are currently available at the site and will likely result in the increase of various species of tree-nesting avifauna. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 359-360, 362-364.
44. The majority of shearwater burrows identified adjacent to the Project Site are located on seaward facing cliffs outside of the Project Area. E.A., Pgs. 16-18; T., V. I, CCH, Pgs. 362, 374.
45. Development of the golf course will not have an adverse impact on any of the identified birds or those expected to use the area or on the habitat utilized by those birds. On the contrary, the development of the course will probably improve the habitat remarkably for a variety of species. The development will not adversely impact any birds including seabirds such as the shearwater or migratory shorebirds. Indeed, moderate control of the coastwise access and prohibition of inappropriate vehicular access along the coast may improve the habitat for the shearwater and other coastal nesting avifauna. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 362-363; T., V. III, CCH, Pg. 26.

Flora

46. Those portions of the Project Site not currently covered by sugarcane field contain scrub vegetation and various weedy or "ruderal" vegetation forms. E.A., Pgs. 18-19; Botanical Survey; T., V. I, CCH, Pgs. 188-208.
47. One hundred forty-nine (149) species of flora were inventoried within and adjacent to the Project Site of which 120 species have been introduced, 19 are indigenous, i.e., native to the islands and elsewhere, 5 are endemic, i.e., native only to the islands, and 5

originally of Polynesian introduction. No threatened or endangered species were found in the Project Area although a few species, including hinahina-kahakai, kipukai, puapilo, nama and ohelo-kai are considered rare or depleted. Those species are described commonly as native coastal strand vegetation and have been identified as occurring within the Conservation District, including the seaward facing slopes, outside of the Project Area. E.A., Pgs. 18-19; T., V. I, CCH, Pgs. 188-208.

48. Development of the golf course project at the Project Site will have no adverse effect on rare or depleted, endemic or indigenous species of plants or on flora generally. The abutment of the Project Area to the Conservation District and exclusion of off-road vehicles along the coastal stretch of the Project Area abutting the Conservation District will improve the habitat for coastal strand vegetation which has been impacted heavily in the past by such vehicles. E.A., Pgs. 18-19; Botanical Survey; T., V. I, CCH, Pgs. 194-196; T., V. III, CCH, Pgs. 46-47, 50.
49. The Applicant and Intervenors' floral experts, Winona Char and Dorothy Tao, respectively, have each recommended that access to Makawehi dune not be permitted to off-road vehicles as they have had a definite negative impact on dune vegetation and have contributed greatly to erosion of the dune area. Each has recommended that pedestrian traffic for the purposes of fishing, hiking, sightseeing and the like continue to be allowed. Further, each has recommended that landscaping with easily-grown native species adapted to local environmental conditions including salt spray be incorporated into the golf course landscaping plans. E.A., Pgs. 18-19, T., V. I, CCH, Pgs. 194-195; T., V. III, CCH, Pgs. 46-47, 50.

Air Quality

50. The existing air quality within and around the Project Site is very good. A short-term air quality impact may result from the proposed Project during its construction phase. Implementation of adequate dust control measures employed during the construction phase will mitigate and alleviate resulting adverse effects, if any, on surrounding resort and residential areas resulting. E.A., Pg 19.
51. No substantial adverse environmental or ecological effect will result from the development of the course. Indeed, the placement of the course within the Project Site will reduce direct long-term air

quality impacts associated with cane harvesting in adjacent areas. E.A., Pg. 19.

Noise

52. Construction activities associated with the development of the golf course may contribute in the short-term to temporarily increase noise levels. Restriction of construction activities to daylight hours where the activities are conducted in proximity to developed areas will mitigate and alleviate any possible impact associated with such activity. E.A., Pgs. 19-22.
53. The proposed implementation of the Project at the Project Site is not expected to increase noise level in the long-term. An increase in traffic, which would be a principal source of long-term noise level increase, is not expected by virtue of implementation of the proposed Project. Consequently, the development will not have any substantial adverse environmental or ecological effect in terms of noise. To the extent that noise may be a concern, roadside landscaping will buffer noise emanating from automotive vehicles. E.A., Pgs. 19-22; T., V. I, CCH, Pgs. 444-445.

Archaeology and Historical Resources

54. Based on all the evidence presented to the Commission, the Project Site has marginal archaeological significance. A surface and subsurface survey of the area identified a total of 18 archaeological sites within and about the Project Area (7 of which had been previously identified in the June 1974 Archaeological Research Center of Hawaii Survey). Subsurface excavation conducted as part of the 1988 survey revealed no subsurface cultural deposits. T., V. I, CCH, Pgs. 213-215; T., V. III, CCH, Pgs. 7-19; Archaeological Surveys.
55. Of the 18 archaeological sites identified, 10 have been identified as important for their information and have been preserved through the recordation of that information and no further protective or preservation measures are required in respect of those sites. Eight of the identified sites are important both for their information and for their potential as good examples of site types and/or for their cultural value. T., V. I, CCH, Pg. 214; T., V. III, CCH, Pgs. 7-19; Archaeological Surveys.

56. The 8 sites recommended for preservation by both the Applicant's and the Intervenor's archaeological experts, Phillip Rosendahl and William Kikuchi, respectively, have been labeled T-2, T-3, T-7, T-8, T-9, T-10, T-11 and 3216. Their site location is reflected generally at figure 1 of the Revised Archaeological Survey. Sites T-7 and T-8 are located outside of the boundary of the Project Area. Site T-9 is located within the golf course boundary. Site T-2 is within the overall Project Area located atop Pu'u Ainako and therefore not within the limits of golf fairways nor within any area proposed for improvement by Applicant. Site T-3 is a large stone-stepped platform situated on the seaward side of Pu'u Ainako and is seemingly located on the Project Area boundary. Site T-3, however, is not within an area proposed for construction of the golf course or any improvements associated with the golf course. Sites T-10, T-11 and site 3216 should be considered a single site complex consisting of stepped platforms, the larger of which, T-10 is located within the Conservation District outside the boundary of the Project Area. The smaller platforms, sites T-11 and 3216 appear to be within the Project Area. T., V. I, CCH, Pgs. 227-232; Archaeological Surveys.
57. Each expert has recommended some level of preservation for the 8 significant archaeological sites ranging from conservation (site preservation as is and site protection) through interpretation (public education and resource study). Both the Applicant's and Intervenor's experts concur that the scope of preservation recommended by Dr. Rosendahl at Table 1 of his Protective Measures Memo should be undertaken by the Applicant. The Applicant has agreed to undertake these recommended preservation measures in respect of the significant archaeological sites which include conservation, clearing and cleaning of sites T-7 and T-8, and interpretation of sites T-2, T-3, T-9, T-10, T-11 and 3216 through clearing and cleaning, and stabilization, among other interpretive measures. T., V. I, CCH, Pg. 110; T., V. I, CCH, Pgs. 218-220, 223; T., V. III, CCH, Pgs. 14-15; Protective Measures Memo.
58. To insure preservation of the 8 significant sites a buffer zone around the sites should be clearly flagged during the construction period. Also, an archaeologist should be available to work with the construction people on-site so that they know where the boundaries of the archaeological sites are. In this manner accidental incursion into the areas can be avoided. T., V. I, CCH, Pg. 219.

59. Due to the flexible nature of golf course design, the archaeological sites within the Project Area boundaries and on the boundaries may be successfully integrated into the golf course and thus preserved in the long-term as well as in the short-term construction period. The sites can be incorporated and it is preferable to incorporate the archaeological sites into the course's natural and cultural features. Including the sites within the course boundary will better serve to preserve the sites through better maintenance and control of the sites, and will not jeopardize public access to the sites to interested persons. T., V. I, CCH, Pgs. 218-219, 231-237; see also T., V. III, CCH, Pgs. 14-15, 18-19.
60. Both the Applicant's and Intervenors' archaeological experts have concurred that the Survey and Protective Measures Memorandum prepared by Dr. Rosendahl can be integrated into a cultural resource management plan for the regional area in a successful manner should such a plan be developed by others in the future. Both experts further agree that the significant sites located can be effectively studied independent of a regionwide plan or survey. T., V. I, CCH, Pg. 220; T., V. III, CCH, Pgs. 18-19.

Natural Hazard

61. The Project Area is outside of any flood plan identified by the Flood Insurance Rate Map ("FIRM") prepared by the U.S. Army Corp of Engineers. Indeed, the Project Area is located above the shoreline behind limestone and lithophyte calcaerous sand dunes which rise approximately 30-120 feet above sea level. The base flood elevation of a potential 100-year tsunami inundation is only 7 feet according to the FIRM map and there are no potential ravine flood plains which can adversely affect the Property. Other natural hazards are of no consequence to the Project Site. E.A., Pg. 22.

Views

62. The proposed golf course will contain a large expanse of green turf, scattered shrubs and trees. The major structural improvements will be the golf clubhouse and maintenance facilities. E.A., Pg. 22; T., V. I, CCH, Pgs. 100-101.
63. The golf clubhouse facilities will be nestled on the mauka side of Pu'u Ainako and therefore will not impair views to, from or along the ocean. Through the

development of the golf course views to and from the ocean and lateral shoreline views will not be impacted adversely, but, rather improved. The maintenance facility to be located at the field nursery site will be screened with shrubs and trees and will not impact mauka/makai views, nor the view along the shoreline. In fact, development of a golf course at this site will result in the opening up of views towards the ocean and mountains resulting in a more aesthetically pleasing and visually enhanced environment in the Pa'a area than that which presently exists. E.A., Pg. 22; T., V. I, CCH, Pgs. 100-101.

Biological/Ocean Marine Resources

64. The Health Department is the lead agency to assess water quality and water pollution in the State. T., V. II, CCH, Pg. 96.
65. The water quality in the Pa'a area coastline can be described as very high (class A) except in times of major rains when natural erosion and sugarcane siltation discharge in the ocean can impact the waters. T., V. I, CCH, Pgs. 172-173, and V. II, CCH, Pg. 88; Marine Biology Report.
66. Nitrogen, which is a component of fertilizer, can potentially impact marine resources, including water quality and coral reefs in near shore regions adjacent to the Project Site. T., V. I, CCH, Pgs. 163-177; Marine Biology Report.
67. Current qualitative evaluations of the near shore water quality reflect no evidence of pollution of any sort or any sort of adverse effect attributable to chemical infiltration through runoff or ground water attributable to sugarcane operation. T., V. I, CCH, Pgs. 172-173; V. II, CCH, Pg. 88; Marine Biology Report.
68. The Applicant intends to utilize a secondary treated effluent created at the Applicant's sewage treatment facility to irrigate and in part fertilize the golf course. T., V. I, CCH, Pgs. 163-177; Marine Biology Report.
69. The creation of a golf course at the Project Site and the utilization of fertilizers on the course and effluent to irrigate the course will result in about 1/20th of the nitrogen introduced into ground water compared to present sugarcane usage at the site. T., V. I, CCH, Pg. 164; T., V. II, CCH, Pg. 99; Marine Biology Report.

70. The conversion of the Project Site to golf course site will result in no increase in phosphorous introduction to the near shore environment. No adverse environmental or ecological effect will result by virtue of these uses. T., V. I, CCH, Pg. 164.
71. No conclusive evidence was adduced regarding the potential impacts, whether adverse or otherwise, to the environment or ecology of the off-shore waters as a result of the use of chemical herbicides or pesticides in the project area. T., V. I-II, CCH.
72. The current sugarcane operation along the coast has a more detrimental effect in general on near shore water quality than will golf course use. T., V. II, CCH, Pg. 114.
73. Based on the testimony of Dr. Steven Dollar, it is unnecessary at this time to conduct a baseline qualitative study of the marine shore organisms in the area as there is no evidence that there will result a negative impact from the golf course operation. T., V. I, CCH, Pgs. 174-175.

Economic Impact

74. Construction and operation of the proposed golf course can be expected to result in increased employment, personal income and government revenues. Direct short-term construction and long-term operational economic benefits will be realized in the neighboring Koloa-Poipu area communities as well as indirect economic benefits in the rest of Kauai and the State. E.A., Pgs. 23-24.
75. Direct employment is expected to result during the temporary construction phase and the operational phase of the golf course facility. The Applicant has represented that it will endeavor to use as many local employees as possible in both the construction and operational phases of the golf course. This activity would be in keeping with the developer's historical approach in connection with developments on the island. E.A., Pgs. 23-24; T., V. II, Pub. Hrg.
76. Indirect employment will be generated in companies supplying materials and services needed to construct the golf course and related facilities. "Induced employment" (which refers to additional jobs created throughout the economy when construction workers and employees and proprietors and supply firms spend their wages and salaries) is also expected to result from

the introduction of the golf course operation at the Project Site. The coupling of indirect and induced employment added to direct employment will result in a multiplier effect generating more than one job opportunity for each job created at the golf course construction site. E.A., Pg. 23-24.

77. Construction of the facilities is expected to require approximately 20 months to complete and a total of 12 full-time equivalent jobs are expected to be created during that period. A full-time equivalent job represents a combined aggregate of full and part-time employment over the worker months to be generated during the construction phase of the operation. E.A., Pg. 24.
78. Direct golf course employment, including employment at the golf clubhouse and maintenance facility, is estimated to include about 86 persons with management personnel accounting for about 10% of the golf course employment. E.A., Pg. 24.
79. It is expected that government revenue in the long-term will increase by virtue of the implementation of the proposed Project attributable both to an increase in the property tax base and consequent property taxes payable to the County, as well as tax revenues resulting from earnings and spending of wage, salary and proprietor's income associated with direct, indirect and induced jobs generated by the operation of the golf course. E.A., Pgs. 24-25.
80. Each of the foregoing socio-economic impacts is perceived as beneficial and will not create any adverse impact on the island economy, environment or ecology. E.A., Pgs. 24-25.

Public Facilities and Services

81. The cost to construct the infrastructure required to support the golf course Project will be borne by Applicant. Development of the proposed golf course will require the extension of Poipu Road along the mauka boundary of the Hyatt Regency Kauai Hotel site as well as the construction of a driveway to the proposed golf clubhouse, a distance of approximately of 2,000 feet. It will be improved to create a two-lane paved road in compliance with County standards, with graded shoulders and landscaping. The portion of the road which adjoins the mauka boundary of the hotel site will be developed by the hotel owner and approval for this road segment has already been

obtained from the County in connection with approval of the hotel. This road will also be extended (per the previous County approval of the hotel) towards the beach at Keonelo Bay to afford public access to the planned public beach park at the hotel site parcel. E.A., Pgs. 25-27; T., V. I, CCH, Pg. 105.

82. Potable water for the golf course operation will be available through the 12-inch water line running along the existing portion of Poipu Road. It is expected that the clubhouse will require an average 6,600 gallons per day of potable water. Any required improvement to the existing water system, which will include an extension of the existing transmission line approximately 2,000 feet from the Poipu Road terminus to the clubhouse will be effected by the Applicant as part of the development of the Hyatt Regency Kauai Hotel and all fees of the Department of Water will be paid. Water source is currently sufficient to satisfy the projected demand. E.A., Pgs. 25-27; Staff Report.
83. Secondarily treated effluent generated by the planned Hyatt Regency's sewage treatment plant, as well as planned irrigation wells to be constructed by the Applicant, will be used to irrigate the course. It is possible that Applicant may also use recycled surface runoff from mauka lands for irrigation purposes. E.A., Pgs. 25-27.
84. No public sewage collection system exists in the area of the Project. All existing systems consist of private collection and treatment facilities. Liquid waste generated from the proposed Project will be treated in conjunction with the planned Hyatt Regency Kauai at the hotel's sewage treatment plant, which will be designed to service the two facilities. Sludge will be disposed of in accordance with Health Department regulations and County requirements. Solid waste will be disposed of by private contractor. Neither waste element will have any substantial adverse environmental or ecological effect and adequate services exist or can be developed without cost to the County, to meet these needs. E.A., Pgs. 25-27; T., V. I, CCH, Pg. 108.
85. Adequate police and fire protection services and electrical and telephone services are available to service any need which may be generated by the proposed Project. E.A., Pgs. 25-27.
86. Implementation of the Project will not unreasonably burden public agencies to provide roads, streets,

sewer and water facilities, drainage facilities, school improvements or police and fire protection. E.A., Pgs. 25-27.

Access

87. Development of a golf course on the Project Area will not impair public access or reduce or impose restrictions on public access to tidal or submerged lands, beaches or areas designated by the mean high tide line. Development of the course will legitimize and improve public access to and along the shoreline and the foregoing areas. T., V. I, CCH, Pgs. 105, 275-276, 279.
88. Concurrent with the development of the golf course public parking facilities will be created by the Applicant on and off-site at the western end of the course at the base of Makawehi dune (off-site), at the northeastern coastal border of the course (off-site) and at the field nursery/maintenance building location (on-site) in the approximate areas reflected on Applicant's Exhibit 1. An area sufficient for parking 40 automobiles will be afforded at the western parking area and area sufficient to park 5 vehicles at each site will be afforded at the northeast coastal and field nursery maintenance building sites. Access to the western parking facility will be via Poipu Road, the beach access road, the golf clubhouse driveway and a compacted (but possibly not surfaced) road to be constructed by Applicant in the general area reflected on Applicant's Exhibit 1. Access to the field nursery parking facility and the northeast coastal facility will be via existing haul cane roads (with minor realignments) also reflected on Exhibit 1. T., V. I, CCH, Pgs. 105-108.
89. Notwithstanding the closure by McBryde Sugar Co., Ltd., and other plantations of their haul cane roads to public access, arrangements have been made with McBryde Sugar (who will continue to utilize the existing haul cane road mauka and northeast of a portion of the course) to maintain open public access for fishermen and other users along those portions of the haul cane road system necessary to access the field nursery and northeast coastal parking facilities. T., V. I, CCH, Pgs. 105-108, 429-430, 434.
90. The parking facilities proposed to be created in connection with the development of the golf course have been sited in areas most commonly used by fisherman and others to access the coastline. Access

from the parking facilities to the coastline will be afforded to the public and the existing shoreline trail present in the Conservation District adjacent to the Project Site, which affords lateral access along the entirety of the coastline adjacent to the Project Site, will also be made available for pedestrian access. Additionally, a shoreline trail from the existing Hyatt Regency Kauai site to the intersection of the golf course Project Site boundary and the Conservation District boundary will be afforded to the public in the general area reflected on Applicant's Exhibit 1, thereby affording lateral pedestrian public access along the coastline from the hotel site to the northeastern most boundary of the golf course site. The existing shoreline trail in the conservation district will be maintained unobstructed in the general area reflected by a dotted line and labeled as shoreline trail on Applicant's Exhibit 1. T., V. I, CCH, Pgs. 105-108.

91. Applicant has represented that it will provide to the County a sufficient license affording to the public the access to and along the shoreline indicated. Although relocation of various facilities may occur in the future, any form of license granted by the Applicant shall provide for the substitution of substantially equivalent access upon such relocation. T., V. I, CCH, Pgs. 129-132.
92. Utilization of a license in lieu of a grant of easement will minimize potential liability exposure to the County, by retaining as private the ownership and rights associated with the licensed access areas to be created in connection with the development of the course and reflects the County's current stated preference. T., V. I, CCH, Pgs. 129-132.

Grove Farm's Plans

93. Grove Farm Company, Incorporated, currently has under lease to McBryde Sugar Company, Ltd. areas in Pa'a and Maha'ulepu. The lease by its terms expires in 1994. T., V. I, Pgs. 407-458, V. II, CCH, Pgs. 7-25.
94. Since as early as 1960 Grove Farm has been developing conceptual plans relating to prospective land uses in the Pa'a and Maha'ulepu areas adjacent to the Project Site. T., V. I, Pgs. 407-458, V. II, CCH, Pgs. 7-25.
95. In assessing the potential cumulative impacts of other developments, the Commission has received and reviewed all of the conceptual plans formulated by Grove Farm

Company, Incorporated in respect of its Pa'a and Maha'ulepu properties. T., V. I, CCH, Pgs. 407-458, V. II, CCH, Pgs. 7-25.

96. Grove Farm Company's Pa'a/Maha'ulepu plans, Intervenor's Exhibit E, are not reasonably probable of implementation in the reasonably anticipated future. The conceptual plans that Grove Farm Company has for the areas in Pa'a and Maha'ulepu surrounding and adjacent to the present Project Area require substantial further study and may require substantive change before Grove Farm Company, Incorporated, will be in a position to seek governmental approval of any of the proposed land uses considered. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.
97. The lack of study by Grove Farm of its conceptual plans and the failure of Grove Farm Company to have undertaken feasibility, infrastructure and market/demand studies, and the like, associated with its conceptual plans, together with other evidence produced at the contested case hearing relative to these plans, reveals that the land use concepts envisioned by Grove Farm Company are not reasonably probable of implementation in the anticipated future. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.
98. The current proposed golf course is independent of the conceptual plans Grove Farm Company has for the surrounding Pa'a-Maha'ulepu areas and was formulated subsequent to the concept for the development of the surrounding area. The current Project and the land uses envisioned in concept by Grove Farm for areas surrounding the proposed golf course are not inter-dependent. The proposed golf course on the Project Site is not economically or functionally dependent on the implementation of any land use concept for areas surrounding the Project Site and conceived by Grove Farm Company in its conceptual plans. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.

Need

99. Since the establishment of district boundaries generally and the Land Use Rules, there has been a substantial increase in the use and interest in the golf industry. The focus of many resort endeavors has moved from conventions and the free independent traveler to the incentive group market, which cannot be attracted effectively without an on-site golf facility. T., V. I, CCH, Pgs. 115-118, 281; Demand Study.

100. The percentage of golfers in the United States has grown 24% to 20.2 million persons over the last two years. In order to keep pace with the demand and the need for golf created by the increased interest in golf in the United States, many golf courses would have to be built. This intensity of interest and need is greater in Hawaii and the sunbelt states than in other parts of the country. Indeed, Hawaii is seen as a vacation mecca with an intense demand for golf currently that is not projected to abate in the future. T., V. I, CCH, Pg. 281; Demand Study.
101. Based on current need and demand, Kauai will need to significantly increase double the number of golf courses currently available to satisfy existing and anticipated need for such recreational facilities. T., V. I, CCH, Pg. 342, 387-390, 395-400; Demand Study.
102. Existing golf facilities on the island of Kauai are inadequate to meet current demand and need for golf on Kauai created by the resident and tourist population, exclusive of the demand and need to be generated by the Hyatt Regency Kauai Hotel. T., V. I, CCH, Pgs. 399-400; Demand Study.
103. Reasonable estimates of the demand and need to be created for additional golf attributable to the Hyatt Regency Kauai Hotel reflect that the Hyatt Hotel will create a need for additional golf facilities exclusive of the general public and tourist need. It is estimated that the Hyatt Hotel will create a demand for some 35,000 rounds of golf annually at its initial stage which will increase thereafter and is expected to reach a demand for some 48,000 rounds of golf annually. T., V. I, CCH, Pgs. 392, 393, 400. See also Demand Study.
104. The existing County golf facility at Wailua is currently overused. Play at that facility has been described as reaching the saturation level. The average municipal course in sunbelt states, where golf usage is higher than other states in the mainland United States, has 55,000 rounds per year played on the facility. At Wailua some 120,000-130,000 rounds of golf are played annually. T., V. I, CCH, Pgs. 400-401. See also Demand Study.
105. Notwithstanding the creation of new courses, including the additional 9-holes contemplated at Princeville and the possible development of an 18-hole golf course at Kukuiula, an 18-hole golf course in Lihue and an additional 9-holes at Kiahuna,

there exists a compelling private need (created by the Hyatt Regency Kauai Hotel) and public need for additional golfing facilities available for the tourist and resident population on Kauai. T., V. I, CCH, Pgs. 115-118, 389, 390-393; Demand Study.

Hawaii State and County General Plan

106. The Hawaii State Plan, adopted in 1978, serves as a guide for the long-range future development of the State. It establishes an overall theme, goals, objectives, policies, priority directions, and a system for plan formulation and program coordination for the integration of all major State and County activities. State goals in the areas of the economy, physical environment, and physical, social and economic well-being of its population are set forth in the plan as well as the State's objectives and policies in the areas of population, the economy, the physical environment, facility systems and socio-cultural advancement. The development of the Property is consistent with the Plan and will contribute to the fulfillment of the following goals, objectives, and/or policies set forth in the Hawaii State Plan by:

- a. Adding 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;
- b. Adding to 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;
- c. Encouragement of an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires;
- d. The encouragement of businesses that have favorable financial multiplier effects within Hawaii's economy;
- e. The promotion and protection of intangible resources in Hawaii such as scenic beauty;
- f. Assistance to the overseas promotion of Hawaii's vacation attractions;

- g. Improving the quality of existing visitor designation areas;
- h. Ensuring that visitor facilities and destination areas are carefully planned and sensitive to neighboring communities and activities;
- i. Providing public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion;
- j. Pursuing compatible relationships among activities, facilities, natural resources, especially within shoreline areas;
- k. Promoting the preservation and restoration of significant natural and historic resources;
- l. Promoting the visual and aesthetic enjoyment of mountains, ocean vistas, scenic landscapes and other natural features;
- m. Promoting the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values;
- n. Ensuring opportunities for everyone to use and enjoy Hawaii's recreational resources;
- o. Sharing the availability of sufficient resources to provide for future recreational needs;
- p. Fostering the increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii;
- q. Managing population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social and economic aspirations while recognizing the unique needs of each county;
- r. Encourage greater cooperation between the public and private sectors in developing and maintaining well-designed and adequately serviced visitor industry and related developments;
- s. Maintaining prudent use of Hawaii's land-based, shoreline and marine resources;

- t. Assuring effective protection of Hawaii's unique and fragile environmental resources;
 - u. Assuring the availability of sufficient resources to provide for future cultural, artistic and recreational needs; and
 - v. Providing a wide range of activities and facilities to fulfill the cultural, artistic and recreational needs of all diverse and special groups effectively and efficiently.
107. The General Plan establishes the County's policy governing the long-range, comprehensive development and allocation of land and water resources within the County of Kauai. The Development Plans, including the Koloa-Poipu-Kalaheo Development Plan ("Development Plan"), are used as guidelines in implementing the General Plan. The development of the Project Area conforms to and is consistent with the provisions of the General Plan and the Development Plan inasmuch as it contributes to the attainment of the following goals of the General Plan:
- a. Maintaining the concept of Kauai as "The Garden Isle" by providing for growth in consonance with the unique landscape and environmental character of the island;
 - b. Ensuring that physical growth is consistent with the overall ecology of the island;
 - c. Creating opportunities for a greater diversity and stability of employment for residents of Kauai;
 - d. Providing for a maximum variety of outdoor recreational activities;
 - e. Recognizing those aspects of the island and its people which are historically and culturally significant and maintaining and enhancing such aspects as a continuing expression of the island's physical and social structure;
 - f. Promoting the improvement and expansion of the island's economy by recognizing and carefully utilizing land and water resources;
 - g. Guiding and controlling development to take full advantage of the island's form, beauty and climate and preserving the opportunity for an improved quality of life; and

- h. Guiding physical growth so that island and visitor communities will develop in social and economic concert with each other.
108. The development of the Property is consistent with the Development Plan and will contribute to the fulfillment of the following goals and objectives set forth therein by:
- a. Increasing the body of knowledge about the public's understanding of the area's history and archaeology;
 - b. Encouraging uses and a development pattern which enhance and protect coastal waters and beaches and encourage construction of structures which do not promote flood and tsunami dangers;
 - c. Encouraging development of visitor facilities which best benefit residents and visitors;
 - d. Increasing job opportunities;
 - e. Directing infrastructure for overall best benefit;
 - f. Developing public access to coastal areas where private properties block such access; and
 - g. Encouraging the development of daytime and nighttime recreational activities desired by residents and visitors.
109. To the extent, if any, the development of the Project Area is regarded as inconsistent with the General Plan or Development Plan designations referred to in paragraph 21 hereof, the guidelines established by such designations are not the most desirable in this particular case and would frustrate the goals of the General Plan and Development Plan as set forth above.

D. AGENCY COMMENTS

110. The Department of Public Works of the County of Kauai ("Public Works"), the Department of Water of the County of Kauai ("Water Department"), the Department of Health of the State of Hawaii ("Health Department"), the Fire Department of the County of Kauai ("Fire Department"), the Kauai Historic Preservation Review Commission ("Historic Commission") and the State Department of Agriculture ("Agriculture Department"), but sometimes referred to collectively with the foregoing departments and commission as the

"Agencies" have each commented on the Application and the proposed development. Staff Report.

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

E. SPECIAL MANAGEMENT AREA USE PERMIT

112. A Special Management Use Permit is required since a portion of the proposed Project is located within the Special Management Areas as established by the County of Kauai and the development cost of the Project exceeds \$65,000.00. See Staff Report, Pg. 1.
113. Development of the golf course at the Project Site will provide coastal recreational opportunities accessible to the public. Coupled with the shoreline access to be provided by the Applicant on lands adjacent to the Project Site, the creation of a golf course at the Project Site will provide adequate accessible and diverse recreational opportunities in the Special Management Area and in the area surrounding it. E.A., Pgs. 27-30; T., V. I, CCH, Pgs. 105-108, 129-132, 234-236, 276-279, 428-430; T., V. II, CCH, Pgs. 30-31.
114. Placement of the golf course mauka of the Conservation District boundary and the creation and maintenance of a variety of vehicular accesses to parking facilities with pedestrian accesses to the shoreline together with a lateral shoreline access will protect the Project Area coastal resources uniquely suited for recreational activities. Access to and along the shoreline and to recognized fishing and surfing sites will be afforded to the public, consistent with the sound conservation of natural resources. Id.
115. Creation of the golf course at the Project Site will indeed encourage expanded public recreational use of the adjacent shoreline lands. Id.
116. The creation by the Applicant of a license for vehicular access to various parking facilities to be created by Applicant and for pedestrian access from those facilities to the shoreline and laterally along the shoreline will effect a reasonable dedication of the shoreline areas having recreational value for public use. Id.

117. Adherence to the Health Department's regulations with respect to grading and erosion control measures at the golf course site will effectively regulate point and non-point sources of pollution (siltation) to protect the recreational value of coastal waters and the near-shore marine habitat. E.A., Pgs. 28-30.
118. Development of the golf course on the Project Site will insure the protection and preservation and, where appropriate, restoration of historic and prehistoric resources identified in the coastal zone management area as well as such resources that are outside of that area which are significant in Hawaiian history and culture. Archaeological Surveys; T., V. I, CCH, Pgs. 215, 218-220, 234-235, 237-241; T., V. III, CCH, Pgs. 10-19.
119. Through the process of an archaeological reconnaissance survey and the conservation and interpretation of various significant archaeological sites, significant archaeological resources in the area have been identified and will be analyzed. Id.
120. Implementation of the proposed development will result in the preservation of remains and artifacts of a significant nature in and about the Project Site. Id.
121. Archaeological discoveries in and about the Project Site can be integrated into a cultural resource survey of the region should such a survey be conducted. Id.
122. Adopting the protective measures proposed by Applicant's expert and concurred in by Intervenor's expert on archaeology will, through the development of the Project, support State goals for protection, restoration, interpretation and display of historic resources. Id.
123. The development of a golf course on the Project Site, outside of the Conservation District but following the Conservation District boundary line along a portion of the Pa'a coastline, will serve to protect, preserve and improve the quality of coastal scenic and open-space resources. Id.; See also E.A., Pgs. 9-30; T., V. I, CCH, Pgs. 100-108, 131-132, 218-220, 234, 274-280, 429-430, 434; T., V. II, Pgs. 30-31, 100.
124. The portion of the Pa'a coastline adjacent to the golf course is a valued resource and the proposed golf course development is compatible in its visual environment, design and location with the coastline and the surrounding land uses. Id.

125. The development of the golf course will result in a minimum of alteration of natural land forms and no adverse impact on existing public views to and along the shoreline. Id.
126. The development of the course will permit the maintenance of the shoreline open-space and scenic resources within the Special Management Area and adjacent thereto throughout the coastwise length of the golf course. Id.
127. Development of a golf course at the Project Site will not impact adversely valuable coastal eco-systems. E.A., Pgs. 9-16, 18-19, 22, 27-30; T., V. I, CCH, Pgs. 168-177; T., V. II, CCH, Pgs. 96, 99, 100, 114.
128. Disruption or degradation of coastal water eco-systems will be avoided effectively through Applicant's adherence to regulations of the Health Department regarding discharge of water and pollutants into the near shore environment. Implementation of the development proposed at the Project Site will promote water quantity and quality planning and management practices. Id.
129. The proposed golf course will be a privately owned public facility important to the State's economy. The proposed siting of the golf course is a suitable location adjacent to existing urban concentrations, recognizing the low agricultural productivity historically experienced in the area and the unavailability of sufficient lands contiguous to the Hyatt Regency Kauai Hotel site within the Urban District. E.A., Pgs. 23-25; T., V. I, CCH, Pgs. 138-140, 422-430, 437.
130. The golf course will not result in any impairment of any existing coastal uses or views if developed subject to the conditions contained in this Decision and Order. No adverse social, visual or environmental impacts will occur in the coastal zone management area. E.A., T., V. I-III, CCH.
131. Placement of a portion of the proposed golf course on Land Study Bureau Productivity Rating Class "B" lands is warranted, reasonable, and justified in that it is not feasible to utilize presently urban designated locations contiguous to the Hyatt Regency Kauai site for the purpose of constructing a golf course. Furthermore, restricting construction of the proposed golf course to exclusively Class "C", "D" or "E" productivity rated lands adjacent to the urban

district would require intrusion into the Conservation District. The current placement of the course is a reasonable, justified and effective balancing of interests, both economic and non-economic in nature, in the avoidance of adverse environmental impacts and in satisfaction of current and anticipated need. E.A.; T., V. I, CCH, Pgs. 138-140, 407-417, 427-428.

132. Development of the golf course on the Project Site as proposed will not create a hazard to life and property from tsunami storm waves, stream flooding, erosion or subsidence. E.A., Pgs. 10-13, 16, 22.
133. To the extent applicable, the development of the Project will comply with the requirements of the Federal Flood Insurance Program and with appropriate irrigation and drainage control will not result in coastal flooding. Id.
134. Adequate and properly located public access to shoreline recreation areas and facilities will be legitimized and reserved in connection with the development of the golf course Project. E.A., Pgs. 3, 27-30; T., V. I, CCH, Pgs. 105-108, 129-132, 234-236, 276-279, 428-430; T., V. II, CCH, Pgs. 30-31.
135. Adequate provisions have been made by the Applicant for solid and liquid waste treatment disposition and management and will result in no adverse effects upon the Special Management Area resources. E.A., Pgs. 25-27; T., V. I, CCH, Pgs. 100-108.
136. Alterations to existing land forms and vegetation (except crops) and the construction of structures at the Project Site will have no adverse effect on water resources nor upon scenic and recreational amenities in the area. Id.
137. When developed in accordance with the conditions made part of this Decision and Order, the proposed Project will not have any substantial adverse environmental or ecological effect. E.A.; T., V. I-II, CCH.
138. The proposed development does not irrevocably commit any significant resources to loss and/or destruction. The proposed development will not curtail the range of beneficial uses in the area. E.A., T., V. I, CCH, Pgs. 275-277.
139. The development is consistent with the County General Plan, zoning and other applicable ordinances and is consistent with the objectives and policies of Chapter

205, Hawaii Revised Statutes, and the Special Management Area Guidelines set forth in the SMA Rules. E.A., Pgs. 7, 26-30.

- 140. The proposed development does not substantially effect the economic or social welfare and activities of the community, County or State; and, the economic impact of the development will be positive. E.A., Pgs. 23-25.
- 141. The proposed development does not have any substantial secondary impact such as population changes or effects on public facilities. Id.
- 142. Implementation of the development at the Project Site will not eliminate planning option and will not have an adverse cumulative environmental or ecological effect when considered in connection with reasonably anticipated future projects. E.A., Pgs. 27-30.

F. USE PERMIT

- 143. A Use Permit is required and is necessary to establish golf course uses within the County's agricultural zoning district. See Staff Report, Pg. 1.
- 144. A Class IV Zoning Permit is a procedural requirement since the Use Permit is simultaneously being requested. Staff Report, Pg. 1.
- 145. The establishment, maintenance and operation of the construction and development of a golf course use at the Project Site is a compatible use generally with surrounding urban uses and agricultural uses. E.A., Pgs. 23-30; T., V. I, CCH, Pgs. 100-108.
- 146. The proposed golf course use at the Project Site will not be detrimental to health, safety, peace, morals, comfort or the general welfare of persons residing or working in the neighborhood of the Project Site. E.A., Pgs. 23-30.
- 147. The proposed golf course use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community. E.A., Pgs. 23-30.
- 148. The proposed golf course usage at the Project Site will not cause any substantial harmful environmental consequences on the land of the Applicant or on other lands or waters adjacent to the Project Site and is consistent with the intent of the RCO or the General Plan. E.A., Pgs. 23-30.

G. SPECIAL PERMIT

149. A Special Permit is necessary since the Applicant proposes to establish golf course recreational usage on a portion of the lands which are rated Class "B" by the Land Study Bureau's Detailed Land Classification Overall (Master) Productivity Rating, which use is not expressly permitted in that district. See Staff Report, Pg. 1.
150. The proposed golf course usage at the Project Site is an unusual and reasonable use which may be permitted within the State Land Use Agricultural District and has been permitted in other locations. E.A.; Staff Report; T., V. I, CCH, Pgs. 138-140, 275-276, 407-417, 427-428.
151. The proposed golf course use is not contrary to the objectives sought to be accomplished by Chapters 205 and 205A of the Hawaii Revised Statutes and the Land Use Rules. Creation of a golf course at the Project Site will not result in an infusion of major urban uses into the Agricultural District. The golf course merely introduces a landscaped parklike open space recreational experience into the district and implementation of the Project through the mechanism of a special permit does not frustrate the effectiveness and objectives of the State's Land Use Laws. E.A., Pgs. 27-30; T., V. I, CCH, Pgs. 275-278.
152. The proposed golf course use at the Project Site will not adversely affect and is not inconsistent with the current uses of surrounding property. The proposed use will not substantially alter the essential character of the land and will be the highest and best use of the land as it remains the Agricultural District. Id.
153. The proposed golf course use at the Project Site will not unreasonably burden public agencies to provide roads and street, sewers, water, drainage and school improvements and police and fire protection. E.A., Pgs. 27-30.
154. Unusual trends, conditions and needs have arisen in the visitor industry, the golfing industry and the agricultural industry since the establishment of the district boundaries and the Land Use Rules which justify the proposed golf course use at the Project Site. T., V. I, CCH, Pgs. 112-117, 280-290, 340-342, 387-393, 399-401.

155. The evidence is both clear and convincing that the land upon which the proposed use is sought is unsuited for the uses permitted within the Agricultural District. T., V. I, CCH, Pgs. 407-411, 413-415, 427-428.
156. The proposed Project Area consists of predominantly vacant and uncultivated land with a portion in cane. Withdrawal of that portion of the Property currently in sugarcane cultivation from the current lease in favor of McBryde Sugar, which is permitted under that lease, will not occur until harvest and will not adversely affect the continued economic survival of McBryde Sugar's operations and will not be contrary to the objectives sought to be accomplished by the Land Use Rules and Land Use Law. Id., E.A., Pgs. 26-30.
157. McBryde Sugar's yields are among the lowest in the industry, approximately 22% below average which is the case with many windward plantations situated in areas such as the Project Site and its environs. McBryde Sugar has itself been withdrawing portions of its acreage from cane over the last several years and there is a strong possibility that McBryde Sugar will not continue its lease for sugarcane in the Project Area and surrounding environs in 1994 when its lease expires. Id.
158. There is no proven alternative agricultural crop which has been shown to be economically viable in the windward areas of the State or Kauai. Indeed, the windward plantations at Kilauea, Kahuku and Kohala have gone out of business and existing windward plantations such as Mauna Kea, Hamakua, Lihue and McBryde are doing the least well of all the other plantations in connection with their sugar operations and their diversified agricultural operations. Id.
159. The effect of cloud cover and high minimum and low diurnal temperatures on the Pa'a area affects the economic viability and suitability of the area for agricultural pursuits, including sugarcane and, although millions of dollars in agricultural diversification studies have been conducted, none have yielded a productive, successful or economically viable crop that can substitute for cane in this area. Id.

H. EVIDENTIARY MATTERS AND RULINGS

160. For purposes of this proceeding, the Planning Commission takes judicial notice of the General Plan

of the County of Kauai, the Koloa-Poipu Development Plan, the RCO, the Kauai County Charter, the Kauai County Flood Control Ordinance, the SMA Rules and maps, the Land Use Rules and the Hawaii Revised Statutes applicable to the Application, the Planning Department's files in respect of the Application and all maps therein contained, the County's Zoning Maps, and the State Land Use District Maps.

161. To the extent any conclusion of law hereinafter set forth in this Decision and Order is properly styled a finding of fact, said conclusion of law is hereby incorporated at this part as a finding of fact.

CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction over the Applicant's Application pursuant to the Hawaii Rev. Stat. § 205-6 Coastal Zone Management Act, Hawaii Rev. Stat. § 205-A, the RCO, the SMA Rules, the Land Use Rules and other applicable provisions of the Hawaii Rev. Stat.

Administrative Procedure

2. The procedural requirements of each of the foregoing statutes, rules and regulations, including specifically, the requirements of the Hawaii Administrative Practice Act, Hawaii Rev. Stat. Chapter 91 have been met. All interested persons and parties have been given due notice of the proceeding and have been afforded the opportunity to present comment, evidence and argument on the Application.

Environmental Impact Statement

3. Hawaii Rev. Stat. § 343 requires that for every application for development of lands under Chapter 205A, there shall be prepared an environmental assessment to determine if there may be a significant environmental impact posed by the proposed project. Hawaii Rev. Stat. § 343-5(a)(3). If such an environmental assessment discloses the likelihood that the project may have a significant environmental impact, the Planning Department shall order the preparation of an environmental impact statement as defined under Hawaii Rev. Stat. § 343-2, as required by Section 7.1E of the Kauai County SMA Regulations.

4. The Commission finds as a matter of fact, based on the environmental assessment performed, and concludes as a matter of law, that the submission and acceptance of an Environmental Impact Statement is not required for the proposed use at the Project Site.

State, General Plan and Development Plan

5. Chapter 226 of the Hawaii Rev. Stat. sets forth a Hawaii state development plan describing the overall theme, goals, objectives, policies, priority guidelines and implementation mechanisms to be used in long-range development of state lands. Hawaii Rev. Stat. § 226-2(6). Those objectives, policies and guidelines are set out in Sections 226-3 through 226-28 of that chapter, and incorporated in the Hawaii State Plan.
6. The Commission finds as a matter of fact, and concludes as a matter of law that the development of the Property is in conformance and is consistent with the overall theme, goals, objectives and policies of the Hawaii State Plan, Hawaii Rev. Stat. Chapter 226.
7. Pursuant to Section 7-1.2(c) of the Kauai County General Plan, the General Plan functions as enabling legislation which establishes the framework, parameters, constraints and guidelines for the Development Plan. Pursuant to Section 7-3.3 of the General Plan, the Development Plan is a guideline for the implementation of the General Plan. Pursuant to Hawaii Rev. Stat. § 226-2(15), which is made applicable to the General Plan pursuant to Hawaii Rev. Stat. § 52(a)(4), a guideline is a stated course of action which is desirable and should be followed unless a determination is made that it is not the most desirable in a particular case. Pursuant to the same authority, a guideline may be deviated from without penalty or sanction.
8. Pursuant to Section 7-1.3(b) of the General Plan, the General Plan shall be interpreted to recognize the changes in social, environmental and economic conditions and may be modified to accommodate such changes by amendment to the General Plan or by changing implementing legislation or programs.
9. The Commission finds as a matter of fact, and concludes as a matter of law that development of the Project Area conforms to and is consistent with the General Plan.

Special Management Area Use Permit

10. Hawaii Rev. Stat. § 205A and the Special Management Area Rules and Regulations of the County of Kauai promulgated thereto, require that, prior to permitting use of lands within the Special Coastal Zone Management Area, an applicant must show that the proposed project meets the objectives and policies of the SMA Rules set out at Section 3.0 of the Rules, as well as address and, to the extent applicable, satisfy the guidelines and conditions specified in Section 4.0 of the SMA Rules.
11. The Commission finds as a matter of fact, and concludes as a matter of law that the Applicant has met and satisfied all requirements and conditions of the SMA Rules of the County of Kauai necessary for issuance of a Special Management Area Use Permit.
12. In approving the development of a golf course at the Project Site and in granting the permits required to effect the golf course development, this Commission has not and does not commit itself or other reviewing agencies and commissions to a practical commitment to or to the necessary approval of the land uses conceived by Grove Farm Company in its conceptual plans for areas in Pa'a and Maha'ulepu surrounding the Project Site.
13. The Commission herein concludes that the Project is consistent with objectives and policies of the SMA Rules and Regulations and Chapter 205A, Hawaii Rev. Stat. in that:
 - a) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, and welfare, or compelling public interest. The Project will not have adverse effects by itself or with other individual developments currently existing or reasonably foreseeable through the creation of potential cumulative impact which would result in a substantial adverse environmental or ecological effect, or the elimination of planning options.
 - b) The Project is consistent with the objectives and policies, of Chapter 205A, Hawaii Rev. Stat., and Section 3.0 and 4.0 of the SMA Rules and Regulations.

- c) The development is consistent with the County general plan, zoning and other applicable ordinances.

CZO Use Permit

- 12. The Kauai County Comprehensive Zoning Ordinance at Title IV, Article 20, Section 8-20.5, authorizes the issuance of a Use Permit for any project for land use offering use compatible with the community in the general vicinity of the proposed development, and for which it is shown that there is no detrimental effect on the health, safety, peace, morals, comfort or general welfare of the contiguous community, and which is consistent with the Zoning Code and the General Plan.
- 13. The Commission finds as a matter of fact, and concludes as a matter of law that the Applicant has met and satisfied all requirements of Article 20 of the RCO, Section 8-20.1, et seq., for the issuance of the Use Permit.

Class IV Zoning Permit

- 14. Insofar as the Class IV Zoning Permit is a procedural requirement and requires no substantive review by the Commission in light of the more extensive findings required to issue the CZO Use Permit, supra, the Applicant has met and satisfied all the requirements of Article 19 of the RCO, Section 8-19.1, et seq., for the issuance of a Class IV Zoning Permit.

Special Permit

- 15. Hawaii Rev. Stat. Chapter 205 (the "State Land Use Law") and Section 15-15-95 of the Hawaii Land Use Commission Rules promulgated thereunder, authorize the Commission to issue Special Permits for unusual and reasonable uses meeting the guidelines therein set forth.
- 16. Under Hawaii Rev. Stat. § 205-6, Special Permits may be issued for land uses determined to be unusual and reasonable applying these guidelines, and which is not an expressly permitted use within the Agricultural District such as the golf course in this instance, which is not an expressly permitted use within the Agricultural District under Hawaii Rev. Stat. Chapter 205.

17. The Commission finds as a matter of fact, and concludes as a matter of law that the proposed golf course has met and satisfied all requirements of Chapter 205 of the Hawaii Rev. Stat. and the Land Use Rules necessary for the issuance of a Special Permit.

Compatibility with Findings of Fact

18. To the extent any finding of fact contained in this Decision and Order is properly styled a conclusion of law, said finding of fact is hereby incorporated at this part as a conclusions of law.

DECISION AND ORDER

IT IS HEREBY ORDERED that the application by AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. for Special Permit SP-88-6, Use Permit U-88-31, Special Management Area Use Permit SMA(U)-88--10 and Class IV Zoning Permit Z-IV-88-39 to develop a golf course and accessory related uses and structures on approximately 210± acres of land identified by Kauai Tax Map Key: 2-9-09: Por. 1, located in the Koloa region, Pa'a Ahupuaa, County and Island of Kauai, State of Hawaii, is approved and that said permits shall be and are hereby issued, subject to the following conditions and restrictions, all of which shall be applicable to each of said permits:

1. The clubhouse facility, including restaurant and snack shop, shall be connected to an approved wastewater treatment facility. Liquid waste from the proposed clubhouse will be conveyed to either the planned wastewater treatment facility for the new Hyatt Regency Kauai or the Private Wastewater Treatment Work (PWTW) at Poipu Kai upon its expansion to accommodate the sewage from the clubhouse and the hotel. Applicant may institute alternate means for sewage treatment at remote facilities provided the same are approved by the Department of Health.
 - a. A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance with the applicable requirements of Hawaii Rev. Stat., Chapter 27, as amended, and the plans for the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the Department of Health for review and approval.
 - b. In connection with Health Department's review and approval of such plans, Applicant shall obtain approval of its proposed effluent irrigation

system under the applicable requirements of Hawaii Rev. Stat. § 282-1, et seq.

2. As stated in Hawaii Rev. Stat. § 27-21.6, the engineer designing the proposed PWTW is given flexibility and design responsibility; provided, however, the engineer should consider incorporating into the design:
 - a. A sludge holding tank to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant; and
 - b. exposing to the atmosphere the water surface in the aeration tank and clarifier to facilitate ease of operation, repair and maintenance of the facility; and
 - c. a stand-by or emergency power source for electrical powered equipment; and
 - d. provisions to ensure that storm water does not enter the facility.
3. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.
4. The project shall be provided with potable water through the County water system.
5. Prior to the issuance of a building permit the Applicant shall prepare and obtain the Department of Water's approval of construction drawings for necessary water system facilities and shall either construct said facilities or post a performance bond for construction. These facilities shall include: the domestic service connection and the fire service connection. The Applicant shall also submit to the Department of Water the interior plumbing plans with the appropriate backflow prevention device reflected, if the same is required.
6. If applicable, a refund agreement between the Department of Water and the Applicant must be completed, whereby the developer contributes its share to Blackfield Hawaii as provided in the Department of Water's Rules.
7. The Applicant shall pay all applicable charges of the Department of Water as required by the Department's Rules.

8. Grubbed material created in the construction phase of the Project shall be disposed of at a site approved by the Department of Health. Open burning is prohibited.
9. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:
 - a. building elevations, roof design, material color schemes and/or samples;
 - b. landscaping plan(s);
 - c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;
 - d. any and all grading plan(s).
10. The Applicants shall identify the boundaries on the Conservation District with survey stakes or pins and shall notify the Planning Department and attorneys of record for the Intervenor prior to any construction, grading, improvements or landscaping activities on the overall parcel area in order that an inspection might be conducted. The location of the boundaries shall be discernible and maintained throughout all phases of development of the project.
11. In view of the series of public accesses and facilities, including parking, which were developed and executed over several phases of development within the Poipu Kai resort community, the Applicants shall provide a consolidated easement location map showing all public roadways, pedestrian and vehicular beach accesses, and the respective owners of any easement areas.
12. The Applicants shall pay to the Planning Department the required Environmental Impact Assessment fee, based on the final construction drawings submitted at time of building permit application.
13. In the event the cane haul road fronting the golf course is improved as a major thoroughfare, the applicant shall provide, install and maintain at their expense, on the makai side of the roadway along its entire length, the following:

- a. curbs, gutters and sidewalks designed and constructed in accordance with County standards; and
- b. additional improved pavement width to County standards, for use as a non-vehicular pathway for joggers, pedestrians and bicyclists.

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

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

18. The Applicants shall institute and maintain whatever measures are necessary, including but not limited to filter screens, siltation ponds, etc., to limit to not more than current rates, surface runoff flowing directly or indirectly into the off-shore waters, both during development of and operation of the project. Plans and/or improvements for such runoff prevention measures are subject to Planning Department review and approval prior to the issuance of any grading permits and prior to the commencement of site work on the property.
19. The Planning Commission shall impose additional conditions, restrictions or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in Chapter 8, KCC, State Land Use District Rules and Regulations, or the Special Management Area Rules and Regulations.
20. Prior to the issuance of any grading or building permits, the Applicants shall resolve with the Planning Department the location and/or relocation of the existing horseback riding trail previously approved by the Planning Commission (Class IV Zoning Permit Z-IV-86-9).
21. Effective dust and soil erosion control measures shall be implemented during all phases of development and operation by the Applicants.
22. Prior to the issuance of any building or grading permit, the Applicants shall flag and create buffer zones around the eight (8) significant archaeological sites identified in the Archaeological Report. Such buffer zones/flagging shall be maintained by the Applicants at all times during the construction/development phase of the project. During grading and construction of the golf course, the Applicants shall have a qualified archaeologist on site to monitor the work. Should anything of historical or archaeological significance be discovered, work in that area shall be stopped for review by the archaeologist. Any information generated from such review shall be forwarded without delay to the Planning Department and State Historic Preservation Officer. The eight (8) significant archaeological sites shall be preserved in the manner reflected in Table 1 of the Archaeological Report, a copy of which is attached hereto and incorporated

herein as Exhibit "A" and, where possible, the sites shall be integrated into the golf course layout design.

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

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

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

23. The Applicants shall implement a system of barricades and signage that will be designed to prohibit and exclude all vehicular access on and around the Makawehi sand dune. Such system shall be implemented within three (3) months of the date of Planning Commission approval. The Applicants shall submit a map reflecting the method and location of such barriers and an example or examples of signage, to scale, for review and approval by the Planning Department.
24. Prior to any building and/or grading permit application, the Applicants shall submit for review and approval by the Planning Department, the form of license by which members of the public will be afforded the accesses created in connection with this application. An executed copy shall be submitted prior to the issuance of a certificate of occupancy for the project.
 - a. The license shall provide for vehicular access to the parking facilities described in condition #25 herein, and shall create a public right to utilize such access and the parking facilities for the purposes described in this condition and said condition #25.
 - b. The license shall provide pedestrian access to the shoreline from the parking facilities and shall grant public pedestrian access along the

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

- c. The license shall permit relocation in the future of the various facilities described in this condition and condition #25 herein, subject to the review and approval of the Planning Commission, and subject to the requirement that the Applicants provide alternate and substantially equivalent substitute accesses and/or parking.
 - d. The license shall absolve the County of any liability claims. The Applicants shall be responsible for the maintenance of the access and parking facility areas, together with any improvements installed, erected, placed or constructed thereupon.
25. Concurrent with its development of the project, the Applicants shall construct three (3) unimproved parking facilities at locations as depicted on Exhibit 1 of sufficient dimensions to park 40 cars at one site, and 5 cars at the remaining two sites. Prior to said construction, the Applicants shall stake the subject sites for inspection by the Planning Department. These facilities, together with vehicular access to the facilities, shall officially be made available to the coastal recreational users on the date of the first public opening to the golf course.
- During construction, alternate access areas shall be provided to the public. The Applicants shall submit a map reflecting these temporary access areas, and shall publish such map in the local newspaper.
26. Upon the execution of a lease in favor of Ainako Associates for the property, the Applicants shall, without delay, submit a fully executed copy thereof to the Planning Department, together with any extensions or renewals of said lease. Non-pertinent items, such as lease rentals, may be excised from the required lease, renewal or extension.
27. The Applicants are restricted from utilizing any pesticides or herbicides on the project area until such time as a report or reports are submitted to the Planning Commission and the Intervenor's counsels of

record, concluding that no significant adverse environmental or ecological consequences will result therefrom to the project area, immediate environs, and the waters off-shore from the project area. Should the Applicants petition or move the Planning Commission for modification, amendment or deletion to this condition, notice shall be given to the Intervenor to attend any meeting or hearing thereon, together with a copy of any petition or motion and accompanying documentation.

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

BY ORDER OF THE PLANNING COMMISSION, the Applicants' request is hereby approved, subject to the aforementioned conditions, by a 6 to 1 vote taken at the August 10, 1988, Planning Commission meeting as follows:

FOR:

Sialana
Dela Cruz
Pablo
Contrades
Matsumura
Costa

AGAINST:

Fujita

By

Renechynne Costa
Chairman of the Commission

Date: 8-10-88

Table 1.

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

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

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

EXHIBIT A

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
0318A/6390-11		

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 1988, copies of the FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER were served upon the following by hand delivery:

Stephen Levine, Esq.
4365 Kukui Grove Street, Suite 103
Lihue, Kauai, Hawaii 96766

Teresa Tico, Esq.
3016 Umi Street, Suite 211B
Lihue, Kauai, Hawaii 96766

Lorna Nishimitsu, Esq.
Deputy County Attorney
County of Kauai
4396 Rice Street
Lihue, Kauai, Hawaii 96766

Dennis M. Lombardi, Esq.
Case & Lynch
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

DATED: Lihue, Kauai, Hawaii, August 11, 1988.



TOM H. SHIGEMOTO
Planning Director

LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 37 PM '88

Of Counsel:
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Attorneys for
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.

RECEIVED

AUG 18 1988

State of Hawaii
LAND USE COMMISSION

PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

081088/0317A/6390-11

ORDER DENYING MOTION TO DEFER
FINAL ARGUMENT TO PERMIT LATE
FILED PROPOSED FINDINGS OF FACT

Intervenors Malama Maha'u-lepu and Ohana Maha'u-lepu
having filed on August 8, 1988, a Motion to Defer Final
Arguments to Permit Late Filed Proposed Findings of Fact, and
Applicants Ainako Resort Associates and Grove Farm Properties,
Inc., having filed a Memorandum in Opposition to Motion to

Defer Final Argument on August 9, 1988, and said motions having come on for consideration by this Commission on August 10, 1988; and

The Commission hereby finds as a matter of fact and concludes as a matter of law that said motion is without merit for the reasons set forth in the record of these proceedings; and accordingly

IT IS HEREBY ORDERED that said motion be and hereby is denied.

DATED: Lihue, Kauai, Hawaii, .

AUG 10 1988

Sunshyne Costa
SUNSHYNE COSTA
Chairman, Kauai County
Planning Commission

APPROVED AS TO FORM:

Reviewed & refused to sign
TERESA TICO, ESQ.
STEPHEN LEVINE, ESQ.
Attorneys for Intervenors

DMR 8/10/88

Tom Shigemoto
TOM SHIGEMOTO
Kauai County Planning Department

Of Counsel:
CASE & LYNCH

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Attorneys for
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.

LAND USE COMMISSION
STATE OF HAWAII
Aug 10 3 37 PM '88

PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
	)	

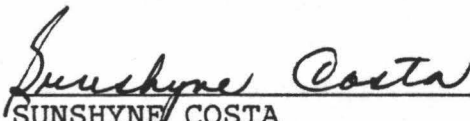
081088/0316A/6390-11

ORDER GRANTING MOTION
TO CORRECT TRANSCRIPT

Applicants Ainako Resort Associates and Grove Farm Properties, Inc., having filed a Motion to Correct Transcript on July 28, 1988, and said motion having come on for consideration by this Commission on August 10, 1988, and no party having any objections thereto,

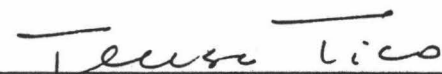
IT IS HEREBY ORDERED that said Motion to Correct Transcript be and hereby is granted, and the Hearing Transcripts described in Exhibit A to said motion be and hereby are corrected as set forth in Exhibit A to said motion.

DATED: Lihue, Kauai, Hawaii, AUG 10 1988.



SUNSHYNE COSTA
Chairman, Kauai County
Planning Commission

APPROVED AS TO FORM:



TERESA TICO, ESQ.
STEPHEN LEVINE, ESQ.
Attorneys for Intervenors



TOM SHIGEMOTO
Kauai County Planning Department

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 Rice Street Lihue, Hawaii 96766

M E M O R A N D U M

TO: Planning Commission

DATE: August 10, 1988

SUBJECT: Additions to Agenda

FROM: Secretary

B-1a Motion to Correct Transcript and Memorandum in Support of Motion.

1b Applicant's Proposed Findings of Fact, Conclusions of Law, Decision and Order.

1c Planning Department's Proposed Findings of Fact, Conclusions of Law, Decision and Order.

1d Intervenor's Proposed Findings of Fact, Conclusion of Law, Decision and Order.

1e Applicant's Objections to Intervenor's Proposed Findings of Fact, Conclusions of Law, Decision and Order.

1f Stipulation and Joint Proposed Findings of Fact, Conclusions of Law, Decision and Order.

1g Intervenor's Motion to Defer Final Agreement to Permit Exceptions to Late Filed Proposed Findings of Fact

1h Planning Commission's Order Ruling on Findings of Fact Proposed By Intervenor's

1i Certification As To Transcripts of The Proceedings

1j Applicant's Memorandum In Opposition to Motion To Defer Final Agreement

LAND USE COMMISSION
STATE OF HAWAII
AUG 10 3 37 PM '88

APR 18 3 35 PM '88

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.,	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

JUL 28 1988

MOTION TO CORRECT TRANSCRIPT

MEMORANDUM IN SUPPORT OF MOTION TO CORRECT TRANSCRIPT

EXHIBIT A

CERTIFICATE OF SERVICE

Aug 18 3 37 PM '88
LAND USE COMMISSION
STATE OF HAWAII

Of Counsel:
CASE & LYNCH

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PLANNING COMMISSION OF THE COUNTY OF KAUAI

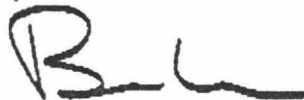
STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.,	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

MOTION TO CORRECT TRANSCRIPT

Pursuant to Rules 1-2-7 and 1-2-17 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, applicants Ainako Resort Associates, a Hawaii partnership, and Grove Farm Properties, Inc., a Hawaii corporation, hereby move for correction of the transcripts of the proceedings in this matter as set forth in Exhibit A.

DATED: Honolulu, Hawaii, July 28, 1988.



DENNIS M. LOMBARDI
DAVID ALLAN FELLER
BRUCE L. LAMON

Attorneys for Applicants
AINAKO RESORT ASSOCIATES and
GROVE FARM PROPERTIES, INC.

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.,	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

MEMORANDUM IN SUPPORT OF MOTION TO CORRECT TRANSCRIPT

In the course of their review of the transcript of these proceedings, the Applicants noticed a number of errors, the great bulk of which are typographical or spelling errors. These errors are compiled in Exhibit A.

Under Rule 1-2-7 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, the Commission is under an obligation to maintain a record of its proceedings which "give a true reflection of the matters discussed at the meeting." This motion attempts to help meet that goal.

It is respectfully submitted that this Commission, the State of Hawaii Land Use Commission, and any reviewing Court are entitled to have before it as accurate a

transcription as possible of the hearings which transpired in this matter. If the transcripts are corrected as suggested in Exhibit A, this Commission will have taken an important step in that direction.

DATED: Honolulu, Hawaii, July 28, 1988.



DENNIS M. LOMBARDI
DAVID ALLAN FELLER
BRUCE L. LAMON

Attorneys for Applicants
AINAKO RESORT ASSOCIATES and
GROVE FARM PROPERTIES, INC.

[PROPOSED CORRECTIONS TO TRANSCRIPTS]

Golf Course Application of
Ainako Resort Associates and Grove Farm Properties, Inc.

Proposed Corrections To Hearing Transcript - VOLUME I
Public hearing of May 25, 1988 commencing at 1:31 p.m.
BEFORE: SUNSHYNE COSTA, CHAIRPERSON
LOCATION: Kauai War Memorial Convention Hall, Lihue, Kauai

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
5	2	justify	testify
6	11	Roam	Rome
10	4	delineatedto	delinated to
20	9	Haa	Paa
20	23	interjection	intervention
22	10	toalso	to also
26	6	lease	please
26	10	plesae	please
27	3	tie	time
28	14	case	cane
29	2	can	cane
33	18	recom-mended	recommended
34	14	Rosenthal	Rosendahl
34	17	Rosenthal	Rosendahl
35	18	andother	and other
36	12	accesssto	access to
37	4	fromthe	from the
38	1	sto	to
39	6	Kalahea	Kalaheo

EXHIBIT A

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
41	12	cornerstooen	cornerstone
42	22	pleasea	pleased
42	24	coures	course
43	1	lenght	length
44	12	drilledon	drilled on
50	17	contrct	contract
54	2	Takinaka	Takenaka
54	3	Takinaka's	Takenaka's
56	16	note	not
60	20	mitigatio	mitigation
61	6	Takushi	Kikuchi
62	17	Takuchi	Kikuchi
63	4	Infor- mation	information
64	11	ws	was
68	6	Pablor	Pablo
68	12	hjasd	has
70	9	yeild	yield
75	19	will	willing

[PROPOSED CORRECTIONS TO TRANSCRIPTS]

Golf Course Application of
Ainako Resort Associates and Grove Farm Properties, Inc.

Proposed Corrections To Hearing Transcript - VOLUME II
Public hearing of May 25, 1988 commencing at 3:15 p.m.
BEFORE: SUNSHYNE COSTA, CHAIRPERSON
LOCATION: Kauai War Memorial Convention Hall, Lihue, Kauai

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
83	25	isthe	is the
84	6	projet	project
88	20	being	bringing
92	3	McKenna	Makena
111	5	violtion	violation
122	11-12	Maka Bay	Makaweli
125	19	locia	local
125	23	he	the
136	4	feelso	feel so
137	5	Kanealoha	Keoneloa
138	10	partof	part of
147	24	methat	me that
148	20	camehere	came here
156	11	four	for
201	3	wsto	was to
206	11	awareof	aware of
211	11	ws	was
221	4	tht	that
233	14	wonderful	wonderful
240	24	Robinso	Robinson

[PROPOSED CORRECTIONS TO TRANSCRIPTS]

Golf Course Application of
Ainako Resort Associates and Grove Farm Properties, Inc.

Proposed Corrections To Hearing Transcript - VOLUME I

(Pages 1 through 264.)

Public hearing of June 23, 1988 commencing at 8:40 a.m.

BEFORE: SUNSHYNE COSTA, CHAIRPERSON

LOCATION: 4396 Rice Street, Lihue, Kauai

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
105	2	Kaloea	Koloa
105	3	crush	crushed

[PROPOSED CORRECTIONS TO TRANSCRIPTS]

Golf Course Application of
Ainako Resort Associates and Grove Far Properties, Inc.

Proposed Correction To Hearing Transcript - VOLUME I
(Pages 265-462)

Public hearing of June 23, 1988 commencing at 8:40 a.m.

BEFORE: SUNSHYNE COSTA, CHAIRPERSON

LOCATION: 4396 Rice Street, Lihue, Kauai

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
411	4	Brewer is	Brewer has
413	3	1961	1960 one
415	10	sugar breaker	sugar per acre
415	24	like Kika	like Kekaha

[PROPOSED CORRECTIONS TO TRANSCRIPTS]

Golf Course Application of
Ainako Resort Associates and Grove Farm Properties, Inc.

Proposed Corrections To Hearing Transcript - VOLUME II
Public hearing of June 24, 1988 commencing at 8:30 a.m.
BEFORE: SUNSHYNE COSTA, CHAIRPERSON
LOCATION: 4396 Rice Street, Lihue, Kauai

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
3	16	COUNCIL: I	COMMISSION: Aye
12	14	Ainakoa	Ainako
26	18	spicket	spigot
27	12	Manele	Manele
35	21	valoriem	valorem
40	2	Bellis	Belles
40	12	Bellis	Belles
55	1	crater hill	Crater Hill
65	8	biko system	ecosystem
95	25	preceeding	proceeding
100	5	Kioniloa	Keonelo
120	19	Pady	Paty
126	12	Marcasans	Marquesans

[PROPOSED CORRECTIONS TO TRANSCRIPTS]

Golf Course Application of
Ainako Resort Associates and Grove Farm Properties, Inc.

Proposed Corrections To Hearing Transcript - VOLUME III

Public hearing of June 24, 1988 commencing at 1:31 p.m.

BEFORE: SUNSHYNE COSTA, CHAIRPERSON and Commissioners
Arthur Fujita, Thomas Contrades, Gerald Dela Cruz,
Rebecca Sialana, Betty Matsumura, and Ajerico
Pablo.

LOCATION: 5396 Rice Street, Lihue, Kauai

<u>Page</u>	<u>Line</u>	<u>Original Version</u>	<u>Proposed Corrections</u>
58	9	DNO'S	D & O's
58	11	DNO'S	D & O's

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was duly served upon the following parties at their last-known addresses by depositing the same in the U.S. Mail, postage paid, first class, on the date stated below.

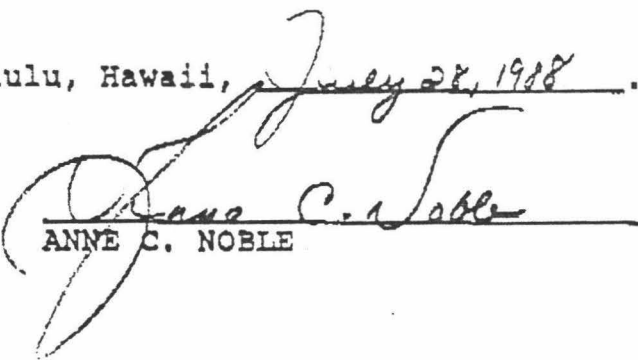
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LORNA NISHIMITSU, ESQ.
Deputy Corporation Counsel
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Lihue, Hawaii 96766

MR. TOM SHIGEMOTO
Planning Director
4280 Rice Street
Lihue, Hawaii 96766

DATED: Honolulu, Hawaii, July 24, 1988.


ANNE C. NOBLE

Of Counsel:
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Attorneys for
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.



LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 37 PM '88

PLANNING COMMISSION TO THE COUNTY OF KAUAI
STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
	)	

072888/2620K/0333A/6390-11

APPLICANTS' PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER

AINAKO RESORT ASSOCIATES, a Hawaii partnership, and
GROVE FARM PROPERTIES, INC., a Hawaii corporation, submit the
following proposed findings of fact, conclusions of law,
decision and order:

INTRODUCTION

The Applicants AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. filed an application (the "Application") with the Planning Department of the County of Kauai on April 18, 1988 for a Special Permit, SP-88-6, a Use Permit, U-88-31, a Special Management Area Use Permit, SMA(U)-88-10 and a Class IV Zoning Permit, Z-IV-88-39. The Application seeks authorization to develop a golf course and to construct certain proposed improvements related to the golf course (sometimes the "Project"), which are ancillary to the development of the Hyatt Regency Kauai Hotel, on that certain real property situate at Pa'a, Island and County of Kauai, State of Hawaii, bearing tax map key no. 2-9-1, portion 1 consisting of approximately 210 total acres (hereinafter sometimes referred to as the "Property" or "Project Area" or "Project Site"). The Planning Commission of the County of Kauai (hereinafter the "Commission") acting in accordance with the Revised Code of Ordinances of the County of Kauai (hereinafter the "RCO"), the Special Management Area Rules and Regulations of the County of Kauai (the "SMA Rules"), the Rules of Practice and Procedure of the Planning Commission for the County of Kauai (the "Commission Rules"), the Hawaii Land Use Commission Rules, Chapter 15-15, et seq., Hawaii Administrative Rules (the "Land Use Rules"), the Administrative Procedures Act of the State of Hawaii (the "APA") and Hawaii Revised Statutes, Chapters 205 and 205-A, as well as other applicable statutory provisions,

having heard the testimony and examined the evidence presented at the hearings held in connection with the Application, and having considered the total record, including the proposed findings of fact and conclusions of law submitted by the parties, hereby makes the following findings of fact, conclusions of law, decision and order (hereinafter sometimes the "Decision and Order"):

FINDINGS OF FACT

A. PARTIES

1. AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. (hereinafter sometimes the "Applicant") have applied for the issuance of the authorizations hereinbefore mentioned to permit the development of a golf course and related facilities (including a clubhouse, restaurant, pro-shop, cart barn, field nursery and maintenance facility) ancillary to and associated with the resort facility currently approved for construction on property adjacent to the Project Area.

2. Grove Farm Company, Incorporated, is the legal owner of the Property and has, pursuant to a letter, dated February 2, 1988, a copy of which has been lodged with the Planning Department of the County of Kauai, authorized Grove Farm Properties, Inc., to apply in the name and stead of Grove Farm Company, Incorporated, to the appropriate agencies of the County of Kauai and of the State of Hawaii for those permits, variances, approvals and authorizations that are appropriate, advisable or necessary in order to develop the Property as a

championship golf course with related facilities. Ainako Resort Associates is the proposed lessee of the Property.

3. Ohana O Maha'ulepu and Malama O Maha'ulepu are unincorporated associations who have sought and have been granted intervention in connection with this proceeding.

4. The Planning Department of the County of Kauai (hereinafter the "Department") is the County agency responsible, pursuant to State statute, the RCO, the SMA Rules, the Commission Rules and the Land Use Rules for coordinating the Commission's review of applications of the kind currently pending before the Commission and for preparing reports for the Commission's consideration concerning approval of the permits requested.

B. PROCEDURAL MATTERS

5. The Applicant has made the necessary filings and provided the notice necessary and required under the RCO, Chapter 205-A of the Hawaii Revised Statutes (sometimes the "Coastal Zone Management Act"), the SMA Rules, the Commission Rules and the Land Use Rules related to special permits, use permits, special management area permits, and class IV zoning permits.

6. A public hearing in respect of the Application was duly noticed, scheduled and occurred on May 25, 1988. A transcript of that proceeding consists of two volumes with consecutively numbered pages. References to the transcript of

the public hearing shall be to volume and page which shall be cited in the following format: "T., V. __, Pub. Hrg., Pg. __".

7. Prior to the public hearing Malama O Maha'ulepu ("Malama"), Ohana O Maha'ulepu ("Ohana") and the Kauai Windsurfing Association each timely filed petitions to intervene in the application process.

8. At the public hearing the Kauai Windsurfing Association voluntarily withdrew its proposed petition for intervention and Malama and Ohana reaffirmed their requests. After conducting a hearing concerning the basis for the proposed intervention of Malama and Ohana (hereinafter sometimes the "Intervenors"), the Commission granted to each the status of intervenor, subject to the requirement that Intervenors consolidated their claims with respect to similar issues raised by the Intervenors in their petitions for intervention. T., V. I, Pub. Hrg., Pgs. 22-24.

9. On June 7, 1988, the Applicant, through its counsel, and the Intervenors, through their counsel, together with Deputy County Attorney, Lorna Nishimitsu, attended a meeting chaired by Rick Tsuchiya, hearings officer for the Planning Commission in connection with the Application. No transcript of that meeting is available. At the meeting the parties were requested to prepare and to submit to the Commission on or before June 16, 1988 their proposed list of witnesses and list of exhibits, together with any motions or requests that the parties might have relating to the conduct of the proceeding.

Pursuant to that request, the parties prepared and each filed its respective witness and exhibit lists. Intervenor further filed on June 14, 1988, a Motion for Declaratory Order and on June 16, 1988, a Request for the Issuance of Subpoenas. Intervenor's Motion for Declaratory Order was opposed by written Memorandum in Opposition to Intervenor's Discovery Request, filed by Applicant on June 16, 1988.

10. On June 16, 1988, the Commission, Sunshyne Costa, the Chairwoman, and Commissioners, Thomas Contrades, Art Fujita and Rebecca Sialana, sitting, conducted a pre-hearing in advance of the contested case portion of the proceeding. The transcript of the pre-hearing portion of the proceeding consists of a single volume and references thereto shall be cited as follows: "T., V. I, Pre-Hrg., Pg. ____."

11. The transcript with respect to the contested case portion of the Application proceeding consists of three volumes (of which volume I is two parts consisting of consecutively numbered pages) and references thereto shall be cited as follows: "T., V. __, CCH, Pg. ____."

12. The transcripts referred to in this Section B have been certified by the Planning department as correct.

13. After considering the Intervenor's Request for Issuance of Subpoenas and the representations and oral argument of parties' counsel in respect of the same, the subpoenas requested by Intervenor were issued, but for the subpoena proposed to be issued to Avery Youn, the former County Planning

Director, which the Commission refused to issue for the purposes of providing testimony regarding the "legislative" intent of the Commission, the Kauai County Council and Mayor of the County in formulating and adopting the Koloa-Poipu-Kalaheo Development Plan requested by Intervenors. Intervenors' request to permit the submission of written testimony by George Cooper and Anthony Romo, under circumstances where those individuals would not be available for cross-examination by Applicant, was denied. T., V. I, Pre-Hrg., Pgs. 162, 164-166.

14. After considered review of the Intervenors' Motion for Declaratory Order, the Memorandum filed in support thereof, the Memorandum filed by Applicant in opposition thereto, and the representations and arguments made by counsel on the record, the Commission granted Intervenors' Motion for Declaratory Order and directed the production of certain documents by Applicant to Intervenor in accordance with Commission's written Order Granting Motion for Declaratory Order, which Order was ratified by the Commission at its hearing conducted on June 23, 1988, and entered at that time. See T., V. I, Pre-Hrg., Pgs. 148-161. See also T., V. I, CCH, Pgs. 48-51. See also, Order Granting Motion for Declaratory Order.

15. The documents the Commission directed Applicant to produce to Intervenors were produced in accordance with the order of the Commission.

16. Among the materials submitted either in connection with the Application in respect of the Project or during the

contested case portion of the proceeding are various surveys and studies prepared on behalf of Applicant in support of the Project as well as the Planning Department's Staff Report (the "Staff Report"). The materials included the Environmental Assessment, dated April 1988 ("Environmental Assessment" or "E.A.") prepared by Belt Collins and Associates, a Botanical Survey, dated January 1988 (the "Botanical Survey"), prepared by Char and Associates, Botanical/Environmental Consultants, Winona P. Char and George K. Linney, a Survey of the Avifauna and Feral Mammals at Grove Farm Properties, Poipu, Kauai, dated January 20, 1988 (the "Fauna Survey"), prepared by Phillip L. Brunner, Assistant Professor of Biology, Director of the Museum of Natural History, BYU Hawaii, a letter, dated April 27, 1988 by Phillip Brunner to Belt Collins and Associates updating the Avifauna Survey (referred to collectively with the Fauna Survey), a Golf Course Demand Study, dated March 2, 1988 (the "Demand Study"), prepared by Robert E. Yoxall, Inc., Recreation Consultant, a marine research report, dated June 18, 1988 (the "Marine Biology Report"), prepared by Marine Research Consultants, Steven Dollar, Ph.D., an Interim Report: Summary of Findings and General Significance Assessments and Recommended General Treatments, Archaeological Reconnaissance Survey, Hyatt Regency Kauai Proposed Golf Course Project Area, dated May 1988 (the "Interim Archaeological Survey"), the Revised Interim Report/Archaeological Reconnaissance Survey, dated June 1988 (the "Revised Archaeological Survey"), and

Memorandum Regarding Recommended Preservation Measures for Identified Archaeological Sites, dated June 20, 1988 (the "Preservation Measures Memo"; referred to collectively with the Interim and Revised Archaeological Surveys as the "Archaeological Surveys") each prepared by Phillip H. Rosendahl, Ph.D., Inc., Consulting Archaeologist. The preparer of each of the foregoing reports (Joseph Vierra on behalf of Belt Collins & Associates) testifying at the contested case portion of the proceeding were qualified as experts in their respective fields as well as David Pratt in the field of Agronomy. Also Dr. William Kikuchi, Archaeologist, Donald Heacock, Marine Biologist, David Boynton on avifauna, and Dorothy Tao on flora, were each called by the Intervenor as witnesses and so qualified. The Commission accepts for the record all attachments to the Applicant's Application, including the Environmental Assessment and any studies or surveys or letters or memoranda submitted in connection therewith. Further, the Commission accepts for the record Applicant's Exhibits 1-10, inclusive, Intervenor's Exhibits B, C, D, E and F, the Staff Report and County Zoning Map No. ZM-PO-300. Taking into consideration the availability of the authors of the reports for cross-examination during the contested case portion of the proceeding, the Commission accepts as written testimony each of the reports contained among Applicant's exhibits and incorporates herein by this reference the Commission's written order in respect of the Intervenor's Motion for Declaratory Order.

C. DESCRIPTION OF PROJECT AND PROPERTY

17. The Project Area is located in the District of Pa'a and is, in part, contiguous to the site of the proposed Hyatt Regency Kauai Hotel, which is located in the State Land Use Urban District. The proposed configuration and boundaries of the Project Site are reflected in figure 2 of the Environmental Assessment filed in connection with these proceedings. E.A., Pgs. 1-2.

18. The proposed golf course will consist of eighteen holes, a driving range, putting green, clubhouse, field nursery and maintenance building. The clubhouse will be located near the planned Hyatt Regency Kauai and will include parking and access from the extension of Poipu Road via the beach access road. The clubhouse will include a golf pro-shop, restaurant, golf club storage room and golf cart maintenance area. The building will articulate an architectural style that will blend with the Hyatt Regency and the architecture of the area. The golf course maintenance building and temporary field nursery will be located within the golf fairways (adjacent to fairways 10 and 5) as reflected in figure 2 of the Environmental Assessment. E.A., Pg. 3; T., V. I, Pub. Hrg., Pgs. 39-60.

19. The golf course layout will be configured to consist of three holes mauka of the Hyatt Regency with the remainder of the course in an area east of the clubhouse generally following the coastline, but mauka of the Conservation District. The makai holes are intended to take advantage of the area's scenic

amenities as well as preserve the shoreline's open-space environment. E.A., Pg. 3.

20. The course is designed essentially as a "core course", i.e., a course where fairways adjoin one another rather than planned residential areas, with its first tee leaving from the proposed golf clubhouse and its eighteenth tee returning to the clubhouse. No fairways or holes of the course are proposed on the oceanside of the State Land Use Conservation District boundary. A shoreline access trail approximating the location of the existing trail is reflected makai of the Conservation District boundary and will be maintained as part of the development of the Project. E.A., Fig. 2; T., V. I, CCH, Pg. 273.

21. The Project Area is within the State Land Use Agricultural District. The Project Area is also within the County's zoning Agriculture District and Open District. A portion of the Project Site is within the Special Management Area defined by the County of Kauai. The Kauai County General Plan ("General Plan") and the Poipu-Koloa-Kalaheo Development Plan ("Development Plan") designations for the Project Area are Agriculture and Open. E.A., Pg. 7. See County Zoning Map and Staff Report.

22. The cost of the improvements proposed to be made to that portion of the Property within the Special Management Area in connection with the development of the golf course exceed \$65,000.00. See Staff Report.

23. The Project Area consists primarily of former sugarcane lands and adjacent areas. Approximately, 50 acres of the site remain planted in sugarcane at this time. T., V. I, CCH, Pgs. 408-411.

24. The Applicant intends and proposes to develop an 18-hole championship-caliber golf course and proposes to operate it in association with the planned 605-room Hyatt Regency Kauai at Keonelo Bay. The proposed development will be operated as a resort oriented facility but will be open to the public. The golf course will be developed also to accommodate an increasing demand for golf play in the Poipu area of Kauai and Kauai generally and to make south Kauai more competitive among other visitor destination areas. E.A., Pgs. 7-9; T., V. I, Pub. Hrg., Pgs. 39-60; T., V. I, CCH, Pgs. 100-120.

25. The Project Site is located on the eastern perimeter of the resort community of Poipu in south Kauai. Unlike master planned destination areas developed by single entities, Poipu is comprised of a number of independent resort and hotel developments, including Kiahuna Plantation, Sheraton Kauai and the Stouffer Waiohai. E.A., Pgs. 7-9.

26. Only recently has Poipu become a major destination area. Prior to 1960, Poipu was an isolated and remote settlement occupied by a small number of beachfront homes which were primarily associated with the sugar plantation that still operates a mill today about 1.5 miles to the north. Today,

Poipu has more than 1,800 hotel rooms and apartment condominiums, together with various commercial facilities, residences and beach parks. E.A., Pg. 9.

27. The Project Site is located on coastal and former agricultural lands. A portion of the Project Area is leased to McBryde Sugar Company, Limited (sometimes "McBryde" or "McBryde Sugar"), for planting and harvesting of sugarcane. The portion of the land which remains subject to the McBryde lease is subject to withdrawal by Grove Farm under the terms of a 1974 lease. E.A., Pg. 10; T., V. I, CCH, Pgs. 408-410.

28. Bordering the Project Area on the west is the resort community of Poipu which stretches approximately 2.3 miles along Kauai's southern coast. Immediately to the west are several resort-residential projects, including Bayview, a 40 lot residential subdivision, Lanai Villas Makai, a 47 lot residential subdivision, and Poipu Sands, a resort-residential condominium. Immediately adjacent to the Project Site is the site of the planned 605-room Hyatt Regency Kauai Hotel which is scheduled to commence construction in 1988. E.A., Pg. 10; see also Staff Report and T., V. I, CCH, Pgs. 100-120.

Physiography

29. The overall terrain of the Property gradually rises from a 30-foot elevation at its most makai boundary to approximately 125 feet at the site's mauka boundary. The average site slope is about 4%. E.A., Pg. 10.

30. There are no distinguishable drainage ways on the Property and the topography is relatively even. Site runoff is primarily by sheet flow towards the ocean. E.A., Pg. 10.

31. At the coastline, outside the Project Site, are formations of limestone and lithophyte, as well as calcareous sand dunes of approximately 30-120 feet in elevation. There are no sand beaches in the Project Area or on the oceanside of the Project boundary. The nearest sand beach is at the Hyatt Regency Kauai Hotel site. E.A., Pg. 10.

Soils

32. According to the Soil Conservation Service of the U.S. Department of Agriculture, the Project Site contains predominantly Waikomo stony silty clay. Also present are Koloa stony silty clay, Mamala stony silty clay loams and jaucas loamy fine sand in smaller amounts. E.A., Pgs. 12-13.

33. Waikomo stony silty clay consists of well-drained stony and rocky material developed in matter weathered from basic igneous rock. The permeability of the soil is moderate, its runoff is slow and its erosion hazard characteristic is slight. E.A., Pgs. 12-13.

34. Inland sections of the Property contain Koloa stony silty clay soil types. This soil too is well-drained and generally found on old volcanic vents in upland ridges. Hard rocks usually underlie this soil at a depth of 20-40 inches. Runoff is medium to severe and the erosion hazard is moderate. E.A., Pgs. 12-13.

35. The Project Area generally encompassed by Waikomo stony silty clay and Mamala stony silty clay loam soils is within the other important agricultural land classification of the Agricultural Lands of Importance of the State of Hawaii (ALISH) Agricultural Land Evaluation System. Except for approximately 11 acres classified prime agricultural land at the mauka boundary of the Project Site, the remainder of the 210 acre Project Site, generally mauka of the shoreline area, is not classified. E.A., Pgs. 12-13.

36. Within the Project Site, the Land Study Bureau of the University of Hawaii classifies the mauka land (essentially the same area shown on the ALISH map as other important agricultural land and prime agricultural land) as having a normal (master) productivity rating of "B". In the makai portions of the Project Site, "B", "D", and "E" classifications predominate. E.A., Pgs. 12-13, 16.

Hydrology and Drainage

37. There are no surface water features on the Property. The site's topography and soil characteristics provide an extremely well-drained condition suitable for development. A man-made retention and sedimentation basin exists in a low-lying area adjacent to the site makai of Pu'u Ainako. E.A., Pg. 16.

38. Runoff from the Project Site will be maintained in the current manner. No increase in surface water discharge or ground water discharge will result from the development. E.A., Pg. 16; T., V. I, CCH, Pgs. 443-446.

39. The Project Site's offshore waters are classified by the State Department of Health as Class A Waters, the second highest class of water rating under the Department's rating system. Discharge into these waters is permitted only upon having the best degree of treatment or control compatible with the criteria established by the Health Department for this class. The proposed Project will not involve discharge of any wastewater, commercial pollutants or industrial waste into the ocean. Surface runoff generated by the proposed development is planned to be contained within the golf course or to be limited to that which currently flows into the ocean. Indeed, with increased landscaping at the Project Site, surface runoff will be reduced by premitting more ground percolation to take place and consequently less flow into coastal waters will occur. E.A., Pg. 16; T., V. I, CCH, Pgs. 443-446.

40. Sewage generated by the proposed clubhouse facilities and on-site restroom facilities will be collected and conveyed to a planned wastewater treatment facility proposed for the new Hyatt Regency Kauai Hotel. E.A., Pg. 16; T., V. I, CCH, Pgs. 107-108.

Fauna

41. A variety of bird species have been observed and recorded at the Project Site. No endangered species have been identified as currently frequenting or nesting in the Project Area. Mammal ground species identified include dogs, cats, rats and mice. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 358, 364.

42. The Project Area and its surrounding environs provides a fairly diverse range of habitats which are utilized by the typical array of exotic birds and migratory shorebirds expected in this location. No endemic species have been identified on the Property. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 359-364.

43. The native indigenous bird species identified at and adjacent to the Project Site fall predominantly into migratory types of birds including the Pacific Golden Plover and seabirds such as the Wedge-tailed Shearwater. The plover prefers a low grassland type of habitat and as a result the development of the golf course will likely increase the presence of the plover in the area. The importation of trees into the area as part of the golf course development will create a greater diversity of living spaces and habitats than are currently available at the site and will likely result in the increase of various species of tree-nesting avifauna. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 359-360, 362-364.

44. The majority of shearwater burrows identified adjacent to the Project Site are located on seaward facing cliffs outside of the Project Area. E.A., Pgs. 16-18; T., V. I, CCH, Pgs. 362, 374.

45. Development of the golf course will not have an adverse impact on any of the identified birds or those expected to use the area or on the habitat utilized by those birds. On the contrary, the development of the course will probably

improve the habitat remarkably for a variety of species. The development will not adversely impact any birds including seabirds such as the shearwater or migratory shorebirds. Indeed, moderate control of the coastwise access and prohibition of inappropriate vehicular access along the coast may improve the habitat for the shearwater and other coastal nesting avifauna. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 362-363; T., V. III, CCH, Pg. 26.

Flora

46. Those portions of the Project Site not currently covered by sugarcane field contain scrub vegetation and various weedy or "ruderal" vegetation forms. E.A., Pgs. 18-19; Botanical Survey; T., V. I, CCH, Pgs. 188-208.

47. One hundred forty-nine (149) species of flora were inventoried within and adjacent to the Project Site of which 120 species have been introduced, 19 are indigenous, i.e., native to the islands and elsewhere, 5 are endemic, i.e., native only to the islands, and 5 originally of Polynesian introduction. No threatened or endangered species were found in the Project Area although a few species, including hinahina-kahakai, kipukai, puapilo, nama and ohelo-kai are considered rare or depleted. Those species are described commonly as native coastal strand vegetation and have been identified as occurring within the Conservation District, including the seaward facing slopes, outside of the Project Area. E.A., Pgs. 18-19; T., V. I, CCH, Pgs. 188-208.

48. Development of the golf course project at the Project Site will have no adverse effect on rare or depleted, endemic or indigenous species of plants or on flora generally. The abutment of the Project Area to the Conservation District and exclusion of off-road vehicles along the coastal stretch of the Project Area abutting the Conservation District will improve the habitat for coastal strand vegetation which has been impacted heavily in the past by such vehicles. E.A., Pgs. 18-19; Botanical Survey; T., V. I, CCH, Pgs. 194-196; T., V. III, CCH, Pgs. 46-47, 50.

49. The Applicant and Intervenors' floral experts, Winona Char and Dorothy Tao, respectively, have each recommended that access to Makawehi dune not be permitted to off-road vehicles as they have had a definite negative impact on dune vegetation and have contributed greatly to erosion of the dune area. Each has recommended that pedestrian traffic for the purposes of fishing, hiking, sightseeing and the like continue to be allowed. Further, each has recommended that landscaping with easily-grown native species adapted to local environmental conditions including salt spray be incorporated into the golf course landscaping plans. E.A., Pgs. 18-19, T., V. I, CCH, Pgs. 194-195; T., V. III, CCH, Pgs. 46-47, 50.

Air Quality

50. The existing air quality within and around the Project Site is very good. A short-term air quality impact may result from the proposed Project during its construction phase.

Implementation of adequate dust control measures employed during the construction phase will mitigate and alleviate resulting adverse effects, if any, on surrounding resort and residential areas resulting. E.A., Pg 19.

51. No substantial adverse environmental or ecological effect will result from the development of the course. Indeed, the placement of the course within the Project Site will reduce direct long-term air quality impacts associated with cane harvesting in adjacent areas. E.A., Pg. 19.

Noise

52. Construction activities associated with the development of the golf course may contribute in the short-term to temporarily increase noise levels. Restriction of construction activities to daylight hours where the activities are conducted in proximity to developed areas will mitigate and alleviate any possible impact associated with such activity. E.A., Pgs. 19-22.

53. The proposed implementation of the Project at the Project Site is not expected to increase noise level in the long-term. An increase in traffic, which would be a principal source of long-term noise level increase, is not expected by virtue of implementation of the proposed Project. Consequently, the development will not have any substantial adverse environmental or ecological effect in terms of noise. To the extent that noise may be a concern, roadside landscaping will buffer noise emanating from automotive vehicles. E.A., Pgs. 19-22; T., V. I, CCH, Pgs. 444-445.

Archaeology and Historical Resources

54. Based on all the evidence presented to the Commission, the Project Site has marginal archaeological significance. A surface and subsurface survey of the area identified a total of 18 archaeological sites within and about the Project Area (7 of which had been previously identified in the June 1974 Archaeological Research Center of Hawaii Survey). Subsurface excavation conducted as part of the 1988 survey revealed no subsurface cultural deposits. T., V. I, CCH, Pgs. 213-215; T., V. III, CCH, Pgs. 7-19; Archaeological Surveys.

55. Of the 18 archaeological sites identified, 10 have been identified as important for their information and have been preserved through the recordation of that information and no further protective or preservation measures are required in respect of those sites. Eight of the identified sites are important both for their information and for their potential as good examples of site types and/or for their cultural value. T., V. I, CCH, Pg. 214; T., V. III, CCH, Pgs. 7-19; Archaeological Surveys.

56. The 8 sites recommended for preservation by both the Applicant's and the Intervenor's archaeological experts, Phillip Rosendahl and William Kikuchi, respectively, have been labeled T-2, T-3, T-7, T-8, T-9, T-10, T-11 and 3216. Their site location is reflected generally at figure 1 of the Revised Archaeological Survey. Sites T-7 and T-8 are located outside of the boundary of the Project Area. Site T-9 is located

within the golf course boundary. Site T-2 is within the overall Project Area located atop Pu'u Ainako and therefore not within the limits of golf fairways nor within any area proposed for improvement by Applicant. Site T-3 is a large stone-stepped platform situated on the seaward side of Pu'u Ainako and is seemingly located on the Project Area boundary. Site T-3, however, is not within an area proposed for construction of the golf course or any improvements associated with the golf course. Sites T-10, T-11 and site 3216 should be considered a single site complex consisting of stepped platforms, the larger of which, T-10 is located within the Conservation District outside the boundary of the Project Area. The smaller platforms, sites T-11 and 3216 appear to be within the Project Area. T., V. I, CCH, Pgs. 227-232; Archaeological Surveys.

57. Each expert has recommended some level of preservation for the 8 significant archaeological sites ranging from conservation (site preservation as is and site protection) through interpretation (public education and resource study). Both the Applicant's and Intervenor's experts concur that the scope of preservation recommended by Dr. Rosendahl at Table 1 of his Protective Measures Memo should be undertaken by the Applicant. The Applicant has agreed to undertake these recommended preservation measures in respect of the significant archaeological sites which include conservation, clearing and cleaning of sites T-7 and T-8, and interpretation of sites T-2,

T-3, T-9, T-10, T-11 and 3216 through clearing and cleaning, and stabilization, among other interpretive measures. T., V. I, CCH, Pg. 110; T., V. I, CCH, Pgs. 218-220, 223; T., V. III, CCH, Pgs. 14-15; Protective Measures Memo.

58. To insure preservation of the 8 significant sites a buffer zone around the sites should be clearly flagged during the construction period. Also, an archaeologist should be available to work with the construction people on-site so that they know where the boundaries of the archaeological sites are. In this manner accidental incursion into the areas can be avoided. T., V. I, CCH, Pg. 219.

59. Due to the flexible nature of golf course design, the archaeological sites within the Project Area boundaries and on the boundaries may be successfully integrated into the golf course and thus preserved in the long-term as well as in the short-term construction period. The sites can be incorporated and it is preferable to incorporate the archaeological sites into the course's natural and cultural features. Including the sites within the course boundary will better serve to preserve the sites through better maintenance and control of the sites, and will not jeopardize public access to the sites to interested persons. T., V. I, CCH, Pgs. 218-219, 231-237; see also T., V. III, CCH, Pgs. 14-15, 18-19.

60. Both the Applicant's and Intervenor's archaeological experts have concurred that the Survey and Protective Measures Memorandum prepared by Dr. Rosendahl can be integrated into a

cultural resource management plan for the regional area in a successful manner should such a plan be developed by others in the future. Both experts further agree that the significant sites located can be effectively studied independent of a regionwide plan or survey. T., V. I, CCH, Pg. 220; T., V. III, CCH, Pgs. 18-19.

Natural Hazard

61. The Project Area is outside of any flood plan identified by the Flood Insurance Rate Map ("FIRM") prepared by the U.S. Army Corp of Engineers. Indeed, the Project Area is located above the shoreline behind limestone and lithophyte calcaerous sand dunes which rise approximately 30-120 feet above sea level. The base flood elevation of a potential 100-year tsunami inundation is only 7 feet according to the FIRM map and there are no potential ravine flood plains which can adversely affect the Property. Other natural hazards are of no consequence to the Project Site. E.A., Pg. 22.

Views

62. The proposed golf course will contain a large expanse of green turf, scattered shrubs and trees. The major structural improvements will be the golf clubhouse and maintenance facilities. E.A., Pg. 22; T., V. I, CCH, Pgs. 100-101.

63. The golf clubhouse facilities will be nestled on the mauka side of Pu'u Ainako and therefore will not impair views to, from or along the ocean. Through the development of the

golf course views to and from the ocean and lateral shoreline views will not be impacted adversely, but, rather improved. The maintenance facility to be located at the field nursery site will be screened with shrubs and trees and will not impact mauka/makai views, nor the view along the shoreline. In fact, development of a golf course at this site will result in the opening up of views towards the ocean and mountains resulting in a more aesthetically pleasing and visually enhanced environment in the Pa'a area than that which presently exists. E.A., Pg. 22; T., V. I, CCH, Pgs. 100-101.

Biological/Ocean Marine Resources

64. The Health Department is the lead agency to assess water quality and water pollution in the State. T., V. II, CCH, Pg. 96.

65. The water quality in the Pa'a area coastline can be described as very high (class A) except in times of major rains when natural erosion and sugarcane siltation discharge in the ocean can impact the waters. T., V. I, CCH, Pgs. 172-173, and V. II, CCH, Pg. 88; Marine Biology Report.

66. Nitrogen, which is a component of fertilizer, can potentially impact marine resources, including water quality and coral reefs in near shore regions adjacent to the Project Site. T., V. I, CCH, Pgs. 163-177; Marine Biology Report.

67. Current qualitative evaluations of the near shore water quality reflect no evidence of pollution of any sort or any sort of adverse effect attributable to chemical

infiltration through runoff or ground water attributable to sugarcane operation. T., V. I, CCH, Pgs. 172-173; V. II, CCH, Pg. 88; Marine Biology Report.

68. The Applicant intends to utilize a secondary treated effluent created at the Applicant's sewage treatment facility to irrigate and in part fertilize the golf course. T., V. I, CCH, Pgs. 163-177; Marine Biology Report.

69. The creation of a golf course at the Project Site and the utilization of fertilizers on the course and effluent to irrigate the course will result in about 1/20th of the nitrogen introduced into ground water compared to present sugarcane usage at the site. T., V. I, CCH, Pg. 164; T., V. II, CCH, Pg. 99; Marine Biology Report.

70. The conversion of the Project Site to golf course site will result in no increase in phosphorous introduction to the near shore environment. No adverse environmental or ecological affect will result by virtue of these uses. T., V. I, CCH, Pg. 164.

71. Herbicides are used both in sugarcane and golf course operations. Due to the low toxicity of herbicides generally, to aquatic organisms, an example being glyphosate, they are relatively safe to use and no substantial adverse environmental or ecological effect results from their use in connection with sugarcane or golf course operations in the State. T., V. I, CCH, Pgs. 163-184; T., V. II, CCH, Pgs. 108-109.

72. Many pesticides have a fairly low toxicity level towards marine organisms but misuse might result in pesticide contamination. Compliance with regulations of the Health Department and product label instructions relative to the use of pesticides can insure that water quality is not impacted and that no substantial adverse environmental or ecological effect will result from the use of pesticides in connection with the golf course operation. T., V. II, CCH, Pgs. 62, 96.

73. The current sugarcane operation along the coast has a more detrimental effect in general on near shore water quality than will golf course use. T., V. II, CCH, Pg. 114.

74. Based on the testimony of Dr. Steven Dollar, it is unnecessary to conduct a baseline qualitative study of the marine shore organisms in the area as there is no evidence that there will result a negative impact from the golf course operation. T., V. I, CCH, Pgs. 174-175.

Economic Impact

75. Construction and operation of the proposed golf course can be expected to result in increased employment, personal income and government revenues. Direct short-term construction and long-term operational economic benefits will be realized in the neighboring Koloa-Poipu area communities as well as indirect economic benefits in the rest of Kauai and the State. E.A., Pgs. 23-24.

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

golf course facility. The Applicant has represented that it will endeavor to use as many local employees as possible in both the construction and operational phases of the golf course. This activity would be in keeping with the developer's historical approach in connection with developments on the island. E.A., Pgs. 23-24; T., V. II, Pub. Hrg.

77. Indirect employment will be generated in companies supplying materials and services needed to construct the golf course and related facilities. "Induced employment" (which refers to additional jobs created throughout the economy when construction workers and employees and proprietors and supply firms spend their wages and salaries) is also expected to result from the introduction of the golf course operation at the Project Site. The coupling of indirect and induced employment added to direct employment will result in a multiplier effect generating more than one job opportunity for each job created at the golf course construction site. E.A., Pg. 23-24.

78. Construction of the facilities is expected to require approximately 20 months to complete and a total of 12 full-time equivalent jobs are expected to be created during that period. A full-time equivalent job represents a combined aggregate of full and part-time employment over the worker months to be generated during the construction phase of the operation. E.A., Pg. 24.

79. Direct golf course employment, including employment at the golf clubhouse and maintenance facility, is estimated to include about 86 persons with management personnel accounting for about 10% of the golf course employment. E.A., Pg. 24.

80. It is expected that government revenue in the long-term will increase by virtue of the implementation of the proposed Project attributable both to an increase in the property tax base and consequent property taxes payable to the County, as well as tax revenues resulting from earnings and spending of wage, salary and proprietor's income associated with direct, indirect and induced jobs generated by the operation of the golf course. E.A., Pgs. 24-25.

81. Each of the foregoing socio-economic impacts is perceived as beneficial and will not create any adverse impact on the island economy, environment or ecology. E.A., Pgs. 24-25.

Public Facilities and Services

82. The cost to construct the infrastructure required to support the golf course Project will be borne by Applicant. Development of the proposed golf course will require the extension of Poipu Road along the mauka boundary of the Hyatt Regency Kauai Hotel site as well as the construction of a driveway to the proposed golf clubhouse, a distance of approximately of 2,000 feet. It will be improved to create a two-lane paved road in compliance with County standards, with graded shoulders and landscaping. The portion of the road

which adjoins the mauka boundary of the hotel site will be developed by the hotel owner and approval for this road segment has already been obtained from the County in connection with approval of the hotel. This road will also be extended (per the previous County approval of the hotel) towards the beach at Keonelo Bay to afford public access to the planned public beach park at the hotel site parcel. E.A., Pgs. 25-27; T., V. I, CCH, Pg. 105.

83. Potable water for the golf course operation will be available through the 12-inch water line running along the existing portion of Poipu Road. It is expected that the clubhouse will require an average 6,600 gallons per day of potable water. Any required improvement to the existing water system, which will include an extension of the existing transmission line approximately 2,000 feet from the Poipu Road terminus to the clubhouse will be effected by the Applicant as part of the development of the Hyatt Regency Kauai Hotel and all fees of the Department of Water will be paid. Water source is currently sufficient to satisfy the projected demand. E.A., Pgs. 25-27; Staff Report.

84. Secondarily treated effluent generated by the planned Hyatt Regency's sewage treatment plant, as well as planned irrigation wells to be constructed by the Applicant, will be used to irrigate the course. It is possible that Applicant may also use recycled surface runoff from mauka lands for irrigation purposes. E.A., Pgs. 25-27.

85. No public sewage collection system exists in the area of the Project. All existing systems consist of private collection and treatment facilities. Liquid waste generated from the proposed Project will be treated in conjunction with the planned Hyatt Regency Kauai at the hotel's sewage treatment plant, which will be designed to service the two facilities. Sludge will be disposed of in accordance with Health Department regulations and County requirements. Solid waste will be disposed of by private contractor. Neither waste element will have any substantial adverse environmental or ecological effect and adequate services exist or can be developed without cost to the County, to meet these needs. E.A., Pgs. 25-27; T., V. I, CCH, Pg. 108.

86. Adequate police and fire protection services and electrical and telephone services are available to service any need which may be generated by the proposed Project. E.A., Pgs. 25-27.

87. Implementation of the Project will not unreasonably burden public agencies to provide roads, streets, sewer and water facilities, drainage facilities, school improvements or police and fire protection. E.A., Pgs. 25-27.

Access

88. Development of a golf course on the Project Area will not impair public access or reduce or impose restrictions on public access to tidal or submerged lands, beaches or areas designated by the mean high tide line. Development of the

course will legitimize and improve public access to and along the shoreline and the foregoing areas. T., V. I, CCH, Pgs. 105, 275-276, 279.

89. Concurrent with the development of the golf course public parking facilities will be created by the Applicant on and off-site at the western end of the course at the base of Makawehi dune (off-site), at the northeastern coastal border of the course (off-site) and at the field nursery/maintenance building location (on-site) in the approximate areas reflected on Applicant's Exhibit 1. An area sufficient for parking 40 automobiles will be afforded at the western parking area and area sufficient to park 5 vehicles at each site will be afforded at the northeast coastal and field nursery maintenance building sites. Access to the western parking facility will be via Poipu Road, the beach access road, the golf clubhouse driveway and a compacted (but possibly not surfaced) road to be constructed by Applicant in the general area reflected on Applicant's Exhibit 1. Access to the field nursery parking facility and the northeast coastal facility will be via existing haul cane roads (with minor realignments) also reflected on Exhibit 1. T., V. I, CCH, Pgs. 105-108.

90. Notwithstanding the closure by McBryde Sugar Co., Ltd., and other plantations of their haul cane roads to public access, arrangements have been made with McBryde Sugar (who will continue to utilize the existing haul cane road mauka and northeast of a portion of the course) to maintain open public

access for fishermen and other users along those portions of the haul cane road system necessary to access the field nursery and northeast coastal parking facilities. T., V. I, CCH, Pgs. 105-108, 429-430, 434.

91. The parking facilities proposed to be created in connection with the development of the golf course have been sited in areas most commonly used by fisherman and others to access the coastline. Access from the parking facilities to the coastline will be afforded to the public and the existing shoreline trail present in the Conservation District adjacent to the Project Site, which affords lateral access along the entirety of the coastline adjacent to the Project Site, will also be made available for pedestrian access. Additionally, a shoreline trail from the existing Hyatt Regency Kauai site to the intersection of the golf course Project Site boundary and the Conservation District boundary will be afforded to the public in the general area reflected on Applicant's Exhibit 1, thereby affording lateral pedestrian public access along the coastline from the hotel site to the northeastern most boundary of the golf course site. The existing shoreline trail in the conservation district will be maintained unobstructed in the general area reflected by a dotted line and labeled as shoreline trail on Applicant's Exhibit 1. T., V. I, CCH, Pgs. 105-108.

92. Applicant has represented that it will provide to the County a sufficient license affording to the public the access

to and along the shoreline indicated. Although relocation of various facilities may occur in the future, any form of license granted by the Applicant shall provide for the substitution of substantially equivalent access upon such relocation. T., V. I, CCH, Pgs. 129-132.

93. Utilization of a license in lieu of a grant of easement will minimize potential liability exposure to the County, by retaining as private the ownership and rights associated with the licensed access areas to be created in connection with the development of the course and reflects the County's current stated preference. T., V. I, CCH, Pgs. 129-132.

Grove Farm's Plans

94. Grove Farm Company, Incorporated, currently has under lease to McBryde Sugar Company, Ltd. areas in Pa'a and Maha'ulepu. The lease by its terms expires in 1994. T., V. I, Pgs. 407-458, V. II, CCH, Pgs. 7-25.

95. Grove Farm has since as early as 1960 has been developing conceptual plans relating to prospective land uses in the Pa'a and Maha'ulepu areas adjacent to the Project Site. T., V. I, Pgs. 407-458, V. II, CCH, Pgs. 7-25.

96. In assessing the potential cumulative impacts of other developments, the Commission has received and reviewed all of the conceptual plans formulated by Grove Farm Company, Incorporated in respect of its Pa'a and Maha'ulepu properties. T., V. I, CCH, Pgs. 407-458, V. II, CCH, Pgs. 7-25.

97. Grove Farm Company's Pa'a/Maha'ulepu plans, Intervenor's Exhibit E, are not reasonably probable of implementation in the reasonably anticipated future. The conceptual plans that Grove Farm Company has for the areas in Pa'a and Maha'ulepu surrounding and adjacent to the present Project Area require substantial further study and may require substantive change before Grove Farm Company, Incorporated, will be in a position to seek governmental approval of any of the proposed land uses considered. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.

98. The lack of study by Grove Farm of its conceptual plans and the failure of Grove Farm Company to have undertaken feasibility, infrastructure and market/demand studies, and the like, associated with its conceptual plans, together with other evidence produced at the contested case hearing relative to these plans, reveals that the land use concepts envisioned by Grove Farm Company are not reasonably probable of implementation in the anticipated future. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.

99. The current proposed golf course is independent of the conceptual plans Grove Farm Company has for the surrounding Pa'a-Maha'ulepu areas and was formulated subsequent to the concept for the development of the surrounding area. The current Project and the land uses envisioned in concept by Grove Farm for areas surrounding the proposed golf course are not inter-dependent. The proposed golf course on the Project

Site is not economically or functionally dependent on the implementation of any land use concept for areas surrounding the Project Site and conceived by Grove Farm Company in its conceptual plans. In approving the development of a golf course at the Project Site and in granting the permits required to effect the golf course development, this Commission has not and does not commit itself or other reviewing agencies and commissions to a practical commitment to or to the necessary approval of the land uses conceived by Grove Farm Company in its conceptual plans for areas in Pa'a and Maha'uilepu surrounding the Project Site. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.

Need

100. Since the establishment of district boundaries generally and the Land Use Rules, there has been a substantial increase in the use and interest in the golf industry. The focus of many resort endeavors has moved from conventions and the free independent traveler to the incentive group market, which cannot be attracted effectively without an on-site golf facility. T., V. I, CCH, Pgs. 115-118, 281; Demand Study.

101. The percentage of golfers in the United States has grown 24% to 20.2 million persons over the last two years. In order to keep pace with the demand and the need for golf created by the increased interest in golf in the United States, many golf courses would have to be built. This intensity of interest and need is greater in Hawaii and the sunbelt states

than in other parts of the country. Indeed, Hawaii is seen as a vacation mecca with an intense demand for golf currently that is not projected to abate in the future. T., V. I, CCH, Pg. 281; Demand Study.

102. Based on current need and demand, Kauai will need to significantly increase double the number of golf courses currently available to satisfy existing and anticipated need for such recreational facilities. T., V. I, CCH, Pg. 342, 387-390, 395-400; Demand Study.

103. Existing golf facilities on the island of Kauai are inadequate to meet current demand and need for golf on Kauai created by the resident and tourist population, exclusive of the demand and need to be generated by the Hyatt Regency Kauai Hotel. T., V. I, CCH, Pgs. 399-400; Demand Study.

104. Reasonable estimates of the demand and need to be created for additional golf attributable to the Hyatt Regency Kauai Hotel reflect that the Hyatt Hotel will create a need for additional golf facilities exclusive of the general public and tourist need. It is estimated that the Hyatt Hotel will create a demand for some 35,000 rounds of golf annually at its initial stage which will increase thereafter and is expected to reach a demand for some 48,000 rounds of golf annually. T., V. I, CCH, Pgs. 392, 393, 400. See also Demand Study.

105. The existing County golf facility at Wailua is currently overused. Play at that facility has been described as reaching the saturation level. The average municipal course

in sunbelt states, where golf usage is higher than other states in the mainland United States, has 55,000 rounds per year played on the facility. At Wailua some 120,000-130,000 rounds of golf are played annually. T., V. I, CCH, Pgs. 400-401. See also Demand Study.

106. Notwithstanding the creation of new courses, including the additional 9-holes contemplated at Princeville and the possible development of an 18-hole golf course at Kukuiula, an 18-hole golf course in Lihue and an additional 9-holes at Kiahuna, there exists a compelling private need (created by the Hyatt Regency Kauai Hotel) and public need for additional golfing facilities available for the tourist and resident population on Kauai. T., V. I, CCH, Pgs. 115-118, 389, 390-393; Demand Study.

Hawaii State and County General Plan

107. The Hawaii State Plan, adopted in 1978, serves as a guide for the long-range future development of the State. It establishes an overall theme, goals, objectives, policies, priority directions, and a system for plan formulation and program coordination for the integration of all major State and County activities. State goals in the areas of the economy, physical environment, and physical, social and economic well-being of its population are set forth in the plan as well as the State's objectives and policies in the areas of population, the economy, the physical environment, facility systems and socio-cultural advancement. The development of the

Property is consistent with the Plan and will contribute to the fulfillment of the following goals, objectives, and/or policies set forth in the Hawaii State Plan by:

- a. Adding 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;
- b. Adding to 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;
- c. Encouragement of an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires;
- d. The encouragement of businesses that have favorable financial multiplier effects within Hawaii's economy;
- e. The promotion and protection of intangible resources in Hawaii such as scenic beauty;
- f. Assistance to the overseas promotion of Hawaii's vacation attractions;
- g. Improving the quality of existing visitor designation areas;

- h. Ensuring that visitor facilities and destination areas are carefully planned and sensitive to neighboring communities and activities;
- i. Providing public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion;
- j. Pursuing compatible relationships among activities, facilities, natural resources, especially within shoreline areas;
- k. Promoting the preservation and restoration of significant natural and historic resources;
- l. Promoting the visual and aesthetic enjoyment of mountains, ocean vistas, scenic landscapes and other natural features;
- m. Promoting the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values;
- n. Ensuring opportunities for everyone to use and enjoy Hawaii's recreational resources;
- o. Sharing the availability of sufficient resources to provide for future recreational needs;
- p. Fostering the increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii;

- q. Managing population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social and economic aspirations while recognizing the unique needs of each county;
- r. Encourage greater cooperation between the public and private sectors in developing and maintaining well-designed and adequately serviced visitor industry and related developments;
- s. Maintaining prudent use of Hawaii's land-based, shoreline and marine resources;
- t. Assuring effective protection of Hawaii's unique and fragile environmental resources;
- u. Assuring the availability of sufficient resources to provide for future cultural, artistic and recreational needs; and
- v. Providing a wide range of activities and facilities to fulfill the cultural, artistic and recreational needs of all diverse and special groups effectively and efficiently.

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

development of the Project Area conforms to and is consistent with the provisions of the General Plan and the Development Plan inasmuch as it contributes to the attainment of the following goals of the General Plan:

- a. Maintaining the concept of Kauai as "The Garden Isle" by providing for growth and consonance with the unique landscape and environmental character of the island;
- b. Ensuring that physical growth is consistent with the overall ecology of the island;
- c. Creating opportunities for a greater diversity and stability of employment for residents of Kauai;
- d. Providing for a maximum variety of outdoor recreational activities;
- e. Recognizing those aspects of the island and its people which are historically and culturally significant and maintaining and enhancing such aspects as a continuing expression of the island's physical and social structure;
- f. Promoting the improvement and expansion of the island's economy by recognizing and carefully utilizing land and water resources;
- g. Guiding and controlling development to take full advantage of the island's form, beauty and

climate and preserving the opportunity for an improved quality of life; and

- h. Guiding physical growth so that island and visitor communities will develop in social and economic concert with each other.

109. The development of the Property is consistent with the Development Plan and will contribute to the fulfillment of the following goals and objectives set forth therein by:

- a. Increasing the body of knowledge about the public's understanding of the area's history and archaeology;
- b. Encouraging uses and a development pattern which enhance and protect coastal waters and beaches and encourage construction of structures which do not promote flood and tsunami dangers;
- c. Encouraging development of visitor facilities which best benefit residents and visitors;
- d. Increasing job opportunities;
- e. Directing infrastructure for overall best benefit;
- f. Developing public access to coastal areas where private properties block such access; and
- g. Encouraging the development of daytime and nighttime recreational activities desired by residents and visitors.

110. To the extent, if any, the development of the Project Area is regarded as inconsistent with the General Plan or

Development Plan designations referred to in paragraph 21 hereof, the guidelines established by such designations are not the most desirable in this particular case and would frustrate the goals of the General Plan and Development Plan as set forth above.

D. AGENCY COMMENTS

111. The Department of Public Works of the County of Kauai ("Public Works"), the Department of Water of the County of Kauai ("Water Department"), the Department of Health of the State of Hawaii ("Health Department"), the Fire Department of the County of Kauai ("Fire Department"), the Kauai Historic Preservation Review Commission ("Historic Commission") and the State Department of Agriculture ("Agriculture Department"), but sometimes referred to collectively with the foregoing departments and commission as the "Agencies" have each commented on the Application and the proposed development. Staff Report.

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

E. SPECIAL MANAGEMENT AREA USE PERMIT

113. A Special Management Use Permit is required since a portion of the proposed Project is located within the Special Management Areas as established by the County of Kauai and the

development cost of the Project exceeds \$65,000.00. See Staff Report, Pg. 1.

114. Development of the golf course at the Project Site will provide coastal recreational opportunities accessible to the public. Coupled with the shoreline access to be provided by the Applicant on lands adjacent to the Project Site, the creation of a golf course at the Project Site will provide adequate accessible and diverse recreational opportunities in the Special Management Area and in the area surrounding it. E.A., Pgs. 27-30; T., V. I, CCH, Pgs. 105-108, 129-132, 234-236, 276-279, 428-430; T., V. II, CCH, Pgs. 30-31.

115. Placement of the golf course mauka of the Conservation District boundary and the creation and maintenance of a variety of vehicular accesses to parking facilities with pedestrian accesses to the shoreline together with a lateral shoreline access will protect the Project Area coastal resources uniquely suited for recreational activities. Access to and along the shoreline and to recognized fishing and surfing sites will be afforded to the public, consistent with the sound conservation of natural resources. Id.

116. Creation of the golf course at the Project Site will indeed encourage expanded public recreational use of the adjacent shoreline lands. Id.

117. The creation by the Applicant of a license for vehicular access to various parking facilities to be created by Applicant and for pedestrian access from those facilities to

the shoreline and laterally along the shoreline will effect a reasonable dedication of the shoreline areas having recreational value for public use. Id.

118. Adherence to the Health Department's regulations with respect to grading and erosion control measures and adherence to the Department's standards and product labeling directions relative to the use of fertilizers, herbicides and pesticides at the golf course site will effectively regulate point and non-point sources of pollution to protect the recreational value of coastal waters and the near-shore marine habitat. E.A., Pgs. 28-30.

119. Development of the golf course on the Project Site will insure the protection and preservation and, where appropriate, restoration of historic and prehistoric resources identified in the coastal zone management area as well as such resources that are outside of that area which are significant in Hawaiian history and culture. Archaeological Surveys; T., V. I, CCH, Pgs. 215, 218-220, 234-235, 237-241; T., V. III, CCH, Pgs. 10-19.

120. Through the process of an archaeological reconnaissance survey and the conservation and interpretation of various significant archaeological sites, significant archaeological resources in the area have been identified and will be analyzed. Id.

121. Implementation of the proposed development will result in the preservation of remains and artifacts of a significant nature in and about the Project Site. Id.

122. Archaeological discoveries in and about the Project Site can be integrated into a cultural resource survey of the region should such a survey be conducted. Id.

123. Adopting the protective measures proposed by Applicant's expert and concurred in by Intervenor's expert on archaeology will, through the development of the Project, support State goals for protection, restoration, interpretation and display of historic resources. Id.

124. The development of a golf course on the Project Site, outside of the Conservation District but following the Conservation District boundary line along a portion of the Pa'a coastline, will serve to protect, preserve and improve the quality of coastal scenic and open-space resources. Id.; See also E.A., Pgs. 9-30; T., V. I, CCH, Pgs. 100-108, 131-132, 218-220, 234, 274-280, 429-430, 434; T., V. II, Pgs. 30-31, 100.

125. The portion of the Pa'a coastline adjacent to the golf course is a valued resource and the proposed golf course development is compatible in its visual environment, design and location with the coastline and the surrounding land uses. Id.

126. The development of the golf course will result in a minimum of alteration of natural land forms and no adverse impact on existing public views to and along the shoreline. Id.

127. The development of the course will permit the maintenance of the shoreline open-space and scenic resources within the Special Management Area and adjacent thereto throughout the coastwise length of the golf course. Id.

128. Development of a golf course at the Project Site will not impact adversely valuable coastal eco-systems. E.A., Pgs. 9-16, 18-19, 22, 27-30; T., V. I, CCH, Pgs. 168-177; T., V. II, CCH, Pgs. 96, 99, 100, 114.

129. Disruption or degradation of coastal water eco-systems will be avoided effectively through Applicant's adherence to regulations of the Health Department regarding discharge of water and pollutants into the near shore environment. Implementation of the development proposed at the Project Site will promote water quantity and quality planning and management practices. Id.

130. The proposed golf course will be a privately owned public facility important to the State's economy. The proposed siting of the golf course is a suitable location adjacent to existing urban concentrations, recognizing the low agricultural productivity historically experienced in the area and the unavailability of sufficient lands contiguous to the Hyatt Regency Kauai Hotel site within the Urban District. E.A., Pgs. 23-25; T., V. I, CCH, Pgs. 138-140, 422-430, 437.

131. The golf course will not result in any impairment of any existing coastal uses or views if developed subject to the conditions contained in this Decision and Order. No adverse social, visual or environmental impacts will occur in the coastal zone management area. E.A., T., V. I-III, CCH.

132. Placement of a portion of the proposed golf course on Land Study Bureau Productivity Rating Class "B" lands is

warranted, reasonable, and justified in that it is not feasible to utilize presently urban designated locations contiguous to the Hyatt Regency Kauai site for the purpose of constructing a golf course. Furthermore, restricting construction of the proposed golf course to exclusively Class "C", "D" or "E" productivity rated lands adjacent to the urban district would require intrusion into the Conservation District. The current placement of the course is a reasonable, justified and effective balancing of interests, both economic and non-economic in nature, in the avoidance of adverse environmental impacts and in satisfaction of current and anticipated need. E.A.; T., V. I, CCH, Pgs. 138-140, 407-417, 427-428.

133. Development of the golf course on the Project Site as proposed will not create a hazard to life and property from tsunami storm waves, stream flooding, erosion or subsidence. E.A., Pgs. 10-13, 16, 22.

134. To the extent applicable, the development of the Project will comply with the requirements of the Federal Flood Insurance Program and with appropriate irrigation and drainage control will not result in coastal flooding. Id.

135. Adequate and properly located public access to shoreline recreation areas and facilities will be legitimized and reserved in connection with the development of the golf course Project. E.A., Pgs. 3, 27-30; T., V. I, CCH, Pgs. 105-108, 129-132, 234-236, 276-279, 428-430; T., V. II, CCH, Pgs. 30-31.

136. Adequate provisions have been made by the Applicant for solid and liquid waste treatment disposition and management and will result in no adverse effects upon the Special Management Area resources. E.A., Pgs. 25-27; T., V. I, CCH, Pgs. 100-108.

137. Alterations to existing land forms and vegetation (except crops) and the construction of structures at the Project Site will have no adverse effect on water resources nor upon scenic and recreational amenities in the area. Id.

138. When developed in accordance with the conditions made part of this Decision and Order, the proposed Project will not have any substantial adverse environmental or ecological effect. E.A.; T., V. I-II, CCH.

139. The proposed development does not irrevocably commit any significant resources to loss and/or destruction. The proposed development will not curtail the range of beneficial uses in the area. E.A., T., V. I, CCH, Pgs. 275-277.

140. The development is consistent with the County General Plan, zoning and other applicable ordinances and is consistent with the objectives and policies of Chapter 205, Hawaii Revised Statutes, and the Special Management Area Guidelines set forth in the SMA Rules. E.A., Pgs. 7, 26-30.

141. The proposed development does not substantially effect the economic or social welfare and activities of the community, County or State; and, the economic impact of the development will be positive. E.A., Pgs. 23-25.

142. The proposed development does not have any substantial secondary impact such as population changes or effects on public facilities. Id.

143. Implementation of the development at the Project Site will not eliminate planning option and will not have an adverse cumulative environmental or ecological effect when considered in connection with reasonably anticipated future projects. E.A., Pgs. 27-30.

F. USE PERMIT

144. A Use Permit is required and is necessary to establish golf course uses within the County's agricultural zoning district. See Staff Report, Pg. 1.

145. A Class IV Zoning Permit is a procedural requirement since the Use Permit is simultaneously being requested. Staff Report, Pg. 1.

146. The establishment, maintenance and operation of the construction and development of a golf course use at the Project Site is a compatible use generally with surrounding urban uses and agricultural uses. E.A., Pgs. 23-30; T., V. I, CCH, Pgs. 100-108.

147. The proposed golf course use at the Project Site will not be detrimental to health, safety, peace, morals, comfort or the general welfare of persons residing or working in the neighborhood of the Project Site. E.A., Pgs. 23-30.

148. The proposed golf course use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community. E.A., Pgs. 23-30.

149. The proposed golf course usage at the Project Site will not cause any substantial harmful environmental consequences on the land of the Applicant or on other lands or waters adjacent to the Project Site and is consistent with the intent of the RCO or the General Plan. E.A., Pgs. 23-30.

G. SPECIAL PERMIT

150. A Special Permit is necessary since the Applicant proposes to establish golf course recreational usage on a portion of the lands which are rated Class "B" by the Land Study Bureau's Detailed Land Classification Overall (Master) Productivity Rating, which use is not expressly permitted in that district. See Staff Report, Pg. 1.

151. The proposed golf course usage at the Project Site is an unusual and reasonable use which may be permitted within the State Land Use Agricultural District and has been permitted in other locations. E.A.; Staff Report; T., V. I, CCH, Pgs. 138-140, 275-276, 407-417, 427-428.

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

objectives of the State's Land Use Laws. E.A., Pgs. 27-30; T., V. I, CCH, Pgs. 275-278.

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

154. The proposed golf course use at the Project Site will not unreasonably burden public agencies to provide roads and street, sewers, water, drainage and school improvements and police and fire protection. E.A., Pgs. 27-30.

155. Unusual trends, conditions and needs have arisen in the visitor industry, the golfing industry and the agricultural industry since the establishment of the district boundaries and the Land Use Rules in the 1960's which justify the proposed golf course use at the Project Site. T., V. I, CCH, Pgs. 112-117, 280-290, 340-342, 387-393, 399-401.

156. The evidence is both clear and convincing that the land upon which the proposed use is sought is unsuited for the uses permitted within the Agricultural District. T., V. I, CCH, Pgs. 407-411, 413-415, 427-428.

157. The proposed Project Area consists of predominantly vacant and uncultivated land with a portion in cane. Withdrawal of that portion of the Property currently in sugarcane cultivation from the current lease in favor of

McBryde Sugar, which is permitted under that lease, will not occur until harvest and will not adversely affect the continued economic survival of McBryde Sugar's operations and will not be contrary to the objectives sought to be accomplished by the Land Use Rules and Land Use Law. Id., E.A., Pgs. 26-30.

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

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

160. The effect of cloud cover and high minimum and low diurnal temperatures on the Pa'a area affects the economic viability and suitability of the area for agricultural pursuits, including sugarcane and, although millions of dollars

in agricultural diversification studies have been conducted, none have yielded a productive, successful or economically viable crop that can substitute for cane in this area. Id.

H. EVIDENTIARY MATTERS AND RULINGS

161. For purposes of this proceeding, the Planning Commission takes judicial notice of the General Plan of the County of Kauai, the Koloa-Poipu Development Plan, the RCO, the Kauai County Charter, the Kauai County Flood Control Ordinance, the SMA Rules and maps, the Land Use Rules and the Hawaii Revised Statutes applicable to the Application, the Planning Department's files in respect of the Application and all maps therein contained, the County's Zoning Maps, and the State Land Use District Maps.

162. To the extent any conclusion of law hereinafter set forth in this Decision and Order is properly styled a finding of fact, said conclusion of law is hereby incorporated at this part as a finding of fact.

CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction over the Applicant's Application pursuant to the Hawaii Rev. Stat. § 205-6 Coastal Zone Management Act, Hawaii Rev. Stat. § 205-A, the RCO, the SMA Rules, the Land Use Rules and other applicable provisions of the Hawaii Rev. Stat.

Administrative Procedure

2. The procedural requirements of each of the foregoing statutes, rules and regulations, including specifically, the requirements of the Hawaii Administrative Practice Act, Hawaii Rev. Stat. Chapter 91 have been met. All interested persons and parties have been given due notice of the proceeding and have been afforded the opportunity to present comment, evidence and argument on the Application.

Environmental Impact Statement

3. Hawaii Rev. Stat. § 343 requires that for every application for development of lands under Chapter 205A, there shall be prepared an environmental assessment to determine if there may be a significant environmental impact posed by the proposed project. Hawaii Rev. Stat. § 343-5(a)(3). If such an environmental assessment discloses the likelihood that the project may have a significant environmental impact, the Planning Department shall order the preparation of an environmental impact statement as defined under Hawaii Rev. Stat. § 343-2, as required by Section 7.1E of the Kauai County SMA Regulations.

4. The Commission finds as a matter of fact, based on the environmental assessment performed, and concludes as a matter of law, that the submission and acceptance of an Environmental Impact Statement is not required for the proposed use at the Project Site.

State, General Plan and Development Plan

5. Chapter 226 of the Hawaii Rev. Stat. sets forth a Hawaii state development plan describing the overall theme, goals, objectives, policies, priority guidelines and implementation mechanisms to be used in long-range development of state lands. Hawaii Rev. Stat. § 226-2(6). Those objectives, policies and guidelines are set out in Sections 226-3 through 226-28 of that chapter, and incorporated in the Hawaii State Plan.

6. The Commission finds as a matter of fact, and concludes as a matter of law that the development of the Property is in conformance and is consistent with the overall theme, goals, objectives and policies of the Hawaii State Plan, Hawaii Rev. Stat. Chapter 226.

7. Pursuant to Section 7-1.2(c) of the Kauai County General Plan, the General Plan functions as enabling legislation which establishes the framework, parameters, constraints and guidelines for the Development Plan. Pursuant to Section 7-3.3 of the General Plan, the Development Plan is a guideline for the implementation of the General Plan. Pursuant to Hawaii Rev. Stat. § 226-2(15), which is made applicable to the General Plan pursuant to Hawaii Rev. Stat. § 52(a)(4), a guideline is a stated course of action which is desirable and should be followed unless a determination is made that it is not the most desirable in a particular case. Pursuant to the same authority, a guideline may be deviated from without penalty or sanction.

8. Pursuant to Section 7-1.3(b) of the General Plan, the General Plan shall be interpreted to recognize the changes in social, environmental and economic conditions and may be modified to accommodate such changes by amendment to the General Plan or by changing implementing legislation or programs.

9. The Commission finds as a matter of fact, and concludes as a matter of law that development of the Project Area conforms to and is consistent with the General Plan.

Special Management Area Use Permit

10. Hawaii Rev. Stat. § 205A and the Special Management Area Rules and Regulations of the County of Kauai promulgated thereto, require that, prior to permitting use of lands within the Special Coastal Zone Management Area, an applicant must show that the proposed project meets the objectives and policies of the SMA Rules set out at Section 3.0 of the Rules, as well as address and, to the extent applicable, satisfy the guidelines and conditions specified in Section 4.0 of the SMA Rules.

11. The Commission finds as a matter of fact, and concludes as a matter of law that the Applicant has met and satisfied all requirements and conditions of the SMA Rules of the County of Kauai necessary for issuance of a Special Management Area Use Permit.

CZO Use Permit

12. The Kauai County Comprehensive Zoning Ordinance at Title IV, Article 20, Section 8-20.5, authorizes the issuance of a Use Permit for any project for land use offering use compatible with the community in the general vicinity of the proposed development, and for which it is shown that there is no detrimental effect on the health, safety, peace, morals, comfort or general welfare of the contiguous community, and which is consistent with the Zoning Code and the General Plan.

13. The Commission finds as a matter of fact, and concludes as a matter of law that the Applicant has met and satisfied all requirements of Article 20 of the RCO, Section 8-20.1, et seq., for the issuance of the Use Permit.

Class IV Zoning Permit

14. Insofar as the Class IV Zoning Permit is a procedural requirement and requires no substantive review by the Commission in light of the more extensive findings required to issue the CZO Use Permit, supra, the Applicant has met and satisfied all the requirements of Article 19 of the RCO, Section 8-19.1, et seq., for the issuance of a Class IV Zoning Permit.

Special Permit

15. Hawaii Rev. Stat. Chapter 205 (the "State Land Use Law") and Section 15-15-95 of the Hawaii Land Use Commission Rules promulgated thereunder, authorize the Commission to issue Special Permits for unusual and reasonable uses meeting the guidelines therein set forth.

16. Under Hawaii Rev. Stat. § 205-6, Special Permits may be issued for land uses determined to be unusual and reasonable applying these guidelines, and which is not an expressly permitted use within the Agricultural District such as the golf course in this instance, which is not an expressly permitted use within the Agricultural District under Hawaii Rev. Stat. Chapter 205.

17. The Commission finds as a matter of fact, and concludes as a matter of law that the proposed golf course has met and satisfied all requirements of Chapter 205 of the Hawaii Rev. Stat. and the Land Use Rules necessary for the issuance of a Special Permit.

Compatibility with Findings of Fact

18. To the extent any finding of fact contained in this Decision and Order is properly styled a conclusion of law, said finding of fact is hereby incorporated at this part as a conclusions of law.

DECISION AND ORDER

On the basis of the foregoing findings of fact and conclusions of law, the Commission hereby orders, adjudges and decrees that the Special Permit, SP-88-6, Use Permit, U-88-31, Special Management Area Use Permit, SMA(U)-88-10 and Class IV Zoning Permit Z-IV-88-39 as and for the purposes described in the Application and the maps, as proposed by the Applicant be and are hereby granted and issued to Applicant upon and subject to the following conditions and restrictions:

1. As detailed plans become available, the Applicant shall submit to the Planning Department for review and approval prior to building permit application:

- a. building elevations, roof design, material color schemes and/or samples;
- b. landscaping plan;
- c. site layout development plan of the entire off-street parking areas, total number of parking stalls, and street lighting plans, if any. The final parking plan shall be subject to approval by the Planning Director prior to issuance of building permit.

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

- a. A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance with the applicable requirements of Hawaii Rev. Stat., Chapter 27, as amended,

and the plans for the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the Department of Health for review and approval.

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

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

- a. A sludge holding tank to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant; and
- b. exposing to the atmosphere the water surface in the aeration tank and clarifier to facilitate ease of operation, repair and maintenance of the facility; and
- c. a stand-by or emergency power source for electrical powered equipment; and
- d. provisions to ensure that storm water does not enter the facility.

4. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.

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

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

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

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

9. Applicant shall discuss and resolve the agency comments as submitted with the appropriate government agency.

10. Applicant shall submit a certified shoreline survey to the Planning Department prior to issuance of a grading or building permit dated no earlier than six (6) months from the start of construction.

11. No building or grading permits for construction, improvements or landscaping shall take place within the Conservation District without the approval of a Conservation District Use Application (CDUA) from the Department of Land and Natural Resources. Upon approval, the Applicant shall identify the boundary of the Conservation District with the erection of survey stakes and notify the Planning Department for inspection purposes prior to any construction, grading, improvements or landscaping activities on the overall parcel area. The location of the boundary shall be discernible and maintained through all phases of construction.

12. Applicant shall institute and maintain whatever measures are necessary, including but not limited to filter screens, siltation ponds, etc., to inhibit runoff flowing directly into the ocean, especially during the ground alteration phase of the Project.

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

14. Effective dust and soil erosion control measures shall be implemented during all phases of development and operation by Applicant.

15. Construction during the development stage of the Project shall be limited to daylight hours.

16. Prior to commencement of construction, Applicant shall flag and create a buffer zone around those of the 8 significant

archaeological sites identified in the Protective Measures Memo that are within the confines of the golf course boundary. During construction, the Applicant shall have a qualified archaeologist available for periodic inspections. Should anything of historical or archaeological significance be discovered, work in that area shall be stopped for review by the archaeologist. The 8 significant archaeological sites shall be preserved to the extent and in the manner reflected in Table 1 of the Protective Measures Memo and, where possible, the sites shall be integrated into the golf course layout design.

17. Concurrent with its development of the Project, Applicant shall construct unpaved public/fishermen parking facilities at the western end of the course in the area of Makawehi dune, at the northeastern coastal border of the course, and at the field nursery maintenance building location in the general areas reflected on Applicant's Exhibit 1. An area sufficient to park 40 automobiles shall be set aside at the western site and areas sufficient to park 5 cars at each site shall be set aside at the other two parking locations. These facilities, together with vehicular access to the facilities, shall be made available to the fishermen and other users as of the date of the first public opening of the golf course facilities.

18. Applicant shall provide to the Planning Department and County Attorney, for their respective review prior to issuance

of building permit a form of license affording public access to and along the shoreline adjacent to the Project. This License shall be finalized in advance of the issuance of a certificate of occupancy.

- a. The License shall provide for vehicular access to the parking facilities described in condition number 18, shall create a public right to utilize such access and the parking facilities for the purposes described in this condition and condition number 18.
- b. The license shall create a right of pedestrian access to the shoreline from the parking facilities and shall grant public pedestrian access along the shoreline in the general area of the shoreline trail, reflected on Applicant's Exhibit 1, from the Hyatt Regency Kauai site to the intersection of the northeastern coastal border of the golf course site and the Conservation District boundary.
- c. The license shall permit relocation in the future of the various facilities described in this condition number 19 and condition number 18 subject to the requirement that Applicant provide alternate substantially equivalent substitute access.

19. Applicant shall not permit access of off-road vehicles in, to and around Makawehi dune.

20. Applicant shall comply with Department of Health standards and regulations relating to Applicant's use of fertilizers, herbicides and pesticides on the proposed golf course.

21. Applicant shall pay to the Planning Department, at the time of the building permit application, the required Environmental Impact Assessment fee, based on final construction drawings.

22. Prior to the issuance of a grading or building permit, Applicant shall resolve with the Planning Department the location and/or relocation of the existing horseback riding trail previously approved by the Planning Commission (Z-IV-86-9).

23. The Applicant shall, within two (2) years from the date Applicant has received all necessary governmental approvals required for Applicant to exercise its rights under the permits, commence substantial construction of the Project. "Substantial construction" shall mean rough grading for the golf course. Failure to commence Substantial Construction may result in the termination of the subject permits, pursuant to proper procedures.

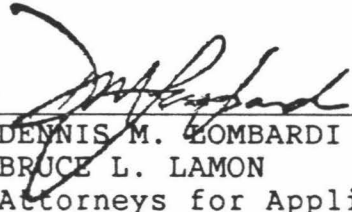
24. As represented, Applicant shall establish a golf rate structure incorporating kamaaina rates for local resident players.

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

DATED: Lihue, Kauai, Hawaii, July 28, 1988.

Respectfully submitted,

CASE & LYNCH
GOODSILL, ANDERSON, QUINN & STIFEL

By 

DENNIS M. LOMBARDI

BRUCE L. LAMON

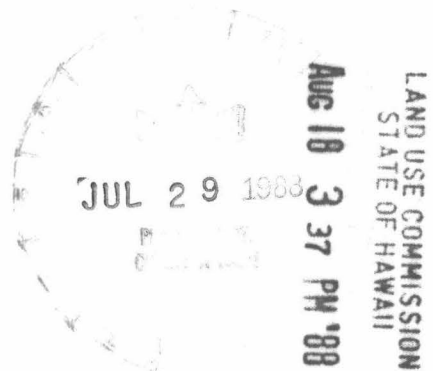
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Attorneys for
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.



PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
072888/2628K/0334/6390-11		)

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of
APPLICANTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER was made by hand delivering a copy of same
on July 28, 1988, addressed to:

Stephen Levine, Esq.
4365 Kukui Grove Street, Suite 103
Lihue, Kauai, HI 96766

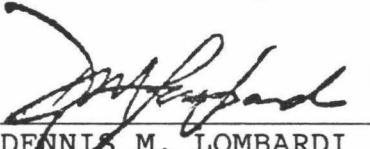
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Kauai County Planning Commission
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Lihue, HI 96766

Mr. Rick Tsuchiya
Hearings Officer
Planning Department
County of Kauai
4280 Rice Street
Lihue, Kauai, HI 96766

DATED: Lihue, Kauai, Hawaii, July 28, 1988.



DENNIS M. LOMBARDI
BRUCE L. LAMON
Attorneys for Applicants

THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

IN THE MATTER OF THE APPLICATION
OF
AINAKO RESORT ASSOCIATES and GROVE
FARM PROPERTIES, INC.

For a new 18 hole golf course, clubhouse and related accessory uses and structures

FOR Special Permit SP-88-6
Use Permit U-88-31
Special Management Area Use Permit SMA(U)-88-1
Class IV Zoning Permit Z-IV-88-39

PLANNING DEPARTMENT'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 38 PM '88

COMES NOW THE PLANNING DEPARTMENT OF THE COUNTY OF KAUAI (hereinafter collectively "Department") and hereby submits the following proposed findings of fact, conclusions of law, decision and order:

INTRODUCTION

The above entitled matter was initiated by the application of AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC., to develop certain property located in the Pa'a ahupua'a, Koloa, Island of Kauai and County of Kauai, State of Hawaii (hereinafter the "Property" or "Project area or site").

The application is for a Use Permit and Class IV Zoning permit, to be issued pursuant to the Comprehensive Zoning Ordinance (hereinafter "CZO") as contained in Chapter 8 of the Kauai County Code (hereinafter "KCC"), a Special Management Area Use (hereinafter "SMA") Permit, to be issued pursuant to the SMA Rules and Regulations of the County of Kauai (hereinafter "SMA Rules"), and a Special Permit (hereinafter "SP"), to be issued pursuant to Title 15, Chapter 15, Subchapter 12, Section 15-15-95, Hawaii Land Use Commission Rules (hereinafter "HLUC Rules"). The Planning Commission of the County of Kauai (hereinafter "Commission"), having heard the testimony and examined the evidence presented at the hearings held herein and having considered the total record including the proposed findings of fact and conclusions of law submitted by the parties, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PARTIES

1. AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. (Hereinafter collectively "Applicants") are the applicants for the permits sought herein. Grove Farm Company, Incorporated (hereinafter "Company") is the legal owner of the Property and has authorized Grove Farm Properties, Inc., to apply, in the name of the Company, for the subject permits in order to develop the Property as herein proposed. Ainako Resort Associates is the proposed lessee of the Property.
2. The PLANNING DEPARTMENT of the County of Kauai (hereinafter "Department") is the agency responsible for coordinating the review of applications for the types of permits sought herein and for preparing reports for the Commission's consideration concerning the approval or disapproval of such permits.

Received for Dennis Lombardi on 7/20/88

Received for Steve Levine on 7/20/88

Rosemary Vnigas
4:06 p.m.

Donna Victorino
4:05 p.m.

B-1C

3. OHANA O MAHAULEPU and MALAMA MAHAULEPU, both of which are unincorporated associations (hereinafter collectively referred to as "Intervenors") were allowed to intervene pursuant to the Rules of Practice and Procedure of the Planning Commission of the County of Kauai (hereinafter "Commission Rules") subject to consolidation, at the May 25, 1988 public hearing.

PROCEDURAL MATTERS

4. The Applicant filed an application dated April 19, 1988 for a Use Permit, Special Permit, Special Management Area Use Permit and Class IV Zoning Permit to develop a golf course and accessory uses on the Project site. The application included the following, (either initially or during the contested case portion), all of which are part of the record before the Commission:
 - a. Environmental Assessment, Proposed Golf Course at Hyatt Regency Kauai, Poipu, Kauai, Hawaii, April 1988, prepared by Belt Collins and Associates, Honolulu, Hawaii (hereinafter "E.A.").
 - b. Golf Course Demand Study, Robert E. Yoxall, In., March 2, 1988 (hereinafter "Demand Study").
 - c. Schematic Route Plan, Proposed Golf Course, Poipu, Kauai, Hawaii.
 - d. Botanical Survey, Char and Associates, January 1988 (hereinafter "Flora Report").
 - e. Survey of the Avifauna and Feral Mammals at Grove Farm Properties, Poipu, Kauai, Dr. Phillip Brunner, January 20, 1988 (hereinafter "Animal Report").
 - f. Letter dated April 27, 1988 from Dr. Phillip Brunner to Belt Collins and Associates regarding avifauna survey.
 - g. Marine research report, Stephen Dollar, Ph.D., June 18, 1988 (hereinafter "Marine Report").
 - h. Interim Report: Summary of Findings and General Significant Assessments and Recommended General Treatments, Archaeological Reconnaissance Survey. Hyatt Regency Kauai Proposed Golf Course Project Area, Phillip H. Rosendahl, Ph.D., May 1988 (hereinafter collectively "Archaeological Reports").
 - i. Revised Interim Report/Archaeological Reconnaissance Survey, Phillip H. Rosendahl, Ph.D., June 1988.
 - j. Memorandum Regarding Recommended Preservation Measures, Phillip H. Rosendahl, Ph.D., June 20, 1988.
5. The Commission conducted a field trip to the Project site on April 21, 1988 pursuant to a notice posted on April 15, 1988.
6. Hearings and motions before the Commission in this matter were held on Wednesday May 25; Thursday June 16; Thursday June 23; and Friday June 24, 1988. The public hearing of May 25, 1988 was conducted pursuant to notices published in the May 4, 1988 Garden Island and Honolulu Star-Bulletin newspapers. Notice was also given to adjoining property owners in Accordance with Section 8-19.6, KCC, and Section 9.0 of the SMA Rules, as evidenced by an affidavit by Gregory A. Kamm dated May 6, 1988.
7. Prior to the public hearing of May 25, 1988, Malama Mahau'lepu (hereinafter "Malama", Ohana O Mahaulepu (hereinafter "Ohana"), and the Kauai Windsurfing Association filed timely petitions to intervene in the application for the Project.

8. At its May 25, 1988 hearing the Commission took testimony from all interested members of the public. Thirty-two people spoke for the application, citing the need for an additional golf course, safer and improved access to the shoreline, jobs, importance to the visitor industry, etc. Forty-three people spoke against the application, citing environmental, sociological, archaeological, land use planning, need and recreational concerns. See Transcript of Proceedings of May 25, 1988, consisting of Volumes I and II (hereinafter "T.I" and "T.II", respectively).
- Communications to the Commission included 64 letters and 5 petitions with 1,214 signatures against the application, and 54 letters and 5 petitions with 1,559 signatures for the application.
9. At the hearing of May 25, 1988, the Kauai Windsurfing Association withdrew its petition for intervention. TI at ____.
 10. By motion duly made and passed at its May 25, 1988 meeting, the Commission consolidated Ohana and Malama and allowed the Intervenor to participate as a party in this application. TI at _____. Intervenor's interests generally included environmental, archaeological, sociological, land use planning, need and recreational concerns.
 11. On June 14, 1988, Intervenor filed a Motion for Declaratory Order and on June 16, 1988, a Request for the Issuance of Subpoenas. On June 16, 1988, Applicants filed a Memorandum in Opposition to Intervenor's Discovery Request.
 12. On June 16, 1988, the Commission conducted a pre-hearing preparatory to commencing the contested case portion of the application which had been scheduled to commence on June 23, 1988. See Pre-hearing transcript of June 16, 1988 (hereinafter "P.T.")
 13. The Intervenor's Request for Issuance of Subpoenas was denied in part and granted in part. P.T. at _____. Intervenor's oral requests to permit the submission of written statements of two witnesses were denied, inasmuch as those two witnesses would not have been available to be cross-examined at the contested case portion. P.T. at _____.
 14. The Commission granted the Intervenor's Motion for Declaratory Order, by which it directed the production, by the Applicants, of certain documents that had been requested in the Intervenor's Motion for Declaratory Order. P.T. at 148-1.61. A written order Granting Motion for Declaratory Order was ratified by the Commission at the commencement of the contested case hearing of June 23, 1988. See Transcripts of the Contested case proceedings of June 23, 1988 and June 24, 1988, consisting of three volumes in four parts (Volume I is in two parts with consecutively numbered pages, and represents the proceedings of June 23. Volume II is in one part, and represents the proceedings of the morning of June 24 and Volume III is in one part and represents the proceedings of the afternoon of June 24 (hereinafter "T/CCP"), Volume I at 48-51.
 15. Over the course of the contested case portion on June 23 and 24, 1988, the Commission heard the testimony of Charles Ortega (T/CCP, Vol. I at 63-92), Mel Ventura (T/CCP, Vol. I at 100-158) Steven Dollar on chemical oceanography (T/CCP, Vol. I at 160-184), Winona Piilani Char on botany (T/CCP, Vol. I at 187-209), Paul H. Rosendahl on archaeology (T/CCP, Vol. I at 210-263), Robert Trent Jones, Jr. on golf course design (T/CCP, Vol. I at 268-345), Phillip Bruner on biology, specifically avifauna and feral mammals (T/CCP, Vol. I at 346-383), Robert E. Yoxall on recreation/need (T/CCP, Vol. I at 384-406), David Pratt on agronomy and the application in general (T/CCP, Vol. I at 406-440; T/CCP, Vol. II at 7-15), Joe Vierra on engineering and planning matters (T/CCP, Vol. I at 442-460; T/CCP, Vol. II at 15-27), Michael Laureta as a member of the Department (T/CCP, Vol. II at 28-31), Don Heacock on marine biology (T/CCP, Vol. II at 55-133),

William Kikuchi on archaeology (T/CCP, Vol.III at 6-19), David Boynton on avifauna (T/CCP, Vol.III at 19-28), Andy Bushnell as a representative of 1,000 Friends (T/CCP, Vol.III at 28-42) and Dorothy Tao on flora (T/CCP, Vol.III at 42-54), some of whom were qualified as experts in the field regarding which they testified.

16. The documents or other exhibits which the Commission accepted for the record or admitted as evidence include the Applicants application filed on April 19, 1988, together with its attachments, studies, letters, surveys and Environmental Assessment, the Applicants Exhibits 1-10, inclusive, Intervenor's exhibits B,C,D,E and F, the written testimonies of members of the public submitted no later than July 1, 1988 to the Commission, all reports submitted by various governmental agencies regarding the project, the Staff Report prepared by the Department and presented on August 9, 1988 (hereinafter "Staff Report"), County Zoning Map ZM-PO-300, SMA Map panel No. 3 for the Kalaheo to Nawiliwili area, and any petitions, motions and memoranda filed during the pendency of these proceedings and orders issued by this Commission.
17. The transcripts of the proceedings conducted on May 25, 1988, June 16, 1988, June 23, 1988 and June 24, 1988, hereabove specified shall be part of the official record of the subject application.

DESCRIPTION OF THE PROPERTY

18. The Property consists of approximately 210+ acres (a portion of a larger parcel that totals 1,229.262 acres) and is identified by Kauai Tax Map Key 2-9-01: por.1, which is located in the Koloa district, Pa'a ahupua'a, County and Island of Kauai, State of Hawaii.
19. The Property is located within the State Land Use "Agricultural" District, is classified Open and Agriculture by the County of Kauai General Plan and the Poipu-Koloa-Kalaheo Development Plan, and is zoned within the Agriculture District (A) and Open District (O) of Chapter 8, KCC. Portions of the Property are also within the SMA, as defined by the SMA Rules and SMA maps incorporated therein, in particular SMA Map Panel No. 3 for the Kalaheo to Nawiliwili area.
20. The over-all terrain of the property gradually rises from the 30 foot elevation near the shoreline to approximately 125 feet at the mauka boundary. The average site slope is approximately 4% and the average site depth is approximately 1,200 feet.
21. The Project area consists primarily of former sugarcane lands and adjacent areas. Approximately 50 acres of the Project area are currently planted in sugarcane. T/CCP, Vol.I at 408-411.
22. Soils.
 - a) According to the Soil Conservation Service of the U.S. Department of Agriculture, the Project site contains the following soil types:
 - Waikomo stony silty clay (WS)
 - Koloa stony silty clay (KvB, KvD)
 - Jaucas loamy fine sand (JfB)
 - Mamala stony silty clay loam (MnC)
 - Rock outcrop (rRO)

Waikomo stony silty clay comprises one of the larger areas on the property. It consists of well-drained, stony and rocky material developed in matter weathered from basic igneous rock. The permeability of the soil is moderate, its runoff is slow, and its erosion hazard characteristic is slight. E.A. at 10-13.

On the inland sections of the Project area are areas encompassing the Koloa stony silty clay soil type. This soil, too, is well-drained and generally found on old volcanic vents and upland ridges. Hard rock usually underlie this soil at a depth of 20 to 40 inches. Runoff is medium to severe and the erosion hazard is moderate. E.A. at 10-16.

The area adjacent to the shoreline of the Project area contains the remainder of the soil types. Present is rock outcrop, and immediately behind the beach sand is Jaucas loamy fine sand and Mamala stony silty clay loam. Except for rock outcrop and Mamala stony silty clay loam, these soils are excessively drained, calcareous materials. They are suitable primarily for recreational use and as natural shoreline resources. Mamala stony silty clay loam is underlain by coral limestone and consolidated calcareous sand. It is moderate in permeability and has an erosion hazard potential that is rated slight to moderate. E.A. at 10-16.

- b) The Project area generally encompassed by the Waikomo stony silty clay and Mamala stony silty clay loam soils are within the Other Important Agricultural Land Classification of the Agricultural Lands of Importance to the State of Hawaii (ALISH) agricultural land evaluation system. Except for approximately 11 acres of classified Prime Agricultural Land at the mauka boundary of the Project site, the remainder of the 210+ Project site, generally behind the shoreline area, is not classified. E.A. at 12-13.
- c) The Land Study Bureau classified a majority of the soils on the subject property as "B"; "E" class soils also exist on the site. E.A. at 12-13.

23. Archaeological Sites.

- a) In June 1974, Archaeological Research Center Hawaii conducted an archaeological survey of about 1,100 acres of land east of Poipu. The proposed golf course development is located in a portion of this study area. According to the survey, nine sites or complexes are located within the Project boundaries, which include stone or boulder walls, cave shelters, and agricultural features, and which are classified as marginal, badly deteriorated or as having no historical or archaeological value. See Archaeological Reports.
- b) A supplemental archaeological survey was conducted during the period May 8-11, 1988 and June 9, 1988 on the Project area, which identified 18 sites within or immediately adjacent to the Project area. No further archaeological work of any kind was recommended for 8 sites; further work in the form of monitoring was recommended for 2 sites; and for the remaining 8 sites, preservation "as is", or with some level of interpretive development was recommended as appropriate. Those 8 sites are identified as T-2, T-3, T-7, T-8, T-9, T-10, T-11 and 3216. See Archaeological Reports; T/CCP, Vol. I at 214-215; T/CCP, Vol. III at 7-9.

Relative to the 8 aforementioned sites requiring additional work, two basic categories of further work are recommended:

- i) further data collection which is intended to provide a detailed and accurate record of each site and to generate the information content necessary for actual interpretive development; and
 - ii) certain specific conservation and interpretation measures. See Archaeological Reports; T/CCP, Vol. I at 216-220, 225-238; T/CCP, Vol. III at 9.
- c) Of the 8 sites to be preserved, three (T-7, T-8, and T-10) are outside of the Project Area, while the remaining 5 are within the Project area or on its boundaries. See Archaeological Reports; T/CCP, Vol. I at 227-232.
 - d) Preservation of the 8 sites would be insured by the location and clear flagging of buffer zones surrounding said sites during any period of construction or development of the Project, and the availability of an archaeologist to work with any construction people on-site in order to advise said construction people of the boundaries of the said sites, as a means of preventing accidental incursions into the site areas. T/CCP, Vol. I at 219.

- e) Given the flexibility available in golf course design, the 5 specified sites within the Project boundaries and on the boundaries may be successfully integrated into the Project, and such integration will better serve to preserve the sites because of the ability to maintain and control the same, without any jeopardy to access by interested members of the public. T/CCP, Vol. I at 219-219, 231-237; T/CCP, Vol. III at 14-15, 18-19.

24. Avifauna and Feral Mammals.

- a) A bird and mammal survey of the Project site was conducted in January 1988, based upon which a report was prepared. No endangered species of birds are located on the Project area. In order to encourage wildlife and exotic birds to increase their numbers in a particular area, the planting of a diversity of trees, particularly fruit bearing trees, would be recommended. See Animal Report; T/CCP, Vol. I at 354-358, 359-362, 371-373, 375-376.
- b) No endangered bird species have been identified as currently frequenting or nesting in the Project area, nor have any endemic species been identified on-site. See Animal Report; T/CCP, Vol. I at 359-361; T/CCP, Vol. III at 21-26.
- c) Mammal ground species identified on the Project site included dogs, cats, rats and mice. E.A. at 16-18; Animal Report. No flying mammals (Hawaiian hoary bats were observed in the Project area. T/CCP, Vol. I at 358.

25. Flora.

A flora study of the Project site as well as the coastal land below it was conducted in January 1988. The study inventoried 149 species, of which 120 species are introduced; 19 species indigenous; 5 species endemic; and 5 species of Polynesian introduction. No threatened or endangered species were found in the Project area, although a few species, including hinahina-kahakai, kipukai, puapilo, nama, and 'ohelo-kai, are considered rare or depleted and occurred on the seaward facing slopes of the dunes areas, outside of the Project area. See Flora Report; T/CCP, Vol. I at 188, 190-192, 195.

The areas with native coastal scrub should be left intact. Most of these areas are on steeply sloping dune faces or near the edges of cliffs. Also, access to the Makawehi dunes should exclude off-road vehicles as they have a definite negative impact on the dune vegetation and contribute greatly to erosion of the dune areas, while pedestrian traffic should continue to be allowed. See Flora Report; T/CCP, Vol. I at 193-195.

26. Drainage/hydrology.

Surface run-off generated by the Project is proposed to be contained within the Project area or limited to that which presently flows to the ocean. There will be no discharge of wastewater, commercial pollutants or industrial waste into the ocean. There are no surface water features on the Project area. The site's topography and soil characteristics provide an extremely well-drained condition. Additionally, a man-made retention and sedimentation basin exists in a low-lying area adjacent to the Project site makai of Pu'u Ainako. E.A. at 16; T/CCP, Vol. I at 443-446.

27. Ocean/Marine Resources.

- a) The water quality offshore from the Project area is classified by the State of Hawaii Department of Health as Class A waters, which is the second highest class of water rating under the Department of Health's rating system, except in times of major rains when natural erosion and siltation discharge into the ocean can temporarily impact waters. E.A. at 16; See Marine Report.
- b) Current qualitative evaluations of the near shore water quality reflect no evidence of pollution nor any adverse effect attributable to chemical infiltration as the result of run-off attributable to sugarcane operation. See Marine Report; T/CCP, Vol. I at 172-173; T/CCP, Vol. II at 88.
- c) The Applicants proposed to utilize secondarily-treated effluent from a sewage treatment facility to irrigate and in part fertilize the Project area. See Marine Report; T/CCP, Vol. I at 163-177.

- d) The utilization of fertilizers and treated sewage effluent, should a golf course be developed on the Project Area, would result in a diminishment (by 1/20th), of the nitrogen (which is a component of fertilizer, and which can potentially impact marine resources, including water quality and coral reefs in off-shore areas) which will be introduced into the ground water, compared with the current sugarcane usage. See Marine Report; T/CCP, Vol. I at 163-177; T/CCP, Vol. II at 99.
- e) No evidence was adduced regarding the potential impacts, whether adverse or otherwise, to the environment or ecology of the off-shore waters as a result of the use of chemical herbicides or pesticides.
- f) The cultivation and harvesting of sugarcane has a more detrimental effect on the quality of off-shore waters than does a golf course. T/CCP, Vol. II at 114-117.

28. Air Quality.

The existing air quality within and around the Project is very good. A short term air quality impact may result from the proposed Project during its construction phase. The proper and methodical implementation of adequate dust control measures by the Applicants will mitigate any adverse impacts to surrounding areas. In the long term, the Project will reduce direct long term air quality impacts associated with cane harvesting in adjacent areas. E.A. at 19.

29. Noise.

- a) Construction activities associated with the proposed development may contribute in the short term to temporarily increased levels of noise. Restriction of construction activities to daylight hours where the activities may be conducted in proximity to developed areas will mitigate and alleviate any possible impacts associated with such activities. E.A. at 19-22.
- b) The proposed Project, during its operational phase, is not expected to increase noise levels in the long term. An increase in traffic, which would be a principal source of long-term noise level increase, is not expected by virtue of operating the Project. As such, the Project will not have any substantial adverse environmental or ecological impacts in terms of noise. To the extent that noise may be a concern, roadside landscaping to serve as a buffer may diminish sounds emanating from vehicular traffic. E.A. at 19-22; T/CCP, Vol. I at 444-445.

30. Natural Hazards.

The Project area is outside of any flood plain identified by the Flood Insurance Rate Map ("FIRM") prepared by the U.S. Army Corp of Engineers. It is located above the shoreline behind limestone and lithophyte calcareous sand dunes which rise approximately 30-120 feet above sea level. The base flood elevation of a potential 100-year tsunami inundation is only 7 feet according to the FIRM map. There are no potential ravine flood plains which can adversely affect the Property. R.A. at 22.

31. Views.

The development of the Project at this site will result in the opening up of view planes towards the ocean and mountains, resulting in a more aesthetically pleasing and visually enhanced environment than that which presently exists. The golf clubhouse facilities will be constructed on the mauka side of Pu'u Ainako and will not obstruct views to, from or along the ocean. E.A. at 22; T/CCP, Vol I at 100-101.

32. PROPOSAL FOR DEVELOPMENT

- a) An 18 hole championship calibre golf course, a driving range, putting green, clubhouse, and parking will comprise the Project. The clubhouse will be located near the north flank of Pu'u Ainako cinder cone, and will include a golf pro shop, snack shop, restaurant, golf club storage room and golf cart maintenance area. A golf course maintenance building and temporary field nursery are also part of the Project. The golf course layout will be

configured to consist of 6 holes, driving range and putting green mauka of the existing McBryde cane haul road, with the remainder of the course east of the clubhouse. No golf holes or fairways are proposed makai of the State Land Use "Conservation" District. E.A. at 1-3.

- b) A shoreline access trail, approximating the location of the existing trail, is proposed makai of the Conservation District Boundary. A 40-car and two 5-car parking areas for ocean and shoreline recreational users are also planned to be strategically located on the Property in close proximity to the high use areas of the shoreline. All public access and parking areas will be described by metes and bounds descriptions and are proposed to be conferred either by license or easement in favor of the general public or the County. Liability insurance and maintenance of these areas will be the responsibility of the Applicant. Alternative access to the shoreline areas will be provided during the construction phase of the Project and an adjacent hotel project. T/CCP, Vol. I at 105-108, 275-276, 279.
- c) A portion of the existing McBryde cane haul dirt road will be relocated northward by the Applicants in order to minimize impacts to the golf course. Poipu Road extension, and driveway improvements to County standards will be provided. See application and accompanying documents and exhibits.
- d) Infrastructure and utility improvements will be provided as required by the appropriate government agencies. See application and accompanying documents and exhibits.
- e) This Project is not a site-specific part of Grove Farm Company's continuing efforts of master planning for its landholdings in the district, and was included only at such time as a lease was requested by Ainako Resort Associates for a golf course area to accompany the proposed Hyatt Regency Kauai in late 1987. T., Vol. I at 50-51.

Grove Farm Company has been developing conceptual plans relating to prospective land uses for their landholdings since as early as 1960. The conceptual plans that Grove Farm Company has for its Pa'a and Mahaulepu lands require further feasibility, infrastructure and market/demand studies prior to seeking governmental approvals of any of the proposed land use considered. The land use concepts envisioned by Grove Farm Company do not appear to be reasonably probably of implementation in the anticipated future. T/CCP, Vol. I at 407-458; T/CCP, Vol. II at 7-25.

The Project site is not economically or functionally dependent on the implementation of any land use concept for areas surrounding the Project site and conceived by Grove Farm Company in its conceptual and on-going planning efforts. In reviewing and/or approving the proposed Project, the Commission and Department has not and does not commit itself or other reviewing agencies and commissions to any approvals of the land uses conceived by Grove Farm Company in its conceptual plans for the Pa'a and Mahaulepu areas. T/CCP, Vol. I at 407-458; T/CCP, Vol. II at 7-25.

- f) The Project will be operated as a resort-oriented facility, but will be open to the public. The Project will be developed also to accommodate an increasing demand for golf play in the Poipu area of Kauai and Kauai generally and to make south Kauai more competitive among other visitor destination areas. See Demand Study; T/CCP, Vol. I at 387-390; T. Vol. I at 39-60; T/CCP, Vol. I at 100-120.
- g) Economic impact.
 - i) Construction and operation of the proposed Project will result in increased employment, personal income and government revenues. Direct short term construction and long term operational economic benefits will be realized in the neighboring Koloa-Poipu communities as well as indirect economic benefits to the rest of Kauai and the State. E.A. at 23-24.

- ii) Efforts will be made by the Applicants to use as many local employees as possible in both the construction and operational phases of the Project. Construction of the Project is expected to require approximately 20 months. E.A. at 23-24; T., Vol. II.
- iii) Direct Project employment, including employment at the golf clubhouse and maintenance facility, is estimated to include about 86 persons with management personnel accounting for about 10% of the golf course employment. E.A. at 24.

33. Public Facilities and Services.

- a) The costs of constructing the Project infrastructure will be borne by the Applicants, among which will include the extension of Poipu Road along the mauka boundary of the Hyatt Regency Hotel site and the construction of a driveway, to County standards, to the proposed clubhouse. E.A. at 25-27; T/CCP, Vol. I at 105.
- b) Potable water for the Project's operation will be available through the existing 12-inch waterline running through an existing portion of Poipu Road. Any required improvements imposed by the Department of Water will be effected by the Applicants. Water Source is currently sufficient to satisfy the Project's anticipated needs. E.A. at 25-27; report from the Department of Water.
- c) Secondarily-treated sewage effluent generated from a private sewage treatment plant, as well as planned irrigation wells to be constructed by the Applicants, shall be used to irrigate the Project area. The Applicants may also use recycled surface run-off from lands mauka of the Project area for irrigation purposes. E.A. at 25-27.
- d) No public sewage collection system exists to service the Project. Liquid waste generated from the proposed Project will be treated at a private sewage treatment plant, and the sludge generated therefrom shall be disposed of in accordance with the State of Hawaii's Department of Health and the County of Kauai's Department of Public Works requirements. Solid waste will be disposed of by private contractors. Adequate services for disposal of liquid and solid waste currently exist or can be developed without cost to the County or the State, to meet the needs of the Project. E.A. at 25-27; T/CCP, Vol. I at 108.
- e) Adequate police and fire protection services, and utilities (electricity and telephone) are currently available to service the needs of the proposed Project. E.A. at 25-27.
- f) During construction and operational phases, the Project will not unreasonably burden public agencies to provide roads, streets, sewer and water facilities, drainage facilities, school improvements, or fire and police protection. E.A. at 25-27.

34. Need.

- a) Since the establishment of the Agricultural district boundary and the Land Use Rules, there has been a substantial increase in the use and interest in the golf industry. The focus of many resort endeavors has moved from conventions and the free independent traveler to the incentive group market, which cannot be attracted effectively without an on-site golf facility. See Demand Study; T/CCP, Vol. I at 115-118, 281.
- b) The percentage of golfers in the United States has grown 24% to 20.2 million persons over the last two years. In order to keep pace with the demand and the need for golf created by the increased interest in golf in the United States, many golf courses would have to be built. This intensity of interest and need is greater in Hawaii and the sunbelt states than in other parts of the country. Indeed, Hawaii is seen as a vacation mecca with an

intense demand for golf currently that is not projected to abate in the future. See Demand Study; T/CCP, Vol. I, at 281.

- c) Based on current need and demand, Kauai will need to significantly increase the number of golf courses currently available to satisfy existing and anticipated need for such recreational facilities. See Demand Study; T/CCP, Vol. I at 342, 387-390, 395-400.
- d) Existing golf facilities on the island of Kauai are inadequate to meet current demand and need for golf created by the resident and tourist population, exclusive of the demand and need to be generated by the Hyatt Regency Kauai Hotel. See Demand Study; T/CCP, Vol. I at 399-400.
- e) Reasonable estimates of the demand and need to be created for additional golf attributable to the Hyatt Regency Kauai Hotel reflect that the Hyatt Hotel will create a need for additional golf facilities exclusive of the general public and tourist need. It is estimated that the Hyatt Hotel will create a demand for some 35,000 rounds of golf annually at its initial stage which will increase thereafter and is expected to reach a demand for some 48,000 rounds of golf annually, See Demand Study; T/CCP, Vol. I at 392, 393, 400.
- f) The existing County golf facility at Wailua is currently overused. Play at that facility has been described as having reached the saturation level. The average municipal course in sunbelt states, where golf usage is higher than other states in the mainland United States, has 55,000 rounds per year played on the facility. At Wailua some 120,000-130,000 rounds of golf are played annually. See Demand Study; T/CCP, Vol. I at 400-401.
- g) Notwithstanding the creation of new courses, including the additional 9-holes contemplated at Princeville and the possible development of an 18-hole golf course at Kukuiula, an 18-hole golf course in Lihue and an additional 9-holes at Kiahuna, all on Kauai, there exists a compelling private need (created by the Hyatt Regency Kauai Hotel) and public need for additional golfing facilities available for the tourist and resident population on Kauai. See Demand Study; T/CCP, Vol. I at 115-118, 389, 390-393.

35. REQUIRED PERMITS AND STANDARDS FOR ISSUANCE.

The following permits are required before the Project can commence:

- a) A SPECIAL PERMIT, since the Property, and the proposed development and uses thereof, are located within the State Land Use Agricultural District, and such development and uses are not generally permitted in the Agriculture District. This permit must conform to the standards and provisions of Title 15, Chapter 15, Subchapter 12, Section 15-15-95, HLUC.

The HLUC Rules require that, before a Special Permit issues, the following elements must be established:

- i) The proposed use will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
- ii) The proposed use will not adversely affect surrounding property.
- iii) The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
- iv) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
- v) The portions of the Property upon which the proposed use is sought are unsuited for agriculture use.

- b) An SMA PERMIT, since portions of the property, and the proposed development thereof, are located within the SMA, and the costs of such proposed development exceeds \$65,000. This permit must conform to the standards and provisions contained in the SMA Rules

The SMA Rules require that before an SMA Permit issues, the following must first be found:

- i) It will not have any substantial adverse environmental or ecological effect. Any adverse environmental or ecological effect that may result will be minimized to the extent practicable and is clearly outweighed by public health, safety and welfare, and other compelling public interests. The development of the property will not have adverse effects by itself or in conjunction with other individual developments, the potential cumulative impacts of which would result in a substantial adverse environmental or ecological effect and the elimination of planning options.
 - ii) It is consistent with: the objectives and policies contained in HRS Chapter 205-A; the objectives and policies contained in Section 3 of the SMA Rules; and the SMA guidelines contained in Section 4.0 of the SMA Rules.
 - iii) It is consistent with the Kauai General Plan Update Ordinance and CZO.
- c) A USE PERMIT, since the applicant proposes a project that is not a generally permitted use on Agriculture and Open zoned land by the County without a Use Permit. This permit must conform to the standards and provisions contained in the Use Permit section of the KCC (Section 8-20).

Section 8-20 of the KCC requires the following for issuance of a Use Permit:

...the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of the CZO and the General Plan.

- d) A CLASS IV ZONING PERMIT, as a procedural requirement for the issuance of a Use Permit. This permit must conform to the standards and provisions contained in the Zoning Permits section of the KCC (Section 8-19).

Section 8-19 of the KCC requires the following for issuance of a Class IV Zoning Permit: a proper application has been filed with the payment of appropriate fees; the Planning Director has determined that the project if developed in accordance with the conditions placed upon it, can conform to the applicable CZO standards; the application has been referred to the appropriate governmental agencies for comment or approval; and a public hearing, subject to the appropriate notice requirements, has been held in this matter.

STATE AND COUNTY AGENCIES AND COMMISSIONS COMMENTS AND CONSIDERATIONS

36. The Department of Public Works of the County of Kauai (hereinafter "Public Works") has made the following comments:

- a) A grading permit is required for the grading work in the Golf Course and roadways.
- b) The Environmental Assessment proposes to dedicate the Poipu Road extension to the County. We are recommending that the road be kept private with public access rights similar to the section in the Poipu Kai subdivision. An alternative is to bring the section of Poipu Road through Poipu Kai subdivision to standards and dedicate the entire length to the County. The

County should not accept dedication of any roadways that do not connect to a public highway.

- c) The Environmental Assessment states that sewage would be handled in conjunction with the planned Hyatt Regency Kauai and that sludge would be disposed of in accordance with State Department of Health regulations. As we indicated for the Hotel application, we are very concerned with the problem of disposing of sludge, especially at the County's wastewater treatment facilities. Therefore the treatment facility for the Hyatt Regency Hotel shall be required to provide its own sludge treatment and de-watering facilities on-site. Disposal at County wastewater facilities will not be permitted. See report of Public Works; Staff Report.
37. The Department of Water of the County of Kauai (hereinafter "Water Department") has no objections to this Zoning, Use, Special Management Area Use and Special Permit Application provided the building permit not be granted until:
- a) The developer prepares and gets Departments of Water's approval of construction drawings for necessary water system facilities and either constructs said facilities or posts a performance bond for construction. These facilities shall include:
 - 1. The domestic service connection.
 - 2. The fire service connection.
 - 3. The interior plumbing plans with the appropriate backflow prevention device (if required).
 - b) Payment of any applicable charges in effect at the time of building permit approval.
 - c) If applicable, a refund agreement between the Department of Water and the developer (of the proposed golf course complex) must be completed; whereby, the developer contributes its share to Blackfield Hawaii as provided in the Department's Rules. At the present time, the developers estimated deposit amount is dependent on the meter size requested. See report of Department of Water; Staff Report.
38. The Fire Department of the County of Kauai has made the following comments: The Applicant shall provide all weather fire access roadways, water for fire protection of the proposed structures and comply with all the applicable requirements of the fire code. See report of Fire Department; Staff Report.
39. The Department of Health of the State of Hawaii (hereinafter "DOH") has stated the following:
- a) The entire golf course, including restaurant and snack shop, shall be connected to an approved wastewater treatment facility. It is understood from the applicant's submittal, that sewage from the proposed clubhouse will be conveyed to the planned wastewater treatment facility for the new Hyatt Regency Kauai. The DOH has not approved a Private Wastewater Treatment Work (PWTW) for the Hyatt Regency Kauai's expansion of the Poipu Kai PWTW to accommodate the sewage from the clubhouse and the Hotel. It is understood that the existing capacity in the Poipu Kai PWTW is committed to future projects within their existing service area.
 - b) A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance with the applicable requirements of Act 282, SLH 1985 as amended by Act 302, SLH 1986.
 - c) The plans of the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the DOH for review and approval.

- d) The owner shall obtain approval for the effluent irrigation system under authority in item #b.
- e) The proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340-B of the HRS.
- f) Developers/owners shall be aware that odor nuisances may occur during the operation of the proposed PWTW.
- g) As stated in Act 282, SLH 1985 as amended by Act 302, SLH 1986, the engineer designing the proposed PWTW is given flexibility and design responsibility. However, the following recommendations are given based on our experiences and observations with these types of PWTW on Kauai:
 - 1) A sludge holding tank should be provided to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant.
 - 2) The water surface in the aeration tank and clarifier should be exposed to the atmosphere to facilitate ease of operation, repair and maintenance of the facility.
 - 3) A stand-by or emergency power source should be provided for electrical powered equipment.
 - 4) Provisions should be made to ensure that storm water doesn't enter the facility.
- h) The project shall be provided with potable water through the County water system.
- i) The restaurant and snack shop shall comply with all applicable requirements of Chapter 1-A Food Service and Food Establishment Sanitation Code, Public Health Regulations, State of Hawaii, Department of Health.
- j) The project is located adjacent to and downwind from the existing sugarcane fields and sugar mill and therefore may be impacted by smoke, dust, odor, mosquito and noise nuisances from its agricultural activities. (This contradicts the applicant's statement under Air Quality on page 19)
- k) The project is also located near to and downwind from the Grove Farm Rock Company quarry and rock crusher which are sources of dust and noise nuisances.
- l) Grubbed material shall be disposed of at a site approved by the DOH. Open burning is prohibited.
- m) Effective dust and soil erosion control measures shall be implemented during all phases of development by the developer. The project area is located up wind of existing resort/residential areas. The project site is also arid, exposed to strong winds and has been an area which experienced severe dust problems during past developments.
- n) Only non-terigenous materials compatible with the marine environment shall be used as fill material under the Shoreline Setback area or other areas within the reach of storm generated waves.
- o) The golf course area being withdrawn from sugar cane cultivation is presently used to apply wastewater generated from the McBryde Sugar Company mill. As with the Lihue Airport, Lihue Plantation mill water problems, provisions must be provided to apply the McBryde Sugar Mill water to an alternate location.

The land application area for miss process wastewater is essential for preventing discharge to the ocean and resulting water pollution violations by McBryde Sugar Co.

- p) A horse stable located adjacent to golf course mauka property may be a source of odor nuisances in the future.
- q) Due to the general nature of plans submitted, we reserve the right to implement further environmental health requirements when more detailed plans are submitted to our department. See report of Department of Health; Staff Report.

40. The Department of Agriculture of the State of Hawaii (hereinafter "DOA") offered the following comments, dated March 17, 1988:

According to the EA, the proposed golf course will be developed and operated in association with the planned Hyatt Regency Kauai at Keonelo Bay. More than half of the subject property is cultivated in sugarcane by McBryde Sugar Company.

References to the Agricultural Lands of Importance to the State of Hawaii (ALISH) system, the Land Study Bureau-Detailed Land Classification for the Island of Oahu, and the Soil Conservation Service Soil Survey are correct. We would like to add that Koloa stony silty clay (KvC) with 8-15% slopes and an irrigated capability classification of IIIe is also found on the subject property.

The subject property has Land Evaluation (LE) ratings ranging from 12 to 74. Approximately $\frac{1}{2}$ of the property has an LE rating of 50 or higher and corresponds to the area that is classified as "Prime" or "Other Important" according to the ALISH system.

The applicants should address the following issues regarding the impacts of the proposed golf course on McBryde Sugar Company and the agricultural resources of the area:

- What alternative sites were considered for the golf course, especially those with less agronomic suitability than the subject site;
- What is the full impact on the economic viability of McBryde Sugar Company resulting from the cessation of sugarcane production on approximately 125 acres. This would include the loss in tons of sugar per acre, lost revenues, location and cost of replacement field preparation and cane haul roads (if any), and any other indicators of adverse impact;
- What are the broader economic and resource impacts on the State from the irrevocable loss of prime agricultural lands;
- What is the conformity to the State Agriculture Functional Plan and its objectives, policies and priority guidelines:

226-7(b)(6) "Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs."

226-103(c)(1) "Provide adequate agricultural lands to support the economic viability of the sugar and pineapple industries."

226-103(d)(1) "Identify, conserve and protect agricultural and aquacultural lands of importance and initiate affirmative and comprehensive programs to promote economically productive agricultural and aquacultural uses of such lands."

226-104(b)(2) "Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district." See letter of Department of Agriculture; Staff Report.

41. The Kauai Historic Preservation Review Commission of the County of Kauai (hereinafter "KHPRC") had the following recommendations:

Our Commission has reviewed the recently completed archaeological study by Dr. Paul Rosendahl and at our May 27, 1988 meeting voted to approve the following recommendations:

- a. That additional subsurface testing be conducted on the two areas shown on the enclosed map "A". It is further recommended that at least two test sites be conducted in each of the two areas (a & b).
- b. That an explicit proposal of protective measures be submitted for the sites identified on Table 4, pages 13 and 14, of Dr. Rosendahl's report.
- c. That Dr. Rosendahl's recommendations regarding field work tasks as outlined in Table 1, pages 5 and 6 of his report, be supported and that all excavation phases of the project be monitored by a qualified archaeologist.

Based on the findings and recommendations of Dr. Rosendahl along with input from KHPRC Commissioner Dr. William Kikuchi, our Commission recommends that the permit requests not be approved until recommendations 1 & 2 are met.

We are very concerned with the potential negative impact of the project on significant cultural and paleontological remains (Olson, 1973), in the Pa'a and Mahaulepu area. The KHPRC feels that a Cultural Resource Management Plan for the region is needed. Such a plan would include an inventory of existing resources and enable the Commission to evaluate future development projects in the area based on their cumulative impact to these resources. See letter of KHPRC: Staff Report.

42. Hawaii State Plan.

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

- a) Adding 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;
- b) Adding to 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.
- c) Encouragement of an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires;
- d) The encouragement of businesses that have favorable financial multiplier effects within Hawaii's economy;
- e) The promotion and protection of intangible resources in Hawaii such as scenic beauty;
- f) Assistance to the overseas promotion of Hawaii's vacation attractions;
- g) Improving the quality of existing visitor designation areas;
- h) Ensuring that visitor facilities and destination areas are carefully planned and sensitive to neighboring communities and activities;
- i) Providing public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion.

- j) Pursuing compatible relationships among activities, facilities, natural resources, especially within shoreline areas;
- k) Promoting the preservation and restoration of significant natural and historic resources;
- l) Promoting the visual and aesthetic enjoyment of mountains, ocean vistas, scenic landscapes and other natural features;
- m) Promoting the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values;
- n) Ensuring opportunities for everyone to use and enjoy Hawaii's recreational resources;
- o) Sharing the availability of sufficient resources to provide for future recreational needs;
- p) Fostering the increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii;
- q) Managing population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social and economic aspirations while recognizing the unique needs of each county;
- r) Encourage greater cooperation between the public and private sectors in developing and maintaining well designed and adequately serviced visitor industry and related developments;
- s) Maintaining prudent use of Hawaii's land based, shoreline and marine resources;
- t) Assuring effective protection of Hawaii's unique and fragile environmental resources;
- u) Assuring the availability of sufficient resources to provide for future cultural, artistic and recreational needs; and
- v) Providing a wide range of activities and facilities to fulfill the cultural, artistic and recreational needs of all diverse and special groups effectively and efficiently.

43. General Plan and Koloa-Poipu-Kalaheo Development Plan.

The General Plan establishes the County's policy governing the long-range, comprehensive development and allocation of land and water resources within the County of Kauai. The Development Plans, including the Koloa-Poipu-Kalaheo Development Plan ("Development Plan"), are used as guidelines in implementing the General Plan. The development of the Project Area conforms to and is consistent with the provisions of the General Plan and the Development Plan in that it contributes to the attainment of the following goals of the General Plan:

- a) Maintaining the concept of Kauai as "The Garden Isle" by providing for growth and consonance with the unique landscape and environmental character of the island;
- b) Ensuring that physical growth is consistent with the overall ecology of the island;
- c) Creating opportunities for a greater diversity and stability of employment for residents of Kauai;

- d) Providing for a maximum variety of outdoor recreational activities;
- e) Recognizing those aspects of the island and its people which are historically and culturally significant and maintaining and enhancing such aspects as a continuing expression of the island's physical and social structure;
- f) Promoting the improvement and expansion of the island's economy by recognizing and carefully utilizing land and water resources;
- g) Guiding and controlling development to take full advantage of the island's form, beauty and climate and preserving the opportunity for an improved quality of life; and
- h) Guiding physical growth so that island and visitor communities will develop in social and economic concert with each other.

44. Special Permit.

- a) The proposed Project is not contrary to the objectives sought to be accomplished by Chapters 205 and 205A of the HRS and HLUC Rules. Creation of a golf course will not result in an infusion of major urban uses into the Agricultural District. The Project merely introduces a landscaped parklike open space recreational area into the district and implementation of the Project through the Special Permit process does not adversely impact the effectiveness and objectives of the State's Land Use Laws. E.A. at 27-30; T/CCP, Vol. I at 275-278.
- b) The proposed golf course use will not generate adverse noise, odors, or emissions which will significantly impact the surrounding properties. The uses proposed are park-like and low intensity in nature. E.A. at 27-30; T/CCP, Vol. I at 275-278.
- c) The proposed Project will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, or police and fire protection. All public service functions are available, and where they are not, appropriate upgrades and improvements will be made by the Applicants, as required by the affected government agencies. E.A. at 27-30.
- d) Unusual conditions, trends and needs have arisen since the instant district boundaries were established in 1974 and since the establishment of the HLUC Rules, in that the proposed use and improvements are in response to trends and needs within the tourism industry and resident population to provide additional recreational options that make optimum use of existing and available resources. See Demand Study.
- e) McBryde Sugar Company's yields are among the lowest in the industry, approximately 22% below average which is the case with many windward plantations situated in areas such as the Project site. McBryde Sugar has been withdrawing portions of its acreage from cane over the last several years and there is a strong possibility that McBryde Sugar will not continue its lease for sugarcane in the Project Area and surrounding environs in 1994 when its lease expires. See E.A. at 26-30; T/CCP, Vol. I at 407-411, 413-415, 427-428.

There is no proven alternative agricultural crop which has been shown to be economically viable in the windward areas of the State or Kauai. Windward plantations such as Kilauea, Kahuku and Kohala have gone out of business and existing windward plantations such as Mauna Kea, Hamakua, Lihue and McBryde are doing the least well of all the other plantations in connection with their sugar operations and their diversified agricultural operations. See E.A. at 26-30; T/CCP, Vol. I at 407-411, 413-415, 427-428.

The effect of cloud cover and high minimum and low diurnal temperatures on the Pa'a area affects the economic viability and suitability of the area for agricultural pursuits, including sugarcane, and although millions of dollars in agricultural diversification studies have been conducted, none have yielded a productive, successful or economically viable crop that can substitute for cane in this area. See E.A. at 26-30; T/CCP, Vol. I at 407-411, 413-415, 427-428.

The proposed Project area consists of predominantly vacant and uncultivated land, with a portion continuing in sugarcane cultivation. Withdrawal of that remaining portion of the Project area from the current lease to McBryde Sugar, which is permissible under the lease, will not occur until harvesting has been completed of the existing crop, and will not adversely affect the continued economic survival of McBryde Sugar's operations. See E.A. at 26-30; T/CCP, Vol. I at 407-411, 413-415, 427-428.

45. Use Permit and Class IV Zoning Permit.

- a) The establishment, maintenance and operation of the construction and development of a golf course use at the Project site is a compatible use generally with surrounding urban uses and agricultural uses. E.A. at 26-30; T/CCP, Vol. I at 100-108.
- b) The proposed golf course use at the Project site will not be detrimental to health, safety, peace, morals, comfort or the general welfare of persons residing or working in the neighborhood of the Project. E.A. at 23-30.
- c) The proposed golf course will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community. E.A. at 23-30.
- d) The proposed golf course usage at the Project site will not cause any substantial harmful environmental consequences on the land of the Applicants or on other lands or waters adjacent to the Project site and is consistent with the intent of Chapter 8, KCC and the General Plan. E.A. at 23-30.

46. Special Management Area Use Permit.

- a) The proposed Project will make provisions for solid and liquid waste treatment and/or disposal in order to minimize any potential for degradation of the coastal resources, and will provide, rather than diminish, the public's right to access the beaches, shoreline, streams, or similar tidal areas in the area. E.A. at 3, 25-30; T/CCP, Vol. I at 100-108, 129-132, 234-236, 276-279, 428-430; T/CCP, Vol. II at 30-31.
- b) Placement of the Project mauka of the Conservation District Boundary and the Creation and maintenance of vehicular, parking, and pedestrian accesses and facilities on behalf of the general public will protect the Project's coastal resources uniquely suited for diverse recreational activities, and will effect a reasonable dedication thereof. E.A. at 27-30; T/CCP, Vol. I at 105-108, 129-132, 234-236, 276-279, 428-430; T/CCP, Vol. II at 30-31.
- c) Development of the golf course on the Project site has identified, and will insure the protection, preservation, and where appropriate, restoration of historic and prehistoric resources, and will protect, preserve, improve and expand the quality of coastal scenic and open-space lands and resources. E.A. at 9-30; T/CCP, Vol. I at 100-108, 131-132, 215, 218-220, 234-235, 237-241, 274-280, 429-430, 434; T/CCP, Vol. II at 10-19, 30-31, 100.
- d) The proposed siting of the golf course is a suitable location adjacent and in close proximity to existing resort developments. E.A. at 23-25; T/CCP, Vol. I at 138-140, 422-430, 437.

- e) The golf course as proposed to be laid out will not result in any impairment of any existing coastal uses or views. No adverse social, visual or environmental impacts will occur in the coastal zone management area or to the coastal ecosystem. E.A. at 9-16, 18-19, 22, 27-30; T/CCP, Vol. I at 168-177; T/CCP, Vol. II at 96, 99, 100, 114.
- f) Development of the Project will not create a hazard to life and property from tsunami storm waves, stream flooding, erosion or subsidence. E.A. at 10-13, 16, 22.
- g) Alterations to existing land forms and vegetation and the construction of structures at the Project site will be minimal, and will have no adverse effect on water resources nor upon scenic and recreational amenities in the area. E.A. at 9-30; T/CCP, Vol. I at 100-108, 131-182, 218-220, 234, 274-280, 429-430, 434; T/CCP, Vol. II at 30-31, 100.
- h) The proposed Project does not irrevocably commit any significant resources in the Special Management Area to loss and/or destruction. The proposed development will not curtail the range of beneficial uses in the area. E.A.; T/CCP, Vol. I at 275-277.
- i) The development is consistent with the County General Plan, zoning and other applicable ordinances and is consistent with the objectives and policies of Chapter 205, HRS, and the Special Management Area Guidelines set forth in the SMA Rules. E.A. at 7, 26-30.
- j) The proposed development does not have any substantial secondary impact such as population changes or effects on public facilities. E.A. at 23-25.
- k) Implementation of the development at the Project site will not eliminate planning options and will not have an adverse cumulative environmental or ecological effect when considered in connection with reasonably anticipated future projects. T/CCP, Vol. I at 416-423, 435-436, 446-450.

RULINGS ON EVIDENCE

- 47. For purposes of this proceeding, the Commission takes judicial notice of the General Plan of the County of Kauap; the Koloa-Poipu-Kalaheo Development Plan; Chapter 8 of the KCC; the Kauai County Charter; the SMA Rules and maps; the Land Use Rules and the Hawaii Revised Statutes applicable to the application; the Planning Department's files in respect of the Application and all maps therein contained; the County's Zoning maps; and the State Land Use District maps.

RULINGS ON PROPOSED FINDINGS

- 48. Any of the proposed findings of fact submitted by any other party to this proceeding not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

- 49. The Commission has jurisdiction over the Applicant's Application pursuant to the Coastal Zone Management Act, Hawaii Revised Statutes 205-A, the KCC, the SMA Rules, the Land Use Rules and other applicable provisions of the Hawaii Revised Statutes.
- 50. The procedural requirements of each of the foregoing statutes, rules and regulations, including specifically, Chapter 91, HRS, have been met. All interested persons and parties have been given due notice of the proceeding and have been afforded the opportunity to present comment, evidence and argument on the Application.

51. The submission and acceptance of an Environmental Impact Statement is not required for the proposed use at the Project site.
52. The development of the Property is in conformance and is consistent with the overall theme, goals, objectives and policies of the Hawaii State Plan, Chapter 226, HRS.
53. The proposed Project is in conformance and is consistent with the overall goal and policy of the County's General Plan.
54. The Applicant has met and satisfied all requirements of Chapter 8, Article 20 of the KCC, for the issuance of the Use Permit.
55. The Applicant has met and satisfied all requirements of the SMA Rules of the County of Kauai necessary for issuance of a Special Management Area Use Permit.
56. The Applicant has met and satisfied all requirements of Chapter 205 of the HRS and the Land Use Rules necessary for the issuance of a Special Permit.
57. The Applicant has met and satisfied all the requirements of Chapter 8, Article 19, KCC, for the issuance of a Class IV Zoning Permit.
58. The proposed golf course use is an unusual and reasonable use as defined by Section 205-6, HRS, and the proposed use is not contrary to the objectives to be accomplished by the State Land Use Law and Land Use Rules in that it can further the purpose of the Land Use Law to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of public health and welfare.
59. The development of the Project area conforms to and is consistent with the General Plan and Development Plan. Pursuant to Section 7-1.3(b) of the General Plan, the General Plan shall be interpreted to recognize the changes in social, environmental and economic conditions and may be modified to accommodate such changes by amendment to the General Plan or by changing implementing legislation or programs. Pursuant to Section 7-1.2(c), the General Plan functions as enabling legislation which establishes the framework, parameters, constraints and guidelines for the Development Plan. Pursuant to Section 7-3.3 of the General Plan, the Development Plan is a guideline for the implementation of the General Plan. Pursuant to Hawaii Revised Statutes 226-2(15), which is made applicable to the General Plan pursuant to HRS 52(a)(4), a guideline is a stated course of action which is desirable and should be followed unless a determination is made that it is not the most desirable in a particular case. Pursuant to the same authority, a guideline may be deviated from without penalty or sanction.
60. To the extent any finding of fact contained in this Decision and Order is properly styled a conclusion of law, said finding of fact is hereby incorporated at this part as a conclusion of law.

DECISION AND ORDER

IT IS HEREBY ORDERED that the application by ANINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. for Special Permit SP-88-6, Use Permit U-88-31, Special Management Area Use Permit SMA(U)-88-10 and Class IV Zoning Permit Z-IV-88-39 to develop a golf course and accessory related uses and structures on approximately 210+ acres of land identified by Kauai Tax Map Key: 2-9-09: Por. 1, located in the Koloa region, Pa'a Ahupuaa, County and Island of Kauai, State of Hawaii, is approved and that said permits shall be issued, subject to the following conditions and restrictions, all of which shall be applicable to each of said permits:

1. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:
 - a. building elevations, roof design, material color schemes and/or samples;
 - b. landscaping plan(s);
 - c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;
 - d. any all grading plan(s).
2. The Applicants shall identify the boundaries of the Conservation District with survey stakes or pins and shall notify the Planning Department prior to any construction, grading, improvements or landscaping activities on the overall parcel area in order that an inspection might be conducted. The location of the boundaries shall be discernible and maintained throughout all phases of development of the project.
3. In view of the series of public accesses and facilities, including parking, which were developed and executed over several phases of development within the Poipu Kai resort community, the Applicants shall provide a consolidated easement location map showing all public roadways, pedestrian and vehicular beach accesses, and the respective owners of any easement areas.
4. The Applicants shall pay to the Planning Department the required Environmental Impact Assessment fee, based on the final construction drawings submitted at time of building permit application.
5. In the event the cane haul road fronting the golf course is improved as a major thoroughfare, the applicant shall provide, install and maintain at their expense, on the makai side of the roadway along its entire length, the following:
 - a. curbs, gutters and sidewalks designed and constructed in accordance with County standards; and
 - b. additional improved pavement width to County standards, for use as a non-vehicular pathway for joggers, pedestrians and bicyclists.

This condition shall be embodied in an agreement entered into by and between both Applicants and the County of Kauai, an executed copy of which shall be submitted to the Planning Department prior

to the commencement of any ground alteration activities on the property.

6. The Applicants shall within two (2) years from the date of State Land Use Commission approval, complete substantial construction of the project. "Substantial construction" shall mean grading and grassing of no less than 60% of the project site. Failure to complete substantial construction within the time period specified shall result in the revocation of the subject permits, pursuant to proper procedures.
7. The Applicants shall discuss, resolve and/or comply with the agency comments and requirements incorporated herein, or imposed hereafter, with the appropriate government agency prior to any building permit approval.
8. The Applicants shall submit a certified shoreline survey to the Planning Department prior to issuance of any grading or building permits dated no earlier than six (6) months from the commencement of any construction activity on the property.
9. The Applicants, pursuant to their representations, shall establish and maintain a golf rate structure incorporating kamaaina rates for local resident players, which structure shall continue, subject to reasonable increases, for the duration of the subject permits.
10. The Applicants shall institute and maintain whatever measures are necessary, including but not limited to filter screens, siltation ponds, etc., to prohibit surface runoff flowing directly or indirectly into the off-shore waters, both during development of and operation of the project. Plans and/or improvements for such runoff prevention measures are subject to Planning Department review and approval prior to the issuance of any grading permits and prior to the commencement of site work on the property.
11. The Planning Commission shall impose additional conditions, restrictions or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in Chapter 8, KCC, State Land Use District Rules and Regulations, or the Special Management Area Rules and Regulations.
12. Prior to the issuance of any grading or building permits, the Applicants shall resolve with the Planning Department the location and/or relocation of the existing horseback riding trail previously approved by the Planning Commission (Class IV Zoning Permit Z-IV-86-9).
13. Effective dust and soil erosion control measures shall be implemented during all phases of development and operation by the Applicants.
14. Prior to the issuance of any building or grading permit, the Applicants shall flag and create buffer zones around the eight (8) significant archaeological sites identified in the Archaeological Report. Such buffer zones/flagging shall be maintained by the Applicants at all times during the construction/development phase of the project. During grading and construction of the golf course, the Applicants shall have a qualified archaeologist on site to monitor the work. Should anything of historical or archaeological significance be discovered, work in that area shall be stopped for review by the archaeologist. Any information generated

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

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

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

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

15. The Applicants shall implement a system of barricades and signage that will prohibit and exclude all vehicular access on and around the Makawehi sand dune. Such system shall be implemented within one (1) month of the date of Planning Commission approval. The Applicants shall submit a map reflecting the method and location of such barriers and an example or examples of signage, to scale, for review and approval by the Planning Department.
16. Prior to any building and/or grading permit application, the Applicants shall submit for review and approval by the Planning Department, the form of license by which members of the public will be afforded the accesses created in connection with this application. An executed copy shall be submitted prior to the issuance of a certificate of occupancy for the project.
 - a. The license shall provide for vehicular access to the parking facilities described in condition #17 herein, and shall create a public right to utilize such access and the parking facilities for the purposes described in this condition and said condition #17.
 - b. The license shall provide pedestrian access to the shoreline from the parking facilities and shall grant public pedestrian access along the shoreline in the general area of the shoreline trail, reflected on Applicants' Exhibit 1, from the Hyatt Regency Kauai site to the intersection of the northeastern coastal border of the project site and the Conservation District boundary.
 - c. The license shall permit relocation in the future of the various facilities described in this condition and condition #17 herein, subject to the review and approval of the Planning Commission, and subject to the requirement that the Applicants provide alternate and substantially equivalent substitute accesses and/or parking.
 - d. The license shall absolve the County of any liability claims. The Applicants shall be responsible for the maintenance of the access and parking facility areas, together with any improvements installed, erected, placed or constructed thereupon

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

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

18. Upon the execution of a lease in favor of AINAKO ASSOCIATES for the property, the Applicants shall, without delay, submit a fully executed copy thereof to the Planning Department, together with any extensions or renewals of said lease. Non-pertinent items, such as lease rentals, may be excised from the required lease, renewal or extension.
19. The Applicants are restricted from utilizing any pesticides or herbicides on the project area until such time as a report or reports are submitted to the Planning Commission and the Intervenor's counsels of record, concluding that no significant adverse environmental or ecological consequences will result therefrom to the project area, immediate environs, and the waters off-shore from the project area. Should the Applicants' petitioner move this Commission for modification, amendment or deletion to this condition, notice shall be given to the Intervenor to attend any meeting or hearing thereon, together with a copy of any petition or motion and accompanying documentation.
20. The permits issued hereunder shall expire upon the expiration of the lease period or any extensions or renewals thereof for the property, and are further conditioned upon the use of the property only for golf course purposes and the structures and improvements listed in the application and depicted on the construction plans which will be certified by the Planning Department in connection herewith. No additional structures or improvements are hereby authorized, nor any expansions thereof.

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Attorneys for the Intervenor
MALAMA MAHA'ULEPU and
OHANA MAHA'ULEPU

Aug 18 3 38 PM '88
LAND USE COMMISSION
STATE OF HAWAII

THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

IN THE MATTER OF THE APPLICATION	)	
OF	)	
AINAKO RESORTS ASSOCIATES and	)	
GROVE FARM COMPANY INCORPORATED;	)	INTERVENORS PROPOSED
	)	FINDINGS OF FACT,
Special Management Area Use	)	CONCLUSIONS OF LAW,
Permit SMA(U) 88-10; Class IV	)	DECISION AND ORDER
Zoning Permit Z-IV-88-39;	)	
Use Permit U-88-31; Special	)	
Permit SP-88-6	)	

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

The Intervenor, MALAMA MAHA'ULEPU and OHANA
O'MAHA'ULEPU, by and through counsel, hereby submit the
following Proposed Findings of Fact and Conclusions of Law,
Decision and Order:

(CERTIFICATE OF SERVICE ATTACHED)

B-1d

FINDINGS OF FACT

1. The Applicants, GROVE FARM PROPERTIES INC. and AINAKO RESORT PROPERTIES, hereinafter the "Applicants", propose to build a golf course and golf course amenities comprising 210 acres on a portion of TMK2-9-1:por 1.

2. The proposed golf course is intended as an amenity for the Hyatt Regency Hotel, to be built on the adjacent property.

3. The proposed site of the golf course is in the Agricultural District, and is zoned agricultural by the County of Kauai.

4. Almost the entire 210 portion of TMK 2-9-1:por 1, intended to be used as a golf course is soil classified by the Land Study Bureaus detailed land classification as overall (master) productivity rating class "B"

5. The proposed golf course site is only a small portion of a 1226 acre parcel.

6. The Applicants have not present plans for the remainder of this parcel.

7. This parcel is part of shoreline holdings of the Applicant Grove Farm Properties, which is master planning this area as a resort destination and not for agricultural uses.

8. TMK2-9-1:por 1 is part of the shoreline holdings of Grove Farm Properties Incorporated, and is part of their ongoing resort planning for the entire coastline from Keoniloa Bay to Kawaiiloa Bay.

9. The Applicant Grove Farm Properties has indicated that it plans to develop the subject property, the remainder of the 1226 acres comprising this parcel, and the rest of its' shoreline holdings in a unified and coordinated manner.

10. The Applicant Grove Farm Properties Inc. is considering plans for 1994 when the leases on the remainder of the Pa'a and Maha'ulepu areas lapse.

11. The General Plan for the County of Kauai, Ordinance No. 461, intends this parcel and the remainder of the Pa'a and Maha'ulepu areas to remain in the agricultural and open zones.

12. The Koloa-Poipu-Kalaheo Development Plan, Ordinance No. 447, intends that the Maha'ulepu area, which consists of both the Pa'a and Maha'ulepu areas, remain undeveloped.

13. Rational planning requires the submittal of an overall master plan for the entire Pa'a and Maha'ulepu areas including the property owned by the Applicant Grove Farm Properties Inc.

14. The Applicant Grove Farm Properties has presented long-term overall master plans in the past with it's Kukui Grove Shopping Center, Puhi, Kauai.

15. The piecemeal development of the Pa'a and Maha'uilepu region will result in the elimination of viable planning options.

16. The Applicant Grove Farm Properties should not be allowed to develop the Pa'a and Maha'uilepu coastline in a piecemeal fashion.

17. The Applicant Grove Farm Properties should present a plan for the entire area at once, rather than in a piecemeal fashion, for incorporation into the Kauai General Plan, Ordinance No. 461, and the Koloa-Poipu-Kalaheo Development Plan, Ordinance No. 447.

18. Before any of the shoreline properties from Keoniloa Bay, east of the Hyatt Regency Hotel, to Haula Bay can be considered for other than agricultural use, the owners must present a master plan for the entire area, reflecting its' long term goals.

19. The proposed golf course is not a development that is coastally dependent.

20. On June 12, 1985, House Bill 1063, H.D.1 became law, amending Hawaii Revised Statutes, 205-2.

CONCLUSIONS OF LAW

21. Hawaii Revised Statutes 205-2 provides in relevant part:

"Districting and classification of lands....
Agricultural districts shall include....open area recreational facilities, including *golf courses* and golf driving ranges, provided that they are not located within the agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A and B." (emphasis added)

22. It is the specific intent of the State Legislature to prohibit the development of golf courses on lands located within agricultural district lands with soil classified by the Land Study Bureau's detailed land classification as overall (master) productivity rated class "B"

23. This specifically prohibits the construction of a golf course in the Agricultural district if the land is rated "B" by the Land Study Bureau.

24. The Special Management Area Rules and Regulations of the County of Kauai, Section 4.0(B) states in pertinent part as follows:

"Special Management Area Guidelines

A. No development shall be approved unless the Authority has first found that:

B. The development is consistent with the County general plan, and zoning, subdivision, and other applicable ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required."

25. The Special Management Area Rules and Regulations of the County of Kauai prohibits approval of projects inconsistent with the General Plan Ordinance No. 461 and the Koloa-Poipu-Kalaheo Development Plan (Ordinance No. 447).

26. The Special Management Area Rules and Regulations of the County of Kauai, Section 4.0(B)(1) states in pertinent part as follows:

"No development shall be approved unless the Authority has first found that:

(1) The development will not have any substantial, adverse environmental or ecological effect.....Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options."

27. It is reasonably foreseeable that the Applicant Grove Farm Properties Inc. plans on developing the remainder of this 1226 acre parcel, as well as the remainder of its shoreline holdings adjacent to the subject property as a resort destination.

DECISION AND ORDER

28. The use of the subject property for a golf course, which is both in the Agricultural District, and almost entirely "B" rated land under the Land Bureau's detailed land classification is prohibited by statute.

29. A special permit cannot be granted for a use specifically prohibited by statute.

30. Therefore the Special Permit in this matter must be denied.

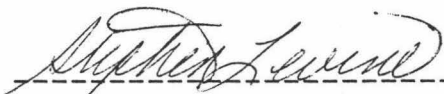
31. The development proposed by the Applicants is inconsistent with the General Plan Ordinance No. 461, and Ordinance No. 447, the Koloa-Poipu-Kalaheo Development Plan.

32. Therefore Special Management Area Use permit SMA(U) 88-10 is hereby denied.

33. The proposed golf course development is a portion of a larger parcel, which in turn is part of a reasonably foreseeable resort development along the entire coast, and cannot be considered in isolation from the entire resort development, therefore Special Management Area Use Permit SMA(U) 88-10 is hereby denied.

34. Rather than amending the Kauai General Plan and the Koloa-Poipu-Kalaheo Development Plan in an acre by acre, piecemeal fashion, the Applicant Grove Farm Properties, Inc. should submit an overall master plan for the area it is considering developing for resort or other purposes.

DATED: Lihue, Kauai, Hawaii, JUL 25, 1988.



STEPHEN LEVINE
TERESA TICO

Attorneys for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that a copy of the INTERVENORS PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER; were duly served upon the following parties by hand delivery:

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Case & Lynch
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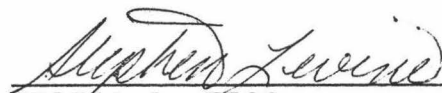
Attorney for Ainako Resorts Associates
and Grove Farm Properties, Inc.

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Attorney for the Planning Commission
County of Kauai

JUL 25

DATED: Lihue, Hawaii _____, 1988.


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Attorneys for
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.



LAND USE COMMISSION
STATE OF HAWAII
Aug 18 3 38 PM '88

PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT FMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
DML/080188/2632K/0306A/6390-11		

APPLICANTS' OBJECTIONS TO INTERVENORS' PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

INTRODUCTION

Applicants AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. ("Applicants") object to the Findings of Fact, Conclusions of Law proposed by the Intervenor on the following grounds:

1. A Special Permit is the appropriate mechanism for obtaining Commission authority to develop the subject golf course on agricultural lands with a Land Study Bureau (LSB) productivity rating of Class A or B ("Class A or B");

2. The Applicants have satisfied all of the requirements for a Special Management Area ("SMA") Permit, including a showing of conformity to the Kauai County General Plan ("General Plan");

3. There is no evidentiary basis or legal support for requiring the Applicants to submit a master plan for the entire area prior to granting the application.

In view of the following discussion, the Applicants urge the Commission to adopt Applicants' Proposed Findings of Fact, Conclusions of Law, Decision and Order as the Commission's own, and to enter its order issuing the requested permits. In no event should Intervenor's Findings be adopted, if for no other reason than their failure to cite support in the record for a single one of their "facts".

DISCUSSION

I. THE SPECIAL LAND USE PERMIT AUTHORIZED UNDER HAWAII REV. STAT. § 205-6 IS THE APPROPRIATE MECHANISM BY WHICH TO ALLOW DEVELOPMENT OF THE SUBJECT GOLF COURSE, AND THE REQUESTED PERMIT SHOULD BE GRANTED TO THE APPLICANTS

A. Chapter 205, Hawaii Rev. Stat., Allows Special Permits For Golf Courses on Class A and B Land

The primary focus of the Intervenor's Proposed Findings of Fact and Conclusions of Law, as indicated at paragraphs 21 through 23, is the issue of whether Chapter 205 of the Hawaii Revised Statutes ("H.R.S.") allows for the development of a golf course within an agricultural district on lands with a productivity rating of Class A or B. Intervenor's erroneously claim that H.R.S. § 205-2 absolutely prohibits development of a golf course on A or B rated lands. Intervenor's ignore H.R.S. § 205-6, which expressly authorizes the issuance of special permits for uses other than those set forth in § 205-2.

Section 205-2 provides the definitions of the three^{1/} principal land use district classifications utilized by the State of Hawaii Land Use Commission ("LUC") in classifying the use of Hawaii lands. The provision defines those classifications by listing the specifically permitted uses of those lands, respectively. Thus, under § 205-2, agricultural district lands generally are characterized by

activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities and uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public,

^{1/} The fourth district, the conservation district, is administered by the State of Hawaii Department of Land and Natural Resources.

private and commercial uses; services and uses accessory to the above facilities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B. (Emphasis added.)

Although Section 205-2 is a descriptive list of uses to be utilized by the LUC in the establishment of the agricultural district boundaries which contains no words of prohibition, it is clear from the emphasized portion of the statute that the agricultural district is not classified for golf course use on Class A or B soil. This is not the end of the matter, however, contrary to Intervenor's argument.

For those uses other than those for which the agricultural district is classified, land owners may nevertheless obtain the right to make such use by obtaining a special permit, as described in Section 205-6 of the statute:

The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. (Emphasis added.)

Thus it is clear that special permits may be granted by this Commission notwithstanding that they are sought for uses other than those for which the district is classified. If this were

not so, no one would ever apply for a special permit, and there would have been no need for the legislature to enact Section 205-6.

B. The 1985 Amendment To H.R.S. § 205-2
 Was Intended To Make Golf Course
 Development Easier, And Did Not Alter
 The Special Permit Provisions

The Intervenors mistakenly argue that the 1985 amendment to H.R.S. § 205-2 (which is later in time to others) is in conflict with other portions of the statute and prohibits the proposed land use.

First, there is no express prohibition on golf course use in Section 205-2. That section is consistent with the balance of the statute. Just as importantly, Section 205-2 cannot be read in a vacuum: the clauses of a statute must be read in the context of all other sections of the statute, State v. Tengan, 67 Haw. 451, 458 (1984), and so the Commission must look to the other sections of the Act to determine the potential uses of A and B lands. The obvious conclusion that special permits are available for uses not otherwise permissible within the Agricultural District is reinforced by Section 205-45(b), which provides specifically that uses not expressly permitted on Class A and B lands may be authorized by a special permit under § 205-6.

Therefore, Chapter 205 plainly states that golf courses may be developed on A and B lands when authorized under Section 205-6 by the issuance of a special permit. Under these

circumstances, it is unnecessary, and even inappropriate, to look to other sources to interpret what the statute means: the Commission should presume that the Legislature said what it meant. Medeiros v. Maui Land and Pineapple Co., 66 Haw. 290, 297 (1983); Agustin v. Dan Ostrow Constr. Co., 64 Haw. 80, 84 (1981). Nevertheless, because the Intervenor suggests that "the specific intent of the Legislature" was to prohibit absolutely the development of golf courses on A and B lands Intervenor's Proposed Conclusions of Law at ¶ 22), it is useful to examine what the Legislature has actually said in developing the regulatory scheme under Chapter 205. What the Commission will find is that the Legislature precisely intended to create the regulatory scheme described above, and to allow golf courses on A and B lands when they meet the criteria for a special permit. Before examining the 1985 amendment relied upon by Intervenor, it is important for the Commission to know the relevant background of the Land Use Law.

Chapter 205 of the Hawaii Revised Statutes is the present manifestation of a land use law first passed in 1961. That law, Act 187 (sometimes the "1961 Land Use Law"), was enacted by the Legislature to set up the system of classifying lands by district for general use as urban, agricultural, or conservation purposes. In that first Act, agricultural districts were defined as being for "the raising of livestock or the growing of crops, flowers, foliage, or other products." Act 187 at § 1(a).

In 1963, the Legislature clarified the provisions of the 1961 Land Use Law and the definition of agricultural district:

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities and uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities. [Act 205 § 1, amending Act 187].

The amendment to the 1961 Land Use Law further provided that uses not expressly permitted under the redefined agricultural district use definition could be authorized by obtaining a special permit from the County Planning Commission, provided it was thereafter approved by the Land Use Commission. Section 98H-6 of the Amended Land Use Law (Act 205) clarified the special permit provisions of the earlier Land Use Law to allow land owners, through the mechanism of the special permit process, to develop their lands included within the Agricultural District in ways not expressly permitted by statute.

Thus, after 1963, the revised statute created two categories of uses to which agricultural lands could be put: those uses expressly permitted under the classification, and those uses for which a special permit had to be obtained.

These two categories applied equally to all lands within the Agricultural District, regardless of the land's productivity rating.

What is absolutely clear on the face of these laws is that no specific use of lands within an agricultural district were absolutely prohibited. There were merely those uses for which a permit was not required, and those uses which required a special permit. Indeed, until the the Legislature adopted the 1985 amendments to the Land Use Law, a special permit was required to construct a golf course on lands within the Agricultural District regardless of the land's productivity rating under the Land Study Bureau's system.

Since 1963, a wide variety of seemingly non-agricultural uses have received the Land Commission's approval for development on agricultural lands, golf courses being among them. In fact, prior to 1985, the Land Use Commission issued special permits for no fewer than seven golf course facilities on agricultural land: the Kauai Surf golf course expansion in 1970 (B lands); Alohilani golf course at Puna in 1971 (no rating, but poor soils); the Waikoloa golf course in 1973 (E lands); the Wailea golf course in 1974 (E lands); Kaanapali Kai golf course in 1975 (apparently B lands, under cultivation at the time); Kapalua golf course in 1979 (C lands, under cultivation at the time); and the Princeville golf

course in 1981 (C, D, E lands).^{2/}

Although Section 205-2 has undergone a number of amendments reflecting changing social and economic needs for those lands^{3/}, the statute has always adhered to the formula of prescribing the permitted uses, and leaving open the possibility of other uses through the special permit process.

With this background in mind, it is clear that the 1985 amendment of H.R.S. § 205-2 was intended to relax the circumstances under which golf courses could be built. In 1985, the Legislature determined that the availability of less-than-prime agricultural areas (those with productivity ratings of C, D, or E) should be more readily available for the development of golf courses. This was a reaction to a growing island population's need for expanded recreational facilities. As noted in the Standing Committee Report 442 on House Bill 1063:

Your Committees find that the need for recreational facilities on the Island of Oahu has remained unfulfilled as the State's population continues to increase. The use

^{2/} Since 1977, the Land Use Commission has granted a number of special permits for various open space recreational uses on A and B lands, including overnight camps, which are treated just like golf courses under the Land Use Law.

^{3/} Other changes to the agricultural designation have occurred as required by societal and technological needs. For example, in 1977 the Legislature amended the law to include aquacultural activities, and in 1980 to allow development of wind power facilities.

of land for golf courses and golf driving ranges has been restricted in recent years, not only because there is limited land classified urban where golf courses and golf driving ranges have been developed, but also because other available lands classified non-urban where these golfing recreational areas may be developed have not been easily made available.

SCRep. 442 Water, Land Use, Development and Hawaiian Affairs and Planning, Energy and Environmental Protections on H.B. 1063 (1985).

In order to make those lands more readily available for recreational use, the Legislature amended Section 205-2 to exempt C, D, and E rated lands from the requirement that a special permit be issued for the development of a golf course. Act 298 amended H.R.S. § 205-2 by adding to the uses permitted within agricultural districts:

Agricultural districts shall include activities or uses characterized by

. . . open area recreational facilities, including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B.

(Amendment emphasized).

Thus, golf courses are now permitted uses, i.e., uses for which a special permit is not required, on agricultural lands with an LSB productivity rating of C, D, or E. A special permit is still required before a golf course may be built on A or B rated lands.

The fact that golf courses are now permitted uses on C, D and E lands does not, as the Intervenor suggests, mean that golf courses cannot be developed on A or B lands as well. The 1985 amendment to Section 205-2 merely relaxed the requirements for golf course development on C, D, and E lands. It did not heighten the requirements for similar developments on A and B lands. It did not in any way amend or restrict the scope of H.R.S. § 205-6.

C. The Land Use Commission Has
Consistently Interpreted Chapter 205 To
Allow For Golf Course Development On A
And B Lands By Special Permit

The plain language of Chapter 205, and the legislative history of the Land Use Law unquestionably allow for the development of golf courses on A and B lands through the special permit process. In recognition of that fact, the Land Use Commission itself has issued numerous special permits to build golf courses on B lands both before and after the 1985 amendments to the Land Use Law. The Land Use Commission's interpretation of its enabling statute should be accorded persuasive weight. Udall v. Tallman, 380 U.S. 1, 16 (1965); State v. McCully, 64 Haw. 407, 414 (1982).

Perhaps the most recent special permit granted for a golf course on Class "B" land was here on Kauai in 1987. In re Hemmeter/VMS Kauai Co. III, SP86-361, involved applications for permits to construct, among other improvements, a golf course

and related facilities for the Westin Kauai project at Nawiliwili, Lihue, Kauai. The project was to be built on property within the Agricultural District on Class B lands.

Consistent with the provisions of Sections 205-2, 205-4.5(b), 205-6, this Commission and State Land Use Commission examined the project to ascertain whether it was an "unusual and reasonable use" for the area, by looking to the guidelines set out in Section 15-15-97 of the Hawaii Land Use Commission Rules, the same guidelines that apply in this case. Agreeing with the decision of the Planning Commission, the Land Use Commission found that the project satisfied those guidelines, and was "not contrary to the objectives to be accomplished by the State Land Use Law to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare."

Among the other golf course uses for which special permits have been granted on Class B soil are the Kauai Surf golf course, the Kaanapali Kai golf course, and the 1986 Westin Kauai golf course expansion.

D. Summary

In summary, the Land Use Law clearly allows for the development of golf courses on A and B rated lands within Agricultural Districts upon the issuance of a special permit as provided for in Section 205-6. That conclusion is manifest in

the plain language of the statute, and is overwhelmingly supported by both the legislative history of the Act, and the State Land Use Commission's own interpretation of the Act over the last two decades.

For the Intervenor's to posit that the statute should be construed otherwise flies in the face of every available statutory source of interpretation, as well as administrative and judicial precedent. The Commission should reject the Intervenor's arguments, and adopt the Findings of Fact and Conclusions of Law, Decision and Order submitted by the Applicants.

II. THE APPLICANTS HAVE SATISFIED ALL OF THE REQUIREMENTS FOR THE ISSUANCE OF AN SMA PERMIT, INCLUDING CONSISTENCY WITH THE GENERAL PLAN

The Intervenor's second major argument is that the golf course is inconsistent with the General Plan. Although, the Intervenor's correctly note (Conclusion of Law No. 24) that the Commission should find that the development is consistent with the General Plan prior to issuing a SMA permit, Intervenor's are incorrect when they conclude that the development must be denied because it is inconsistent with the General Plan and with the Koloa-Poipu-Kalaheo Development Plan ("Development Plan"). According to the preamble to the General Plan, the purpose of the General Plan is not to fix specific land use boundaries but rather is to "establish policy in

governing the long-range comprehensive development and allocation of land and water resources within the County of Kauai." Intervenor fail to discuss the many ways in which the golf course is consistent with the long-range, overall goals of the General Plan.

Likewise, the specific land use designations contained in the various Development Plans of the County of Kauai "shall be used by the Planning Department as guidelines to implement the General Plan." Indeed, in his testimony during the public hearing portion of the proceedings, Intervenor's counsel, Mr. Levine, admitted that the plans are guides not limitations. Transcript, May 25, 1988, Vol. II at 158, l. 16. Under the Hawaii State Plan, a guideline is a stated course of action which should be followed unless a determination is made that it is not the most desirable in a particular case. H.R.S. § 226-2(15). Additionally, the General Plan provides that it controls and establishes constraints over the Development plan. See Section 7-1.2(c) of the General Plan.

In short, the General Plan and Development Plan are above all documents which provide long-range conceptual evidence, and are emphatically not intended to dictate the precise use of all property on Kauai. If the General Plan had the function the Intervenor argue for, there would be no need for a comprehensive zoning ordinance and no need for a Planning Commission to bring the General Plan's goals to life in specific situations.

In this context, it is clear that the development is consistent with a number of goals of the General Plan, including insuring that physical growth is consistent with the overall ecology of the island, creating opportunities for greater diversity and stability of employment for residents of Kauai, providing for a maximum variety of outdoor recreational activities, and promoting the improvement and expansion of the island's economy by recognizing and carefully utilizing land and water resources. Similarly, the proposed development is consistent with the Development Plan. These facts are discussed in some detail in the Findings proposed by both the Applicants and the Planning Department as is the basis for the issuance of a SMA permit. These findings are entirely un rebutted by any contrary finding of fact proposed by the Intervenor and properly reflect that Applicants have met all the criteria for the issuance of a SMA permit.^{4/}

III. THERE IS NO BASIS FOR REQUIRING APPLICANTS
TO SUBMIT A MASTER PLAN

The Applicants would make one final general objection to the Intervenor's proposed findings and conclusions: of the 27 paragraphs in those proposed findings and conclusions, some 17 of them address the sole question of whether Grove Farm

^{4/} Although the golf course helps fulfill many goals of both the General and Development Plans, under the Hawaii State Plan, a development is consistent if it conforms to even one such goal. H.R.S. § 226-2(14).

Properties, Inc., may in the future wish to develop other of its lands around the proposed golf course. Intervenors suggest, without any basis in fact or law, that the Applicants should not be allowed to develop the requested golf course without submitting a master plan and justifying the development of all Grove Farm lands.

As the record shows without contradiction, Grove Farm's ideas for the use of its lands in the future do not rise to the level of an expected development of which the Commission must take note in evaluating the environmental impacts of the present proposal. Grove Farm's ideas for the potential development of its lands are merely concepts at this point which have not been acted on in any concrete fashion. (Applicants' Proposed Findings of Fact at ¶¶ 94-99). No studies have been performed; no engineering or other work has been conducted to determine if any of those ideas are physically or economically feasible. Grove Farm is not in a position at this point to even apply for government approval of any of those development concepts.

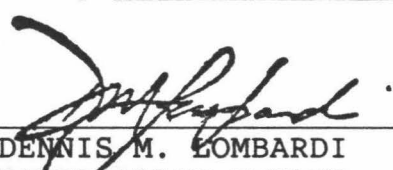
The ideas Grove Farm may have for developing its lands in the future are thus so currently remote as to have no bearing on the evaluation of the environmental impacts of the Project at hand. The Intervenors conclusions to the contrary should be disregarded. The possible cumulative impacts of the golf course do not pose any environmental hazards which would

bar issuance of the Special Area Management Permit, CZO Use Permit, or the Class IV Zoning Permit, and so those permits should be issued as set out in the Applicants Proposed Decision and Order. Indeed, the evidence produced at the hearing on this matter shows clearly that the Applicants have satisfied each of the conditions, criteria or guidelines applicable to and/or necessary to be met for the issuance of the requested permits.

CONCLUSION

Based on the foregoing discussion, the Applicants respectfully urge the Planning Commission to the County of Kauai to adopt in full their Proposed Findings of Fact, Conclusions of Law, Decision and Order as submitted.

DATED: Honolulu, Hawaii, August 1, 1988.



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PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
080188/2634K/0307A/6390-11	)	

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of
APPLICANTS' OBJECTIONS TO INTERVENORS' PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, DECISION AND ORDER was made by hand
delivering a copy of same on August 1, 1988, addressed to:



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4365 Kukui Grove Street, Suite 103
Lihue, Kauai, HI 96766

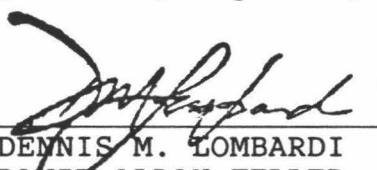
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Mr. Tom Shigemoto
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Mr. Rick Tsuchiya
Hearings Officer
Planning Department
County of Kauai
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DATED: Lihue, Kauai, Hawaii, August 1, 1988.



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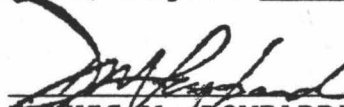
STATE OF HAWAII

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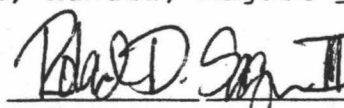
STIPULATION

Pursuant to Rule 1-6-10 of the Rules of Practice and Procedure of the Planning Commission, the Planning Department of the County of Kauai, by and through its Planning Director, and Applicants Ainako Resort Associates, a Hawaii partnership, and Grove Farm Properties, Inc., a Hawaii corporation, by and through their counsel of record, having considered and evaluated their respective proposed decisions and orders prepared and submitted to the Planning Commission of the County of Kauai in connection with the above-captioned matter, hereby stipulate to the entry by the Planning Commission, if approved, of the attached joint Findings of Fact, Conclusions of Law, Decision and Order.

DATED: Honolulu, Hawaii, August 3, 1988.


DENNIS M. LOMBARDI
BRUCE L. LAMON
Attorneys for Applicants

DATED: Lihue, Kauai, Hawaii, August 3, 1988.


TOM SHIGEMOTO
Planning Director
County of Kauai
DEPUTY PLANNING DIRECTOR

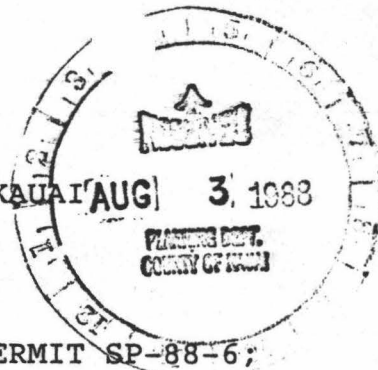


LAND USE COMMISSION
STATE OF HAWAII
AUG 29 12 55 PM '88

B-14

PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII



IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

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FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER

INTRODUCTION

The Applicants AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. filed an application (the "Application") with the Planning Department of the County of Kauai on April 18, 1988 for a Special Permit, SP-88-6, a Use Permit, U-88-31, a Special Management Area Use Permit, SMA(U)-88-10 and a Class IV Zoning Permit, Z-IV-88-39. The Application seeks authorization to develop a golf course and to construct certain proposed improvements related to the golf course (sometimes the "Project"), which are ancillary to the development of the Hyatt Regency Kauai Hotel, on that certain real property situate at Pa'a, Island and County of Kauai, State of Hawaii, bearing tax map key no. 2-9-1, portion 1 consisting of approximately 210 total acres (hereinafter sometimes referred to as the "Property" or "Project Area" or "Project Site"). The Planning Commission of the County of Kauai (hereinafter the "Commission") acting in accordance with the Revised Code of Ordinances of the County of Kauai (hereinafter the "RCO"), the Special Management Area Rules and Regulations of the County of Kauai (the "SMA Rules"), the Rules of Practice and Procedure of the Planning Commission for the County of Kauai (the "Commission Rules"), the Hawaii Land Use Commission Rules, Chapter 15-15, et seq., Hawaii Administrative Rules (the "Land Use Rules"), the Administrative Procedures Act of the State of Hawaii (the "APA") and Hawaii Revised Statutes, Chapters 205 and 205-A, as well as other applicable statutory provisions, having heard the testimony and examined the evidence presented

at the hearings held in connection with the Application, and having considered the total record, including the proposed findings of fact and conclusions of law submitted by the parties, hereby makes the following findings of fact, conclusions of law, decision and order (hereinafter sometimes the "Decision and Order"):

FINDINGS OF FACT

A. PARTIES

1. AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. (hereinafter sometimes collectively described as the "Applicant" and all reference to Applicant shall describe both Ainako Resort Associates and Grove Farm Properties, Inc.) have applied for the issuance of the authorizations hereinbefore mentioned to permit the development of a golf course and related facilities (including a clubhouse, restaurant, pro-shop, cart barn, field nursery and maintenance facility) ancillary to and associated with the resort facility currently approved for construction on property adjacent to the Project Area.
2. Grove Farm Company, Incorporated, is the legal owner of the Property and has, pursuant to a letter, dated February 2, 1988, a copy of which has been lodged with the Planning Department of the County of Kauai, authorized Grove Farm Properties, Inc., to apply in the name and stead of Grove Farm Company, Incorporated, to the appropriate agencies of the County of Kauai and of the State of Hawaii for those permits, variances, approvals and authorizations that are appropriate, advisable or necessary in order to develop the Property as a championship golf course with related facilities. Ainako Resort Associates is the proposed lessee of the Property.
3. Ohana O Maha'u-lepu and Malama O Maha'u-lepu are unincorporated associations who have sought and have been granted intervention in connection with this proceeding.
4. The Planning Department of the County of Kauai (hereinafter the "Department") is the County agency responsible, pursuant to State statute, the RCO, the SMA Rules, the Commission Rules and the Land Use Rules for coordinating the Commission's review of applications of the kind currently pending before the Commission and for preparing reports for the Commission's consideration concerning approval of the permits requested.

B. PROCEDURAL MATTERS

5. The Applicant has made the necessary filings and provided the notice necessary and required under the RCO, Chapter 205-A of the Hawaii Revised Statutes (sometimes the "Coastal Zone Management Act"), the SMA Rules, the Commission Rules and the Land Use Rules related to special permits, use permits, special management area permits, and class IV zoning permits.
6. A public hearing in respect of the Application was duly noticed, scheduled and occurred on May 25, 1988. A transcript of that proceeding consists of two volumes with consecutively numbered pages. References to the transcript of the public hearing shall be to volume and page which shall be cited in the following format: "T., V. __, Pub. Hrg., Pg. __".
7. Prior to the public hearing Malama O Maha'ulepu ("Malama"), Ohana O Maha'ulepu ("Ohana") and the Kauai Windsurfing Association each timely filed petitions to intervene in the application process.
8. At the public hearing the Kauai Windsurfing Association voluntarily withdrew its proposed petition for intervention and Malama and Ohana reaffirmed their requests. After conducting a hearing concerning the basis for the proposed intervention of Malama and Ohana (hereinafter sometimes the "Intervenors"), the Commission granted to each the status of intervenor, subject to the requirement that Intervenors consolidated their claims with respect to similar issues raised by the Intervenors in their petitions for intervention. T., V. I, Pub. Hrg., Pgs. 22-24.
9. On June 7, 1988, the Applicant, through its counsel, and the Intervenors, through their counsel, together with Deputy County Attorney, Lorna Nishimitsu, attended a meeting chaired by Rick Tsuchiya, hearings officer for the Planning Commission in connection with the Application. No transcript of that meeting is available. At the meeting the parties were requested to prepare and to submit to the Commission on or before June 16, 1988 their proposed list of witnesses and list of exhibits, together with any motions or requests that the parties might have relating to the conduct of the proceeding. Pursuant to that request, the parties prepared and each filed its respective witness and exhibit lists. Intervenors further filed on June 14, 1988, a Motion for Declaratory Order and on June 16, 1988, a Request for the Issuance of Subpoenas. Intervenors' Motion for Declaratory Order

was opposed by written Memorandum in Opposition to Intervenor's Discovery Request, filed by Applicant on June 16, 1988.

10. On June 16, 1988, the Commission, Sunshyne Costa, the Chairwoman, and Commissioners, Thomas Contrades, Art Fujita and Rebecca Sialana, sitting, conducted a pre-hearing in advance of the contested case portion of the proceeding. The transcript of the pre-hearing portion of the proceeding consists of a single volume and references thereto shall be cited as follows: "T., V. I, Pre-Hrg., Pg. ____."
11. The transcript with respect to the contested case portion of the Application proceeding consists of three volumes (of which volume I is two parts consisting of consecutively numbered pages) and references thereto shall be cited as follows: "T., V. __, CCH, Pg. ____."
12. The transcripts referred to in this Section B have been certified by the Planning department as correct.
13. After considering the Intervenor's Request for Issuance of Subpoenas and the representations and oral argument of parties' counsel in respect of the same, the subpoenas requested by Intervenor were issued, but for the subpoena proposed to be issued to Avery Youn, the former County Planning Director, which the Commission refused to issue for the purposes of providing testimony regarding the "legislative" intent of the Commission, the Kauai County Council and Mayor of the County in formulating and adopting the Koloa-Poipu-Kalaheo Development Plan requested by Intervenor. Intervenor's request to permit the submission of written testimony by George Cooper and Anthony Romo, under circumstances where those individuals would not be available for cross-examination by Applicant, was denied. T., V. I, Pre-Hrg., Pgs. 162, 164-166.
14. After considered review of the Intervenor's Motion for Declaratory Order, the Memorandum filed in support thereof, the Memorandum filed by Applicant in opposition thereto, and the representations and arguments made by counsel on the record, the Commission granted Intervenor's Motion for Declaratory Order and directed the production of certain documents by Applicant to Intervenor in accordance with Commission's written Order Granting Motion for Declaratory Order, which Order was ratified by the Commission at its hearing conducted on June 23, 1988,

and entered at that time. See T., V. I, Pre-Hrg., Pgs. 148-161. See also T., V. I, CCH, Pgs. 48-51. See also, Order Granting Motion for Declaratory Order.

15. The documents the Commission directed Applicant to produce to Intervenor were produced in accordance with the order of the Commission.
16. Among the materials submitted either in connection with the Application in respect of the Project or during the contested case portion of the proceeding are various surveys and studies prepared on behalf of Applicant in support of the Project as well as the Planning Department's Staff Report (the "Staff Report"). The materials included the Environmental Assessment, dated April 1988 ("Environmental Assessment" or "E.A.") prepared by Belt Collins and Associates, a Botanical Survey, dated January 1988 (the "Botanical Survey"), prepared by Char and Associates, Botanical/Environmental Consultants, Winona P. Char and George K. Linney, a Survey of the Avifauna and Feral Mammals at Grove Farm Properties, Poipu, Kauai, dated January 20, 1988 (the "Fauna Survey"), prepared by Phillip L. Brunner, Assistant Professor of Biology, Director of the Museum of Natural History, BYU Hawaii, a letter, dated April 27, 1988 by Phillip Brunner to Belt Collins and Associates updating the Avifauna Survey (referred to collectively with the Fauna Survey), a Golf Course Demand Study, dated March 2, 1988 (the "Demand Study"), prepared by Robert E. Yoxall, Inc., Recreation Consultant, a marine research report, dated June 18, 1988 (the "Marine Biology Report"), prepared by Marine Research Consultants, Steven Dollar, Ph.D., an Interim Report: Summary of Findings and General Significance Assessments and Recommended General Treatments, Archaeological Reconnaissance Survey, Hyatt Regency Kauai Proposed Golf Course Project Area, dated May 1988 (the "Interim Archaeological Survey"), the Revised Interim Report/Archaeological Reconnaissance Survey, dated June 1988 (the "Revised Archaeological Survey"), and Memorandum Regarding Recommended Preservation Measures for Identified Archaeological Sites, dated June 20, 1988 (the "Preservation Measures Memo"; referred to collectively with the Interim and Revised Archaeological Surveys as the "Archaeological Surveys") each prepared by Phillip H. Rosendahl, Ph.D., Inc., Consulting Archaeologist. The preparer of each of the foregoing reports (Joseph Vierra on behalf of Belt Collins & Associates) testifying at the contested case portion of the proceeding were qualified as experts in their respective fields as

well as David Pratt in the field of Agronomy. Also Dr. William Kikuchi, Archaeologist, Donald Heacock, Marine Biologist, David Boynton on avifauna, and Dorothy Tao on flora, were each called by the Intervenor as witnesses and so qualified. The Commission accepts for the record all attachments to the Applicant's Application, including the Environmental Assessment and any studies or surveys or letters or memoranda submitted in connection therewith. Further, the Commission accepts for the record Applicant's Exhibits 1-10, inclusive, Intervenor's Exhibits B, C, D, E and F, the Staff Report and County Zoning Map No. ZM-PO-300. Taking into consideration the availability of the authors of the reports for cross-examination during the contested case portion of the proceeding, the Commission accepts as written testimony each of the reports contained among Applicant's exhibits and incorporates herein by this reference the Commission's written order in respect of the Intervenor's Motion for Declaratory Order.

C. DESCRIPTION OF PROJECT AND PROPERTY

17. The Project Area is located in the District of Pa'a and is, in part, contiguous to the site of the proposed Hyatt Regency Kauai Hotel, which is located in the State Land Use Urban District. The proposed configuration and boundaries of the Project Site are reflected in figure 2 of the Environmental Assessment filed in connection with these proceedings. E.A., Pgs. 1-2.
18. The proposed golf course will consist of eighteen holes, a driving range, putting green, clubhouse, field nursery and maintenance building. The clubhouse will be located near the planned Hyatt Regency Kauai and will include parking and access from the extension of Poipu Road via the beach access road. The clubhouse will include a golf pro-shop, restaurant, golf club storage room and golf cart maintenance area. The building will articulate an architectural style that will blend with the Hyatt Regency and the architecture of the area. The golf course maintenance building and temporary field nursery will be located within the golf fairways (adjacent to fairways 10 and 5) as reflected in figure 2 of the Environmental Assessment. E.A., Pg. 3; T., V. I, Pub. Hrg., Pgs. 39-60.
19. The golf course layout will be configured to consist of three holes mauka of the Hyatt Regency with the

remainder of the course in an area east of the clubhouse generally following the coastline, but mauka of the Conservation District. The makai holes are intended to take advantage of the area's scenic amenities as well as preserve the shoreline's open-space environment. E.A., Pg. 3.

20. The course is designed essentially as a "core course", i.e., a course where fairways adjoin one another rather than planned residential areas, with its first tee leaving from the proposed golf clubhouse and its eighteenth tee returning to the clubhouse. No fairways or holes of the course are proposed on the oceanside of the State Land Use Conservation District boundary. A shoreline access trail approximating the location of the existing trail is reflected makai of the Conservation District boundary and will be maintained as part of the development of the Project. E.A., Fig. 2; T., V. I, CCH, Pg. 273.
21. The Project Area is within the State Land Use Agricultural District. The Project Area is also within the County's zoning Agriculture District and Open District. A portion of the Project Site is within the Special Management Area defined by the County of Kauai. The Kauai County General Plan ("General Plan") and the Poipu-Koloa-Kalaheo Development Plan ("Development Plan") designations for the Project Area are Agriculture and Open. E.A., Pg. 7. See County Zoning Map and Staff Report.
22. The cost of the improvements proposed to be made to that portion of the Property within the Special Management Area in connection with the development of the golf course exceed \$65,000.00. See Staff Report.
23. The Project Area consists primarily of former sugarcane lands and adjacent areas. Approximately, 50 acres of the site remain planted in sugarcane at this time. T., V. I, CCH, Pgs. 408-411.
24. The Applicant intends and proposes to develop an 18-hole championship-caliber golf course and proposes to operate it in association with the planned 605-room Hyatt Regency Kauai at Keonelo Bay. The proposed development will be operated as a resort oriented facility but will be open to the public. The golf course will be developed also to accommodate an increasing demand for golf play in the Poipu area of Kauai and Kauai generally and to make south Kauai more competitive among other visitor destination areas. E.A., Pgs. 7-9; T., V. I, Pub. Hrg., Pgs. 39-60; T., V. I, CCH, Pgs. 100-120.

25. The Project Site is located on the eastern perimeter of the resort community of Poipu in south Kauai. Unlike master planned destination areas developed by single entities, Poipu is comprised of a number of independent resort and hotel developments, including Kiahuna Plantation, Sheraton Kauai and the Stouffer Waiohai. E.A., Pgs. 7-9.
26. Only recently has Poipu become a major destination area. Prior to 1960, Poipu was an isolated and remote settlement occupied by a small number of beachfront homes which were primarily associated with the sugar plantation that still operates a mill today about 1.5 miles to the north. Today, Poipu has more than 1,800 hotel rooms and apartment condominiums, together with various commercial facilities, residences and beach parks. E.A., Pg. 9.
27. The Project Site is located on coastal and former agricultural lands. A portion of the Project Area is leased to McBryde Sugar Company, Limited (sometimes "McBryde" or "McBryde Sugar"), for planting and harvesting of sugarcane. The portion of the land which remains subject to the McBryde lease is subject to withdrawal by Grove Farm under the terms of a 1974 lease. E.A., Pg. 10; T., V. I, CCH, Pgs. 408-410.
28. Bordering the Project Area on the west is the resort community of Poipu which stretches approximately 2.3 miles along Kauai's southern coast. Immediately to the west are several resort-residential projects, including Bayview, a 40 lot residential subdivision, Lanai Villas Makai, a 47 lot residential subdivision, and Poipu Sands, a resort-residential condominium. Immediately adjacent to the Project Site is the site of the planned 605-room Hyatt Regency Kauai Hotel which is scheduled to commence construction in 1988. E.A., Pg. 10; see also Staff Report and T., V. I, CCH, Pgs. 100-120.

Physiography

29. The overall terrain of the Property gradually rises from a 30-foot elevation at its most makai boundary to approximately 125 feet at the site's mauka boundary. The average site slope is about 4%. E.A., Pg. 10.
30. There are no distinguishable drainage ways on the Property and the topography is relatively even. Site runoff is primarily by sheet flow towards the ocean. E.A., Pg. 10.

31. At the coastline, outside the Project Site, are formations of limestone and lithophyte, as well as calcareous sand dunes of approximately 30-120 feet in elevation. There are no sand beaches in the Project Area or on the oceanside of the Project boundary. The nearest sand beach is at the Hyatt Regency Kauai Hotel site. E.A., Pg. 10.

Soils

32. According to the Soil Conservation Service of the U.S. Department of Agriculture, the Project Site contains predominantly Waikomo stony silty clay. Also present are Koloa stony silty clay, Mamala stony silty clay loams and jaucas loamy fine sand in smaller amounts. E.A., Pgs. 12-13.
33. Waikomo stony silty clay consists of well-drained stony and rocky material developed in matter weathered from basic igneous rock. The permeability of the soil is moderate, its runoff is slow and its erosion hazard characteristic is slight. E.A., Pgs. 12-13.
34. Inland sections of the Property contain Koloa stony silty clay soil types. This soil too is well-drained and generally found on old volcanic vents in upland ridges. Hard rocks usually underlie this soil at a depth of 20-40 inches. Runoff is medium to severe and the erosion hazard is moderate. E.A., Pgs. 12-13.
35. The Project Area generally encompassed by Waikomo stony silty clay and Mamala stony silty clay loam soils is within the other important agricultural land classification of the Agricultural Lands of Importance of the State of Hawaii (ALISH) Agricultural Land Evaluation System. Except for approximately 11 acres classified prime agricultural land at the mauka boundary of the Project Site, the remainder of the 210 acre Project Site, generally mauka of the shoreline area, is not classified. E.A., Pgs. 12-13.
36. Within the Project Site, the Land Study Bureau of the University of Hawaii classifies the mauka land (essentially the same area shown on the ALISH map as other important agricultural land and prime agricultural land) as having a normal (master) productivity rating of "B". In the makai portions of the Project Site, "B", "D", and "E" classifications predominate. E.A., Pgs. 12-13, 16.

Hydrology and Drainage

37. There are no surface water features on the Property. The site's topography and soil characteristics provide an extremely well-drained condition suitable for development. A man-made retention and sedimentation basin exists in a low-lying area adjacent to the site makai of Pu'u Ainako. E.A., Pg. 16.
38. Runoff from the Project Site will be maintained in the current manner. No increase in surface water discharge or ground water discharge will result from the development. E.A., Pg. 16; T., V. I, CCH, Pgs. 443-446.
39. The Project Site's offshore waters are classified by the State Department of Health as Class A Waters, the second highest class of water rating under the Department's rating system. Discharge into these waters is permitted only upon having the best degree of treatment or control compatible with the criteria established by the Health Department for this class. The proposed Project will not involve discharge of any wastewater, commercial pollutants or industrial waste into the ocean. Surface runoff generated by the proposed development is planned to be contained within the golf course or to be limited to that which currently flows into the ocean. Indeed, with increased landscaping at the Project Site, surface runoff will be reduced by premitting more ground percolation to take place and consequently less flow into coastal waters will occur. E.A., Pg. 16; T., V. I, CCH, Pgs. 443-446.
40. Sewage generated by the proposed clubhouse facilities and on-site restroom facilities will be collected and conveyed to a planned wastewater treatment facility proposed for the new Hyatt Regency Kauai Hotel. E.A., Pg. 16; T., V. I, CCH, Pgs. 107-108.

Fauna

41. A variety of bird species have been observed and recorded at the Project Site. No endangered species have been identified as currently frequenting or nesting in the Project Area. Mammal ground species identified include dogs, cats, rats and mice. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 358, 364.
42. The Project Area and its surrounding environs provides a fairly diverse range of habitats which are utilized by the typical array of exotic birds and migratory

shorebirds expected in this location. No endemic species have been identified on the Property. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 359-364.

43. The native indigenous bird species identified at and adjacent to the Project Site fall predominantly into migratory types of birds including the Pacific Golden Plover and seabirds such as the Wedge-tailed Shearwater. The plover prefers a low grassland type of habitat and as a result the development of the golf course will likely increase the presence of the plover in the area. The importation of trees into the area as part of the golf course development will create a greater diversity of living spaces and habitats than are currently available at the site and will likely result in the increase of various species of tree-nesting avifauna. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 359-360, 362-364.
44. The majority of shearwater burrows identified adjacent to the Project Site are located on seaward facing cliffs outside of the Project Area. E.A., Pgs. 16-18; T., V. I, CCH, Pgs. 362, 374.
45. Development of the golf course will not have an adverse impact on any of the identified birds or those expected to use the area or on the habitat utilized by those birds. On the contrary, the development of the course will probably improve the habitat remarkably for a variety of species. The development will not adversely impact any birds including seabirds such as the shearwater or migratory shorebirds. Indeed, moderate control of the coastwise access and prohibition of inappropriate vehicular access along the coast may improve the habitat for the shearwater and other coastal nesting avifauna. E.A., Pgs. 16-18; Fauna Survey; T., V. I, CCH, Pgs. 362-363; T., V. III, CCH, Pg. 26.

Flora

46. Those portions of the Project Site not currently covered by sugarcane field contain scrub vegetation and various weedy or "ruderal" vegetation forms. E.A., Pgs. 18-19; Botanical Survey; T., V. I, CCH, Pgs. 188-208.
47. One hundred forty-nine (149) species of flora were inventoried within and adjacent to the Project Site of which 120 species have been introduced, 19 are indigenous, i.e., native to the islands and elsewhere, 5 are endemic, i.e., native only to the islands, and 5

originally of Polynesian introduction. No threatened or endangered species were found in the Project Area although a few species, including hinahina-kahakai, kipukai, puapilo, nama and ohelo-kai are considered rare or depleted. Those species are described commonly as native coastal strand vegetation and have been identified as occurring within the Conservation District, including the seaward facing slopes, outside of the Project Area. E.A., Pgs. 18-19; T., V. I, CCH, Pgs. 188-208.

48. Development of the golf course project at the Project Site will have no adverse effect on rare or depleted, endemic or indigenous species of plants or on flora generally. The abutment of the Project Area to the Conservation District and exclusion of off-road vehicles along the coastal stretch of the Project Area abutting the Conservation District will improve the habitat for coastal strand vegetation which has been impacted heavily in the past by such vehicles. E.A., Pgs. 18-19; Botanical Survey; T., V. I, CCH, Pgs. 194-196; T., V. III, CCH, Pgs. 46-47, 50.
49. The Applicant and Intervenor's floral experts, Winona Char and Dorothy Tao, respectively, have each recommended that access to Makawehi dune not be permitted to off-road vehicles as they have had a definite negative impact on dune vegetation and have contributed greatly to erosion of the dune area. Each has recommended that pedestrian traffic for the purposes of fishing, hiking, sightseeing and the like continue to be allowed. Further, each has recommended that landscaping with easily-grown native species adapted to local environmental conditions including salt spray be incorporated into the golf course landscaping plans. E.A., Pgs. 18-19, T., V. I, CCH, Pgs. 194-195; T., V. III, CCH, Pgs. 46-47, 50.

Air Quality

50. The existing air quality within and around the Project Site is very good. A short-term air quality impact may result from the proposed Project during its construction phase. Implementation of adequate dust control measures employed during the construction phase will mitigate and alleviate resulting adverse effects, if any, on surrounding resort and residential areas resulting. E.A., Pg 19.
51. No substantial adverse environmental or ecological effect will result from the development of the course. Indeed, the placement of the course within the Project Site will reduce direct long-term air

quality impacts associated with cane harvesting in adjacent areas. E.A., Pg. 19.

Noise

52. Construction activities associated with the development of the golf course may contribute in the short-term to temporarily increase noise levels. Restriction of construction activities to daylight hours where the activities are conducted in proximity to developed areas will mitigate and alleviate any possible impact associated with such activity. E.A., Pgs. 19-22.
53. The proposed implementation of the Project at the Project Site is not expected to increase noise level in the long-term. An increase in traffic, which would be a principal source of long-term noise level increase, is not expected by virtue of implementation of the proposed Project. Consequently, the development will not have any substantial adverse environmental or ecological effect in terms of noise. To the extent that noise may be a concern, roadside landscaping will buffer noise emanating from automotive vehicles. E.A., Pgs. 19-22; T., V. I, CCH, Pgs. 444-445.

Archaeology and Historical Resources

54. Based on all the evidence presented to the Commission, the Project Site has marginal archaeological significance. A surface and subsurface survey of the area identified a total of 18 archaeological sites within and about the Project Area (7 of which had been previously identified in the June 1974 Archaeological Research Center of Hawaii Survey). Subsurface excavation conducted as part of the 1988 survey revealed no subsurface cultural deposits. T., V. I, CCH, Pgs. 213-215; T., V. III, CCH, Pgs. 7-19; Archaeological Surveys.
55. Of the 18 archaeological sites identified, 10 have been identified as important for their information and have been preserved through the recordation of that information and no further protective or preservation measures are required in respect of those sites. Eight of the identified sites are important both for their information and for their potential as good examples of site types and/or for their cultural value. T., V. I, CCH, Pg. 214; T., V. III, CCH, Pgs. 7-19; Archaeological Surveys.

56. The 8 sites recommended for preservation by both the Applicant's and the Intervenor's archaeological experts, Phillip Rosendahl and William Kikuchi, respectively, have been labeled T-2, T-3, T-7, T-8, T-9, T-10, T-11 and 3216. Their site location is reflected generally at figure 1 of the Revised Archaeological Survey. Sites T-7 and T-8 are located outside of the boundary of the Project Area. Site T-9 is located within the golf course boundary. Site T-2 is within the overall Project Area located atop Pu'u Ainako and therefore not within the limits of golf fairways nor within any area proposed for improvement by Applicant. Site T-3 is a large stone-stepped platform situated on the seaward side of Pu'u Ainako and is seemingly located on the Project Area boundary. Site T-3, however, is not within an area proposed for construction of the golf course or any improvements associated with the golf course. Sites T-10, T-11 and site 3216 should be considered a single site complex consisting of stepped platforms, the larger of which, T-10 is located within the Conservation District outside the boundary of the Project Area. The smaller platforms, sites T-11 and 3216 appear to be within the Project Area. T., V. I, CCH, Pgs. 227-232; Archaeological Surveys.
57. Each expert has recommended some level of preservation for the 8 significant archaeological sites ranging from conservation (site preservation as is and site protection) through interpretation (public education and resource study). Both the Applicant's and Intervenor's experts concur that the scope of preservation recommended by Dr. Rosendahl at Table 1 of his Protective Measures Memo should be undertaken by the Applicant. The Applicant has agreed to undertake these recommended preservation measures in respect of the significant archaeological sites which include conservation, clearing and cleaning of sites T-7 and T-8, and interpretation of sites T-2, T-3, T-9, T-10, T-11 and 3216 through clearing and cleaning, and stabilization, among other interpretive measures. T., V. I, CCH, Pg. 110; T., V. I, CCH, Pgs. 218-220, 223; T., V. III, CCH, Pgs. 14-15; Protective Measures Memo.
58. To insure preservation of the 8 significant sites a buffer zone around the sites should be clearly flagged during the construction period. Also, an archaeologist should be available to work with the construction people on-site so that they know where the boundaries of the archaeological sites are. In this manner accidental incursion into the areas can be avoided. T., V. I, CCH, Pg. 219.

59. Due to the flexible nature of golf course design, the archaeological sites within the Project Area boundaries and on the boundaries may be successfully integrated into the golf course and thus preserved in the long-term as well as in the short-term construction period. The sites can be incorporated and it is preferable to incorporate the archaeological sites into the course's natural and cultural features. Including the sites within the course boundary will better serve to preserve the sites through better maintenance and control of the sites, and will not jeopardize public access to the sites to interested persons. T., V. I, CCH, Pgs. 218-219, 231-237; see also T., V. III, CCH, Pgs. 14-15, 18-19.
60. Both the Applicant's and Intervenors' archaeological experts have concurred that the Survey and Protective Measures Memorandum prepared by Dr. Rosendahl can be integrated into a cultural resource management plan for the regional area in a successful manner should such a plan be developed by others in the future. Both experts further agree that the significant sites located can be effectively studied independent of a regionwide plan or survey. T., V. I, CCH, Pg. 220; T., V. III, CCH, Pgs. 18-19.

Natural Hazard

61. The Project Area is outside of any flood plan identified by the Flood Insurance Rate Map ("FIRM") prepared by the U.S. Army Corp of Engineers. Indeed, the Project Area is located above the shoreline behind limestone and lithophyte calcaerous sand dunes which rise approximately 30-120 feet above sea level. The base flood elevation of a potential 100-year tsunami inundation is only 7 feet according to the FIRM map and there are no potential ravine flood plains which can adversely affect the Property. Other natural hazards are of no consequence to the Project Site. E.A., Pg. 22.

Views

62. The proposed golf course will contain a large expanse of green turf, scattered shrubs and trees. The major structural improvements will be the golf clubhouse and maintenance facilities. E.A., Pg. 22; T., V. I, CCH, Pgs. 100-101.
63. The golf clubhouse facilities will be nestled on the mauka side of Pu'u Ainako and therefore will not impair views to, from or along the ocean. Through the

development of the golf course views to and from the ocean and lateral shoreline views will not be impacted adversely, but, rather improved. The maintenance facility to be located at the field nursery site will be screened with shrubs and trees and will not impact mauka/makai views, nor the view along the shoreline. In fact, development of a golf course at this site will result in the opening up of views towards the ocean and mountains resulting in a more aesthetically pleasing and visually enhanced environment in the Pa'a area than that which presently exists. E.A., Pg. 22; T., V. I, CCH, Pgs. 100-101.

Biological/Ocean Marine Resources

64. The Health Department is the lead agency to assess water quality and water pollution in the State. T., V. II, CCH, Pg. 96.
65. The water quality in the Pa'a area coastline can be described as very high (class A) except in times of major rains when natural erosion and sugarcane siltation discharge in the ocean can impact the waters. T., V. I, CCH, Pgs. 172-173, and V. II, CCH, Pg. 88; Marine Biology Report.
66. Nitrogen, which is a component of fertilizer, can potentially impact marine resources, including water quality and coral reefs in near shore regions adjacent to the Project Site. T., V. I, CCH, Pgs. 163-177; Marine Biology Report.
67. Current qualitative evaluations of the near shore water quality reflect no evidence of pollution of any sort or any sort of adverse effect attributable to chemical infiltration through runoff or ground water attributable to sugarcane operation. T., V. I, CCH, Pgs. 172-173; V. II, CCH, Pg. 88; Marine Biology Report.
68. The Applicant intends to utilize a secondary treated effluent created at the Applicant's sewage treatment facility to irrigate and in part fertilize the golf course. T., V. I, CCH, Pgs. 163-177; Marine Biology Report.
69. The creation of a golf course at the Project Site and the utilization of fertilizers on the course and effluent to irrigate the course will result in about 1/20th of the nitrogen introduced into ground water compared to present sugarcane usage at the site. T., V. I, CCH, Pg. 164; T., V. II, CCH, Pg. 99; Marine Biology Report.

70. The conversion of the Project Site to golf course site will result in no increase in phosphorous introduction to the near shore environment. No adverse environmental or ecological effect will result by virtue of these uses. T., V. I, CCH, Pg. 164.
71. No conclusive evidence was adduced regarding the potential impacts, whether adverse or otherwise, to the environment or ecology of the off-shore waters as a result of the use of chemical herbicides or pesticides in the project area. T., V. I-II, CCH.
72. The current sugarcane operation along the coast has a more detrimental effect in general on near shore water quality than will golf course use. T., V. II, CCH, Pg. 114.
73. Based on the testimony of Dr. Steven Dollar, it is unnecessary at this time to conduct a baseline qualitative study of the marine shore organisms in the area as there is no evidence that there will result a negative impact from the golf course operation. T., V. I, CCH, Pgs. 174-175.

Economic Impact

74. Construction and operation of the proposed golf course can be expected to result in increased employment, personal income and government revenues. Direct short-term construction and long-term operational economic benefits will be realized in the neighboring Koloa-Poipu area communities as well as indirect economic benefits in the rest of Kauai and the State. E.A., Pgs. 23-24.
75. Direct employment is expected to result during the temporary construction phase and the operational phase of the golf course facility. The Applicant has represented that it will endeavor to use as many local employees as possible in both the construction and operational phases of the golf course. This activity would be in keeping with the developer's historical approach in connection with developments on the island. E.A., Pgs. 23-24; T., V. II, Pub. Hrg.
76. Indirect employment will be generated in companies supplying materials and services needed to construct the golf course and related facilities. "Induced employment" (which refers to additional jobs created throughout the economy when construction workers and employees and proprietors and supply firms spend their wages and salaries) is also expected to result from

the introduction of the golf course operation at the Project Site. The coupling of indirect and induced employment added to direct employment will result in a multiplier effect generating more than one job opportunity for each job created at the golf course construction site. E.A., Pg. 23-24.

77. Construction of the facilities is expected to require approximately 20 months to complete and a total of 12 full-time equivalent jobs are expected to be created during that period. A full-time equivalent job represents a combined aggregate of full and part-time employment over the worker months to be generated during the construction phase of the operation. E.A., Pg. 24.
78. Direct golf course employment, including employment at the golf clubhouse and maintenance facility, is estimated to include about 86 persons with management personnel accounting for about 10% of the golf course employment. E.A., Pg. 24.
79. It is expected that government revenue in the long-term will increase by virtue of the implementation of the proposed Project attributable both to an increase in the property tax base and consequent property taxes payable to the County, as well as tax revenues resulting from earnings and spending of wage, salary and proprietor's income associated with direct, indirect and induced jobs generated by the operation of the golf course. E.A., Pgs. 24-25.
80. Each of the foregoing socio-economic impacts is perceived as beneficial and will not create any adverse impact on the island economy, environment or ecology. E.A., Pgs. 24-25.

Public Facilities and Services

81. The cost to construct the infrastructure required to support the golf course Project will be borne by Applicant. Development of the proposed golf course will require the extension of Poipu Road along the mauka boundary of the Hyatt Regency Kauai Hotel site as well as the construction of a driveway to the proposed golf clubhouse, a distance of approximately of 2,000 feet. It will be improved to create a two-lane paved road in compliance with County standards, with graded shoulders and landscaping. The portion of the road which adjoins the mauka boundary of the hotel site will be developed by the hotel owner and approval for this road segment has already been

obtained from the County in connection with approval of the hotel. This road will also be extended (per the previous County approval of the hotel) towards the beach at Keonelo Bay to afford public access to the planned public beach park at the hotel site parcel. E.A., Pgs. 25-27; T., V. I, CCH, Pg. 105.

82. Potable water for the golf course operation will be available through the 12-inch water line running along the existing portion of Poipu Road. It is expected that the clubhouse will require an average 6,600 gallons per day of potable water. Any required improvement to the existing water system, which will include an extension of the existing transmission line approximately 2,000 feet from the Poipu Road terminus to the clubhouse will be effected by the Applicant as part of the development of the Hyatt Regency Kauai Hotel and all fees of the Department of Water will be paid. Water source is currently sufficient to satisfy the projected demand. E.A., Pgs. 25-27; Staff Report.
83. Secondly treated effluent generated by the planned Hyatt Regency's sewage treatment plant, as well as planned irrigation wells to be constructed by the Applicant, will be used to irrigate the course. It is possible that Applicant may also use recycled surface runoff from mauka lands for irrigation purposes. E.A., Pgs. 25-27.
84. No public sewage collection system exists in the area of the Project. All existing systems consist of private collection and treatment facilities. Liquid waste generated from the proposed Project will be treated in conjunction with the planned Hyatt Regency Kauai at the hotel's sewage treatment plant, which will be designed to service the two facilities. Sludge will be disposed of in accordance with Health Department regulations and County requirements. Solid waste will be disposed of by private contractor. Neither waste element will have any substantial adverse environmental or ecological effect and adequate services exist or can be developed without cost to the County, to meet these needs. E.A., Pgs. 25-27; T., V. I, CCH, Pg. 108.
85. Adequate police and fire protection services and electrical and telephone services are available to service any need which may be generated by the proposed Project. E.A., Pgs. 25-27.
86. Implementation of the Project will not unreasonably burden public agencies to provide roads, streets,

sewer and water facilities, drainage facilities, school improvements or police and fire protection. E.A., Pgs. 25-27.

Access

87. Development of a golf course on the Project Area will not impair public access or reduce or impose restrictions on public access to tidal or submerged lands, beaches or areas designated by the mean high tide line. Development of the course will legitimize and improve public access to and along the shoreline and the foregoing areas. T., V. I, CCH, Pgs. 105, 275-276, 279.
88. Concurrent with the development of the golf course public parking facilities will be created by the Applicant on and off-site at the western end of the course at the base of Makawehi dune (off-site), at the northeastern coastal border of the course (off-site) and at the field nursery/maintenance building location (on-site) in the approximate areas reflected on Applicant's Exhibit 1. An area sufficient for parking 40 automobiles will be afforded at the western parking area and area sufficient to park 5 vehicles at each site will be afforded at the northeast coastal and field nursery maintenance building sites. Access to the western parking facility will be via Poipu Road, the beach access road, the golf clubhouse driveway and a compacted (but possibly not surfaced) road to be constructed by Applicant in the general area reflected on Applicant's Exhibit 1. Access to the field nursery parking facility and the northeast coastal facility will be via existing haul cane roads (with minor realignments) also reflected on Exhibit 1. T., V. I, CCH, Pgs. 105-108.
89. Notwithstanding the closure by McBryde Sugar Co., Ltd., and other plantations of their haul cane roads to public access, arrangements have been made with McBryde Sugar (who will continue to utilize the existing haul cane road mauka and northeast of a portion of the course) to maintain open public access for fishermen and other users along those portions of the haul cane road system necessary to access the field nursery and northeast coastal parking facilities. T., V. I, CCH, Pgs. 105-108, 429-430, 434.
90. The parking facilities proposed to be created in connection with the development of the golf course have been sited in areas most commonly used by fisherman and others to access the coastline. Access

from the parking facilities to the coastline will be afforded to the public and the existing shoreline trail present in the Conservation District adjacent to the Project Site, which affords lateral access along the entirety of the coastline adjacent to the Project Site, will also be made available for pedestrian access. Additionally, a shoreline trail from the existing Hyatt Regency Kauai site to the intersection of the golf course Project Site boundary and the Conservation District boundary will be afforded to the public in the general area reflected on Applicant's Exhibit 1, thereby affording lateral pedestrian public access along the coastline from the hotel site to the northeastern most boundary of the golf course site. The existing shoreline trail in the conservation district will be maintained unobstructed in the general area reflected by a dotted line and labeled as shoreline trail on Applicant's Exhibit 1. T., V. I, CCH, Pgs. 105-108.

91. Applicant has represented that it will provide to the County a sufficient license affording to the public the access to and along the shoreline indicated. Although relocation of various facilities may occur in the future, any form of license granted by the Applicant shall provide for the substitution of substantially equivalent access upon such relocation. T., V. I, CCH, Pgs. 129-132.
92. Utilization of a license in lieu of a grant of easement will minimize potential liability exposure to the County, by retaining as private the ownership and rights associated with the licensed access areas to be created in connection with the development of the course and reflects the County's current stated preference. T., V. I, CCH, Pgs. 129-132.

Grove Farm's Plans

93. Grove Farm Company, Incorporated, currently has under lease to McBryde Sugar Company, Ltd. areas in Pa'a and Maha'ulepu. The lease by its terms expires in 1994. T., V. I, Pgs. 407-458, V. II, CCH, Pgs. 7-25.
94. Since as early as 1960 Grove Farm has been developing conceptual plans relating to prospective land uses in the Pa'a and Maha'ulepu areas adjacent to the Project Site. T., V. I, Pgs. 407-458, V. II, CCH, Pgs. 7-25.
95. In assessing the potential cumulative impacts of other developments, the Commission has received and reviewed all of the conceptual plans formulated by Grove Farm

Company, Incorporated in respect of its Pa'a and Maha'ulepu properties. T., V. I, CCH, Pgs. 407-458, V. II, CCH, Pgs. 7-25.

96. Grove Farm Company's Pa'a/Maha'ulepu plans, Intervenor's Exhibit E, are not reasonably probable of implementation in the reasonably anticipated future. The conceptual plans that Grove Farm Company has for the areas in Pa'a and Maha'ulepu surrounding and adjacent to the present Project Area require substantial further study and may require substantive change before Grove Farm Company, Incorporated, will be in a position to seek governmental approval of any of the proposed land uses considered. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.
97. The lack of study by Grove Farm of its conceptual plans and the failure of Grove Farm Company to have undertaken feasibility, infrastructure and market/demand studies, and the like, associated with its conceptual plans, together with other evidence produced at the contested case hearing relative to these plans, reveals that the land use concepts envisioned by Grove Farm Company are not reasonably probable of implementation in the anticipated future. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.
98. The current proposed golf course is independent of the conceptual plans Grove Farm Company has for the surrounding Pa'a-Maha'ulepu areas and was formulated subsequent to the concept for the development of the surrounding area. The current Project and the land uses envisioned in concept by Grove Farm for areas surrounding the proposed golf course are not inter-dependent. The proposed golf course on the Project Site is not economically or functionally dependent on the implementation of any land use concept for areas surrounding the Project Site and conceived by Grove Farm Company in its conceptual plans. T., V. I, CCH, Pgs. 407-458; T., V. II, CCH, Pgs. 7-25.

Need

99. Since the establishment of district boundaries generally and the Land Use Rules, there has been a substantial increase in the use and interest in the golf industry. The focus of many resort endeavors has moved from conventions and the free independent traveler to the incentive group market, which cannot be attracted effectively without an on-site golf facility. T., V. I, CCH, Pgs. 115-118, 281; Demand Study.

100. The percentage of golfers in the United States has grown 24% to 20.2 million persons over the last two years. In order to keep pace with the demand and the need for golf created by the increased interest in golf in the United States, many golf courses would have to be built. This intensity of interest and need is greater in Hawaii and the sunbelt states than in other parts of the country. Indeed, Hawaii is seen as a vacation mecca with an intense demand for golf currently that is not projected to abate in the future. T., V. I, CCH, Pg. 281; Demand Study.
101. Based on current need and demand, Kauai will need to significantly increase double the number of golf courses currently available to satisfy existing and anticipated need for such recreational facilities. T., V. I, CCH, Pg. 342, 387-390, 395-400; Demand Study.
102. Existing golf facilities on the island of Kauai are inadequate to meet current demand and need for golf on Kauai created by the resident and tourist population, exclusive of the demand and need to be generated by the Hyatt Regency Kauai Hotel. T., V. I, CCH, Pgs. 399-400; Demand Study.
103. Reasonable estimates of the demand and need to be created for additional golf attributable to the Hyatt Regency Kauai Hotel reflect that the Hyatt Hotel will create a need for additional golf facilities exclusive of the general public and tourist need. It is estimated that the Hyatt Hotel will create a demand for some 35,000 rounds of golf annually at its initial stage which will increase thereafter and is expected to reach a demand for some 48,000 rounds of golf annually. T., V. I, CCH, Pgs. 392, 393, 400. See also Demand Study.
104. The existing County golf facility at Wailua is currently overused. Play at that facility has been described as reaching the saturation level. The average municipal course in sunbelt states, where golf usage is higher than other states in the mainland United States, has 55,000 rounds per year played on the facility. At Wailua some 120,000-130,000 rounds of golf are played annually. T., V. I, CCH, Pgs. 400-401. See also Demand Study.
105. Notwithstanding the creation of new courses, including the additional 9-holes contemplated at Princeville and the possible development of an 18-hole golf course at Kukuiula, an 18-hole golf course in Lihue and an additional 9-holes at Kiahuna,

there exists a compelling private need (created by the Hyatt Regency Kauai Hotel) and public need for additional golfing facilities available for the tourist and resident population on Kauai. T., V. I, CCH, Pgs. 115-118, 389, 390-393; Demand Study.

Hawaii State and County General Plan

106. The Hawaii State Plan, adopted in 1978, serves as a guide for the long-range future development of the State. It establishes an overall theme, goals, objectives, policies, priority directions, and a system for plan formulation and program coordination for the integration of all major State and County activities. State goals in the areas of the economy, physical environment, and physical, social and economic well-being of its population are set forth in the plan as well as the State's objectives and policies in the areas of population, the economy, the physical environment, facility systems and socio-cultural advancement. The development of the Property is consistent with the Plan and will contribute to the fulfillment of the following goals, objectives, and/or policies set forth in the Hawaii State Plan by:

- a. Adding 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;
- b. Adding to 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;
- c. Encouragement of an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires;
- d. The encouragement of businesses that have favorable financial multiplier effects within Hawaii's economy;
- e. The promotion and protection of intangible resources in Hawaii such as scenic beauty;
- f. Assistance to the overseas promotion of Hawaii's vacation attractions;

- g. Improving the quality of existing visitor designation areas;
- h. Ensuring that visitor facilities and destination areas are carefully planned and sensitive to neighboring communities and activities;
- i. Providing public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion;
- j. Pursuing compatible relationships among activities, facilities, natural resources, especially within shoreline areas;
- k. Promoting the preservation and restoration of significant natural and historic resources;
- l. Promoting the visual and aesthetic enjoyment of mountains, ocean vistas, scenic landscapes and other natural features;
- m. Promoting the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values;
- n. Ensuring opportunities for everyone to use and enjoy Hawaii's recreational resources;
- o. Sharing the availability of sufficient resources to provide for future recreational needs;
- p. Fostering the increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii;
- q. Managing population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social and economic aspirations while recognizing the unique needs of each county;
- r. Encourage greater cooperation between the public and private sectors in developing and maintaining well-designed and adequately serviced visitor industry and related developments;
- s. Maintaining prudent use of Hawaii's land-based, shoreline and marine resources;

- t. Assuring effective protection of Hawaii's unique and fragile environmental resources;
 - u. Assuring the availability of sufficient resources to provide for future cultural, artistic and recreational needs; and
 - v. Providing a wide range of activities and facilities to fulfill the cultural, artistic and recreational needs of all diverse and special groups effectively and efficiently.
107. The General Plan establishes the County's policy governing the long-range, comprehensive development and allocation of land and water resources within the County of Kauai. The Development Plans, including the Koloa-Poipu-Kalaheo Development Plan ("Development Plan"), are used as guidelines in implementing the General Plan. The development of the Project Area conforms to and is consistent with the provisions of the General Plan and the Development Plan inasmuch as it contributes to the attainment of the following goals of the General Plan:
- a. Maintaining the concept of Kauai as "The Garden Isle" by providing for growth in consonance with the unique landscape and environmental character of the island;
 - b. Ensuring that physical growth is consistent with the overall ecology of the island;
 - c. Creating opportunities for a greater diversity and stability of employment for residents of Kauai;
 - d. Providing for a maximum variety of outdoor recreational activities;
 - e. Recognizing those aspects of the island and its people which are historically and culturally significant and maintaining and enhancing such aspects as a continuing expression of the island's physical and social structure;
 - f. Promoting the improvement and expansion of the island's economy by recognizing and carefully utilizing land and water resources;
 - g. Guiding and controlling development to take full advantage of the island's form, beauty and climate and preserving the opportunity for an improved quality of life; and

- h. Guiding physical growth so that island and visitor communities will develop in social and economic concert with each other.
108. The development of the Property is consistent with the Development Plan and will contribute to the fulfillment of the following goals and objectives set forth therein by:
- a. Increasing the body of knowledge about the public's understanding of the area's history and archaeology;
 - b. Encouraging uses and a development pattern which enhance and protect coastal waters and beaches and encourage construction of structures which do not promote flood and tsunami dangers;
 - c. Encouraging development of visitor facilities which best benefit residents and visitors;
 - d. Increasing job opportunities;
 - e. Directing infrastructure for overall best benefit;
 - f. Developing public access to coastal areas where private properties block such access; and
 - g. Encouraging the development of daytime and nighttime recreational activities desired by residents and visitors.
109. To the extent, if any, the development of the Project Area is regarded as inconsistent with the General Plan or Development Plan designations referred to in paragraph 21 hereof, the guidelines established by such designations are not the most desirable in this particular case and would frustrate the goals of the General Plan and Development Plan as set forth above.

D. AGENCY COMMENTS

110. The Department of Public Works of the County of Kauai ("Public Works"), the Department of Water of the County of Kauai ("Water Department"), the Department of Health of the State of Hawaii ("Health Department"), the Fire Department of the County of Kauai ("Fire Department"), the Kauai Historic Preservation Review Commission ("Historic Commission") and the State Department of Agriculture ("Agriculture Department"), but sometimes referred to collectively with the foregoing departments and commission as the

"Agencies" have each commented on the Application and the proposed development. Staff Report.

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

E. SPECIAL MANAGEMENT AREA USE PERMIT

112. A Special Management Use Permit is required since a portion of the proposed Project is located within the Special Management Areas as established by the County of Kauai and the development cost of the Project exceeds \$65,000.00. See Staff Report, Pg. 1.
113. Development of the golf course at the Project Site will provide coastal recreational opportunities accessible to the public. Coupled with the shoreline access to be provided by the Applicant on lands adjacent to the Project Site, the creation of a golf course at the Project Site will provide adequate accessible and diverse recreational opportunities in the Special Management Area and in the area surrounding it. E.A., Pgs. 27-30; T., V. I, CCH, Pgs. 105-108, 129-132, 234-236, 276-279, 428-430; T., V. II, CCH, Pgs. 30-31.
114. Placement of the golf course mauka of the Conservation District boundary and the creation and maintenance of a variety of vehicular accesses to parking facilities with pedestrian accesses to the shoreline together with a lateral shoreline access will protect the Project Area coastal resources uniquely suited for recreational activities. Access to and along the shoreline and to recognized fishing and surfing sites will be afforded to the public, consistent with the sound conservation of natural resources. Id.
115. Creation of the golf course at the Project Site will indeed encourage expanded public recreational use of the adjacent shoreline lands. Id.
116. The creation by the Applicant of a license for vehicular access to various parking facilities to be created by Applicant and for pedestrian access from those facilities to the shoreline and laterally along the shoreline will effect a reasonable dedication of the shoreline areas having recreational value for public use. Id.

117. Adherence to the Health Department's regulations with respect to grading and erosion control measures at the golf course site will effectively regulate point and non-point sources of pollution (siltation) to protect the recreational value of coastal waters and the near-shore marine habitat. E.A., Pgs. 28-30.
118. Development of the golf course on the Project Site will insure the protection and preservation and, where appropriate, restoration of historic and prehistoric resources identified in the coastal zone management area as well as such resources that are outside of that area which are significant in Hawaiian history and culture. Archaeological Surveys; T., V. I, CCH, Pgs. 215, 218-220, 234-235, 237-241; T., V. III, CCH, Pgs. 10-19.
119. Through the process of an archaeological reconnaissance survey and the conservation and interpretation of various significant archaeological sites, significant archaeological resources in the area have been identified and will be analyzed. Id.
120. Implementation of the proposed development will result in the preservation of remains and artifacts of a significant nature in and about the Project Site. Id.
121. Archaeological discoveries in and about the Project Site can be integrated into a cultural resource survey of the region should such a survey be conducted. Id.
122. Adopting the protective measures proposed by Applicant's expert and concurred in by Intervenor's expert on archaeology will, through the development of the Project, support State goals for protection, restoration, interpretation and display of historic resources. Id.
123. The development of a golf course on the Project Site, outside of the Conservation District but following the Conservation District boundary line along a portion of the Pa'a coastline, will serve to protect, preserve and improve the quality of coastal scenic and open-space resources. Id.; See also E.A., Pgs. 9-30; T., V. I, CCH, Pgs. 100-108, 131-132, 218-220, 234, 274-280, 429-430, 434; T., V. II, Pgs. 30-31, 100.
124. The portion of the Pa'a coastline adjacent to the golf course is a valued resource and the proposed golf course development is compatible in its visual environment, design and location with the coastline and the surrounding land uses. Id.

125. The development of the golf course will result in a minimum of alteration of natural land forms and no adverse impact on existing public views to and along the shoreline. Id.
126. The development of the course will permit the maintenance of the shoreline open-space and scenic resources within the Special Management Area and adjacent thereto throughout the coastwise length of the golf course. Id.
127. Development of a golf course at the Project Site will not impact adversely valuable coastal eco-systems. E.A., Pgs. 9-16, 18-19, 22, 27-30; T., V. I, CCH, Pgs. 168-177; T., V. II, CCH, Pgs. 96, 99, 100, 114.
128. Disruption or degradation of coastal water eco-systems will be avoided effectively through Applicant's adherence to regulations of the Health Department regarding discharge of water and pollutants into the near shore environment. Implementation of the development proposed at the Project Site will promote water quantity and quality planning and management practices. Id.
129. The proposed golf course will be a privately owned public facility important to the State's economy. The proposed siting of the golf course is a suitable location adjacent to existing urban concentrations, recognizing the low agricultural productivity historically experienced in the area and the unavailability of sufficient lands contiguous to the Hyatt Regency Kauai Hotel site within the Urban District. E.A., Pgs. 23-25; T., V. I, CCH, Pgs. 138-140, 422-430, 437.
130. The golf course will not result in any impairment of any existing coastal uses or views if developed subject to the conditions contained in this Decision and Order. No adverse social, visual or environmental impacts will occur in the coastal zone management area. E.A., T., V. I-III, CCH.
131. Placement of a portion of the proposed golf course on Land Study Bureau Productivity Rating Class "B" lands is warranted, reasonable, and justified in that it is not feasible to utilize presently urban designated locations contiguous to the Hyatt Regency Kauai site for the purpose of constructing a golf course. Furthermore, restricting construction of the proposed golf course to exclusively Class "C", "D" or "E" productivity rated lands adjacent to the urban

district would require intrusion into the Conservation District. The current placement of the course is a reasonable, justified and effective balancing of interests, both economic and non-economic in nature, in the avoidance of adverse environmental impacts and in satisfaction of current and anticipated need. E.A.; T., V. I, CCH, Pgs. 138-140, 407-417, 427-428.

132. Development of the golf course on the Project Site as proposed will not create a hazard to life and property from tsunami storm waves, stream flooding, erosion or subsidence. E.A., Pgs. 10-13, 16, 22.
133. To the extent applicable, the development of the Project will comply with the requirements of the Federal Flood Insurance Program and with appropriate irrigation and drainage control will not result in coastal flooding. Id.
134. Adequate and properly located public access to shoreline recreation areas and facilities will be legitimized and reserved in connection with the development of the golf course Project. E.A., Pgs. 3, 27-30; T., V. I, CCH, Pgs. 105-108, 129-132, 234-236, 276-279, 428-430; T., V. II, CCH, Pgs. 30-31.
135. Adequate provisions have been made by the Applicant for solid and liquid waste treatment disposition and management and will result in no adverse effects upon the Special Management Area resources. E.A., Pgs. 25-27; T., V. I, CCH, Pgs. 100-108.
136. Alterations to existing land forms and vegetation (except crops) and the construction of structures at the Project Site will have no adverse effect on water resources nor upon scenic and recreational amenities in the area. Id.
137. When developed in accordance with the conditions made part of this Decision and Order, the proposed Project will not have any substantial adverse environmental or ecological effect. E.A.; T., V. I-II, CCH.
138. The proposed development does not irrevocably commit any significant resources to loss and/or destruction. The proposed development will not curtail the range of beneficial uses in the area. E.A., T., V. I, CCH, Pgs. 275-277.
139. The development is consistent with the County General Plan, zoning and other applicable ordinances and is consistent with the objectives and policies of Chapter

205, Hawaii Revised Statutes, and the Special Management Area Guidelines set forth in the SMA Rules. E.A., Pgs. 7, 26-30.

- 140. The proposed development does not substantially effect the economic or social welfare and activities of the community, County or State; and, the economic impact of the development will be positive. E.A., Pgs. 23-25.
- 141. The proposed development does not have any substantial secondary impact such as population changes or effects on public facilities. Id.
- 142. Implementation of the development at the Project Site will not eliminate planning option and will not have an adverse cumulative environmental or ecological effect when considered in connection with reasonably anticipated future projects. E.A., Pgs. 27-30.

F. USE PERMIT

- 143. A Use Permit is required and is necessary to establish golf course uses within the County's agricultural zoning district. See Staff Report, Pg. 1.
- 144. A Class IV Zoning Permit is a procedural requirement since the Use Permit is simultaneously being requested. Staff Report, Pg. 1.
- 145. The establishment, maintenance and operation of the construction and development of a golf course use at the Project Site is a compatible use generally with surrounding urban uses and agricultural uses. E.A., Pgs. 23-30; T., V. I, CCH, Pgs. 100-108.
- 146. The proposed golf course use at the Project Site will not be detrimental to health, safety, peace, morals, comfort or the general welfare of persons residing or working in the neighborhood of the Project Site. E.A., Pgs. 23-30.
- 147. The proposed golf course use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community. E.A., Pgs. 23-30.
- 148. The proposed golf course usage at the Project Site will not cause any substantial harmful environmental consequences on the land of the Applicant or on other lands or waters adjacent to the Project Site and is consistent with the intent of the RCO or the General Plan. E.A., Pgs. 23-30.

G. SPECIAL PERMIT

149. A Special Permit is necessary since the Applicant proposes to establish golf course recreational usage on a portion of the lands which are rated Class "B" by the Land Study Bureau's Detailed Land Classification Overall (Master) Productivity Rating, which use is not expressly permitted in that district. See Staff Report, Pg. 1.
150. The proposed golf course usage at the Project Site is an unusual and reasonable use which may be permitted within the State Land Use Agricultural District and has been permitted in other locations. E.A.; Staff Report; T., V. I, CCH, Pgs. 138-140, 275-276, 407-417, 427-428.
151. The proposed golf course use is not contrary to the objectives sought to be accomplished by Chapters 205 and 205A of the Hawaii Revised Statutes and the Land Use Rules. Creation of a golf course at the Project Site will not result in an infusion of major urban uses into the Agricultural District. The golf course merely introduces a landscaped parklike open space recreational experience into the district and implementation of the Project through the mechanism of a special permit does not frustrate the effectiveness and objectives of the State's Land Use Laws. E.A., Pgs. 27-30; T., V. I, CCH, Pgs. 275-278.
152. The proposed golf course use at the Project Site will not adversely affect and is not inconsistent with the current uses of surrounding property. The proposed use will not substantially alter the essential character of the land and will be the highest and best use of the land as it remains the Agricultural District. Id.
153. The proposed golf course use at the Project Site will not unreasonably burden public agencies to provide roads and street, sewers, water, drainage and school improvements and police and fire protection. E.A., Pgs. 27-30.
154. Unusual trends, conditions and needs have arisen in the visitor industry, the golfing industry and the agricultural industry since the establishment of the district boundaries and the Land Use Rules which justify the proposed golf course use at the Project Site. T., V. I, CCH, Pgs. 112-117, 280-290, 340-342, 387-393, 399-401.

155. The evidence is both clear and convincing that the land upon which the proposed use is sought is unsuited for the uses permitted within the Agricultural District. T., V. I, CCH, Pgs. 407-411, 413-415, 427-428.
156. The proposed Project Area consists of predominantly vacant and uncultivated land with a portion in cane. Withdrawal of that portion of the Property currently in sugarcane cultivation from the current lease in favor of McBryde Sugar, which is permitted under that lease, will not occur until harvest and will not adversely affect the continued economic survival of McBryde Sugar's operations and will not be contrary to the objectives sought to be accomplished by the Land Use Rules and Land Use Law. Id., E.A., Pgs. 26-30.
157. McBryde Sugar's yields are among the lowest in the industry, approximately 22% below average which is the case with many windward plantations situated in areas such as the Project Site and its environs. McBryde Sugar has itself been withdrawing portions of its acreage from cane over the last several years and there is a strong possibility that McBryde Sugar will not continue its lease for sugarcane in the Project Area and surrounding environs in 1994 when its lease expires. Id.
158. There is no proven alternative agricultural crop which has been shown to be economically viable in the windward areas of the State or Kauai. Indeed, the windward plantations at Kilauea, Kahuku and Kohala have gone out of business and existing windward plantations such as Mauna Kea, Hamakua, Lihue and McBryde are doing the least well of all the other plantations in connection with their sugar operations and their diversified agricultural operations. Id.
159. The effect of cloud cover and high minimum and low diurnal temperatures on the Pa'a area affects the economic viability and suitability of the area for agricultural pursuits, including sugarcane and, although millions of dollars in agricultural diversification studies have been conducted, none have yielded a productive, successful or economically viable crop that can substitute for cane in this area. Id.

H. EVIDENTIARY MATTERS AND RULINGS

160. For purposes of this proceeding, the Planning Commission takes judicial notice of the General Plan

of the County of Kauai, the Koloa-Poipu Development Plan, the RCO, the Kauai County Charter, the Kauai County Flood Control Ordinance, the SMA Rules and maps, the Land Use Rules and the Hawaii Revised Statutes applicable to the Application, the Planning Department's files in respect of the Application and all maps therein contained, the County's Zoning Maps, and the State Land Use District Maps.

161. To the extent any conclusion of law hereinafter set forth in this Decision and Order is properly styled a finding of fact, said conclusion of law is hereby incorporated at this part as a finding of fact.

CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction over the Applicant's Application pursuant to the Hawaii Rev. Stat. § 205-6 Coastal Zone Management Act, Hawaii Rev. Stat. § 205-A, the RCO, the SMA Rules, the Land Use Rules and other applicable provisions of the Hawaii Rev. Stat.

Administrative Procedure

2. The procedural requirements of each of the foregoing statutes, rules and regulations, including specifically, the requirements of the Hawaii Administrative Practice Act, Hawaii Rev. Stat. Chapter 91 have been met. All interested persons and parties have been given due notice of the proceeding and have been afforded the opportunity to present comment, evidence and argument on the Application.

Environmental Impact Statement

3. Hawaii Rev. Stat. § 343 requires that for every application for development of lands under Chapter 205A, there shall be prepared an environmental assessment to determine if there may be a significant environmental impact posed by the proposed project. Hawaii Rev. Stat. § 343-5(a)(3). If such an environmental assessment discloses the likelihood that the project may have a significant environmental impact, the Planning Department shall order the preparation of an environmental impact statement as defined under Hawaii Rev. Stat. § 343-2, as required by Section 7.1E of the Kauai County SMA Regulations.

4. The Commission finds as a matter of fact, based on the environmental assessment performed, and concludes as a matter of law, that the submission and acceptance of an Environmental Impact Statement is not required for the proposed use at the Project Site.

State, General Plan and Development Plan

5. Chapter 226 of the Hawaii Rev. Stat. sets forth a Hawaii state development plan describing the overall theme, goals, objectives, policies, priority guidelines and implementation mechanisms to be used in long-range development of state lands. Hawaii Rev. Stat. § 226-2(6). Those objectives, policies and guidelines are set out in Sections 226-3 through 226-28 of that chapter, and incorporated in the Hawaii State Plan.
6. The Commission finds as a matter of fact, and concludes as a matter of law that the development of the Property is in conformance and is consistent with the overall theme, goals, objectives and policies of the Hawaii State Plan, Hawaii Rev. Stat. Chapter 226.
7. Pursuant to Section 7-1.2(c) of the Kauai County General Plan, the General Plan functions as enabling legislation which establishes the framework, parameters, constraints and guidelines for the Development Plan. Pursuant to Section 7-3.3 of the General Plan, the Development Plan is a guideline for the implementation of the General Plan. Pursuant to Hawaii Rev. Stat. § 226-2(15), which is made applicable to the General Plan pursuant to Hawaii Rev. Stat. § 52(a)(4), a guideline is a stated course of action which is desirable and should be followed unless a determination is made that it is not the most desirable in a particular case. Pursuant to the same authority, a guideline may be deviated from without penalty or sanction.
8. Pursuant to Section 7-1.3(b) of the General Plan, the General Plan shall be interpreted to recognize the changes in social, environmental and economic conditions and may be modified to accommodate such changes by amendment to the General Plan or by changing implementing legislation or programs.
9. The Commission finds as a matter of fact, and concludes as a matter of law that development of the Project Area conforms to and is consistent with the General Plan.

Special Management Area Use Permit

10. Hawaii Rev. Stat. § 205A and the Special Management Area Rules and Regulations of the County of Kauai promulgated thereto, require that, prior to permitting use of lands within the Special Coastal Zone Management Area, an applicant must show that the proposed project meets the objectives and policies of the SMA Rules set out at Section 3.0 of the Rules, as well as address and, to the extent applicable, satisfy the guidelines and conditions specified in Section 4.0 of the SMA Rules.
11. The Commission finds as a matter of fact, and concludes as a matter of law that the Applicant has met and satisfied all requirements and conditions of the SMA Rules of the County of Kauai necessary for issuance of a Special Management Area Use Permit.
12. In approving the development of a golf course at the Project Site and in granting the permits required to effect the golf course development, this Commission has not and does not commit itself or other reviewing agencies and commissions to a practical commitment to or to the necessary approval of the land uses conceived by Grove Farm Company in its conceptual plans for areas in Pa'a and Maha'ulepu surrounding the Project Site.
13. The Commission herein concludes that the Project is consistent with objectives and policies of the SMA Rules and Regulations and Chapter 205A, Hawaii Rev. Stat. in that:
 - a) The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, and welfare, or compelling public interest. The Project will not have adverse effects by itself or with other individual developments currently existing or reasonably foreseeable through the creation of potential cumulative impact which would result in a substantial adverse environmental or ecological effect, or the elimination of planning options.
 - b) The Project is consistent with the objectives and policies, of Chapter 205A, Hawaii Rev. Stat., and Section 3.0 and 4.0 of the SMA Rules and Regulations.

- c) The development is consistent with the County general plan, zoning and other applicable ordinances.

CZO Use Permit

12. The Kauai County Comprehensive Zoning Ordinance at Title IV, Article 20, Section 8-20.5, authorizes the issuance of a Use Permit for any project for land use offering use compatible with the community in the general vicinity of the proposed development, and for which it is shown that there is no detrimental effect on the health, safety, peace, morals, comfort or general welfare of the contiguous community, and which is consistent with the Zoning Code and the General Plan.
13. The Commission finds as a matter of fact, and concludes as a matter of law that the Applicant has met and satisfied all requirements of Article 20 of the RCO, Section 8-20.1, et seq., for the issuance of the Use Permit.

Class IV Zoning Permit

14. Insofar as the Class IV Zoning Permit is a procedural requirement and requires no substantive review by the Commission in light of the more extensive findings required to issue the CZO Use Permit, supra, the Applicant has met and satisfied all the requirements of Article 19 of the RCO, Section 8-19.1, et seq., for the issuance of a Class IV Zoning Permit.

Special Permit

15. Hawaii Rev. Stat. Chapter 205 (the "State Land Use Law") and Section 15-15-95 of the Hawaii Land Use Commission Rules promulgated thereunder, authorize the Commission to issue Special Permits for unusual and reasonable uses meeting the guidelines therein set forth.
16. Under Hawaii Rev. Stat. § 205-6, Special Permits may be issued for land uses determined to be unusual and reasonable applying these guidelines, and which is not an expressly permitted use within the Agricultural District such as the golf course in this instance, which is not an expressly permitted use within the Agricultural District under Hawaii Rev. Stat. Chapter 205.

17. The Commission finds as a matter of fact, and concludes as a matter of law that the proposed golf course has met and satisfied all requirements of Chapter 205 of the Hawaii Rev. Stat. and the Land Use Rules necessary for the issuance of a Special Permit.

Compatibility with Findings of Fact

18. To the extent any finding of fact contained in this Decision and Order is properly styled a conclusion of law, said finding of fact is hereby incorporated at this part as a conclusions of law.

DECISION AND ORDER

IT IS HEREBY ORDERED that the application by AINAKO RESORT ASSOCIATES and GROVE FARM PROPERTIES, INC. for Special Permit SP-88-6, Use Permit U-88-31, Special Management Area Use Permit SMA(U)-88--10 and Class IV Zoning Permit Z-IV-88-39 to develop a golf course and accessory related uses and structures on approximately 210± acres of land identified by Kauai Tax Map Key: 2-9-09: Por. 1, located in the Koloa region, Pa'a Ahupuaa, County and Island of Kauai, State of Hawaii, is approved and that said permits shall be and are hereby issued, subject to the following conditions and restrictions, all of which shall be applicable to each of said permits:

1. The clubhouse facility, including restaurant and snack shop, shall be connected to an approved wastewater treatment facility. Liquid waste from the proposed clubhouse will be conveyed to either the planned wastewater treatment facility for the new Hyatt Regency Kauai or the Private Wastewater Treatment Work (PWTW) at Poipu Kai upon its expansion to accommodate the sewage from the clubhouse and the hotel. Applicant may institute alternate means for sewage treatment at remote facilities provided the same are approved by the Department of Health.
 - a. A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance with the applicable requirements of Hawaii Rev. Stat., Chapter 27, as amended, and the plans for the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the Department of Health for review and approval.
 - b. In connection with Health Department's review and approval of such plans, Applicant shall obtain approval of its proposed effluent irrigation

system under the applicable requirements of Hawaii Rev. Stat. § 282-1, et seq.

2. As stated in Hawaii Rev. Stat. § 27-21.6, the engineer designing the proposed PWTW is given flexibility and design responsibility; provided, however, the engineer should consider incorporating into the design:
 - a. A sludge holding tank to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant; and
 - b. exposing to the atmosphere the water surface in the aeration tank and clarifier to facilitate ease of operation, repair and maintenance of the facility; and
 - c. a stand-by or emergency power source for electrical powered equipment; and
 - d. provisions to ensure that storm water does not enter the facility.
3. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.
4. The project shall be provided with potable water through the County water system.
5. Prior to the issuance of a building permit the Applicant shall prepare and obtain the Department of Water's approval of construction drawings for necessary water system facilities and shall either construct said facilities or post a performance bond for construction. These facilities shall include: the domestic service connection and the fire service connection. The Applicant shall also submit to the Department of Water the interior plumbing plans with the appropriate backflow prevention device reflected, if the same is required.
6. If applicable, a refund agreement between the Department of Water and the Applicant must be completed, whereby the developer contributes its share to Blackfield Hawaii as provided in the Department of Water's Rules.
7. The Applicant shall pay all applicable charges of the Department of Water as required by the Department's Rules.

8. Grubbed material created in the construction phase of the Project shall be disposed of at a site approved by the Department of Health. Open burning is prohibited.
9. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:
 - a. building elevations, roof design, material color schemes and/or samples;
 - b. landscaping plan(s);
 - c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;
 - d. any and all grading plan(s).
10. The Applicants shall identify the boundaries on the Conservation District with survey stakes or pins and shall notify the Planning Department prior to any construction, grading, improvements or landscaping activities on the overall parcel area in order that an inspection might be conducted. The location of the boundaries shall be discernible and maintained throughout all phases of development of the project.
11. In view of the series of public accesses and facilities, including parking, which were developed and executed over several phases of development within the Poipu Kai resort community, the Applicants shall provide a consolidated easement location map showing all public roadways, pedestrian and vehicular beach accesses, and the respective owners of any easement areas.
12. The Applicants shall pay to the Planning Department the required Environmental Impact Assessment fee, based on the final construction drawings submitted at time of building permit application.
13. In the event the cane haul road fronting the golf course is improved as a major thoroughfare, the applicant shall provide, install and maintain at their expense, on the makai side of the roadway along its entire length, the following:

- a. curbs, gutters and sidewalks designed and constructed in accordance with County standards; and
- b. additional improved pavement width to County standards, for use as a non-vehicular pathway for joggers, pedestrians and bicyclists.

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

14. The Applicants shall within two (2) years from the date of State Land Use Commission approval, complete substantial construction of the project. "Substantial construction" shall mean grading and grassing of no less than 30% of the project site and the completion of building foundations for the golf clubhouse facility. Failure to complete substantial construction within the time period specified shall result in the revocation of the subject permits, pursuant to proper procedures.
15. The Applicants shall discuss, resolve and/or comply with the agency comments and requirements incorporated herein, or imposed hereafter, with the appropriate government agency prior to any building permit approval.
16. The Applicants shall submit a certified shoreline survey to the Planning Department prior to issuance of any grading or building permits dated no earlier than six (6) months from the commencement of any construction activity on the property.
17. The Applicants, pursuant to their representations, shall establish and maintain a golf rate structure incorporating kamaaina rates for local resident players, which structure shall continue, subject to reasonable increases, for the duration of the subject permits.
18. The Applicants shall institute and maintain whatever measures are necessary, including but not limited to filter screens, siltation ponds, etc., to limit to not more than current rates, surface runoff flowing directly or indirectly into the off-shore waters, both during development of and operation of the project. Plans and/or improvements for such runoff prevention

measures are subject to Planning Department review and approval prior to the issuance of any grading permits and prior to the commencement of site work on the property.

19. The Planning Commission shall impose additional conditions, restrictions or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in Chapter 8, KCC, State Land Use District Rules and Regulations, or the Special Management Area Rules and Regulations.
20. Prior to the issuance of any grading or building permits, the Applicants shall resolve with the Planning Department the location and/or relocation of the existing horseback riding trail previously approved by the Planning Commission (Class IV Zoning Permit Z-IV-86-9).
21. Effective dust and soil erosion control measures shall be implemented during all phases of development and operation by the Applicants.
22. Prior to the issuance of any building or grading permit, the Applicants shall flag and create buffer zones around the eight (8) significant archaeological sites identified in the Archaeological Report. Such buffer zones/flagging shall be maintained by the Applicants at all times during the construction/development phase of the project. During grading and construction of the golf course, the Applicants shall have a qualified archaeologist on site to monitor the work. Should anything of historical or archaeological significance be discovered, work in that area shall be stopped for review by the archaeologist. Any information generated from such review shall be forwarded without delay to the Planning Department and State Historic Preservation Officer. The eight (8) significant archaeological sites shall be preserved in the manner reflected in Table 1 of the Archaeological Report, a copy of which is attached hereto and incorporated herein as Exhibit "A" and, where possible, the sites shall be integrated into the golf course layout design.

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

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

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

23. The Applicants shall implement a system of barricades and signage that will be designed to prohibit and exclude all vehicular access on and around the Makawehi sand dune. Such system shall be implemented within three (3) months of the date of Planning Commission approval. The Applicants shall submit a map reflecting the method and location of such barriers and an example or examples of signage, to scale, for review and approval by the Planning Department.
24. Prior to any building and/or grading permit application, the Applicants shall submit for review and approval by the Planning Department, the form of license by which members of the public will be afforded the accesses created in connection with this application. An executed copy shall be submitted prior to the issuance of a certificate of occupancy for the project.
 - a. The license shall provide for vehicular access to the parking facilities described in condition #25 herein, and shall create a public right to utilize such access and the parking facilities for the purposes described in this condition and said condition #25.
 - b. The license shall provide pedestrian access to the shoreline from the parking facilities and shall grant public pedestrian access along the shoreline in the general area of the shoreline trail, reflected on Applicants' Exhibit 1, from the Hyatt Regency Kauai site to the intersection of the northeastern coastal border of the project site and the Conservation District boundary.
 - c. The license shall permit relocation in the future of the various facilities described in this condition and condition #25 herein, subject to the review and approval of the Planning

Commission, and subject to the requirement that the Applicants provide alternate and substantially equivalent substitute accesses and/or parking.

- d. The license shall absolve the County of any liability claims. The Applicants shall be responsible for the maintenance of the access and parking facility areas, together with any improvements installed, erected, placed or constructed thereupon.
25. Concurrent with its development of the project, the Applicants shall construct three (3) unimproved parking facilities at locations as depicted on Exhibit 1 of sufficient dimensions to park 40 cars at one site, and 5 cars at the remaining two sites. Prior to said construction, the Applicants shall stake the subject sites for inspection by the Planning Department. These facilities, together with vehicular access to the facilities, shall officially be made available to the coastal recreational users on the date of the first public opening to the golf course.

During construction, alternate access areas shall be provided to the public. The Applicants shall submit a map reflecting these temporary access areas, and shall publish such map in the local newspaper.
 26. Upon the execution of a lease in favor of Ainako Associates for the property, the Applicants shall, without delay, submit a fully executed copy thereof to the Planning Department, together with any extensions or renewals of said lease. Non-pertinent items, such as lease rentals, may be excised from the required lease, renewal or extension.
 27. The Applicants are restricted from utilizing any pesticides or herbicides on the project area until such time as a report or reports are submitted to the Planning Commission and the Intervenor's counsels of record, concluding that no significant adverse environmental or ecological consequences will result therefrom to the project area, immediate environs, and the waters off-shore from the project area. Should the Applicants petition or move the Planning Commission for modification, amendment or deletion to this condition, notice shall be given to the Intervenor's to attend any meeting or hearing thereon, together with a copy of any petition or motion and accompanying documentation.

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

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GROVE FARM PROPERTIES, INC.

PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES
and GROVE FARM PROPERTIES, INC.

Applicants.

) SPECIAL PERMIT SP-88-6;
) USE PERMIT U-88-31;
) SPECIAL MANAGEMENT AREA
) USE PERMIT SMA(U)-88-10;
) CLASS IV ZONING PERMIT
) Z-IV-88-39
)

080188/2634K/0307A/6390-11

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the
STIPULATION together with the attached joint Findings of Fact,
Conclusions of Law, Decision and Order was made by hand
delivering a copy of same on August 3, 1988, addressed to:



LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 38 PM '88

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PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
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	)	Z-IV-88-39
	)	

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delivering a copy of same on August 3, 1988, addressed to:



LAND USE COMMISSION
STATE OF HAWAII
AUG 18 3 38 PM '88

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Lihue, Kauai, HI 96766

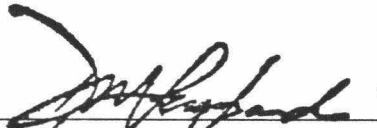
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Mr. Tom Shigemoto
Kauai County Planning Commission
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Lihue, HI 96766

Mr. Rick Tsuchiya
Hearings Officer
Planning Department
County of Kauai
4280 Rice Street
Lihue, Kauai, HI 96766

DATED: Lihue, Kauai, Hawaii, August 3, 1988.



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DAVID ALLAN FELLER
CASE & LYNCH

BRUCE L. LAMON
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Aug 18 3 36 PM '88
LAND USE COMMISSION
STATE OF HAWAII

PLANNING COMMISSION TO THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
	)	

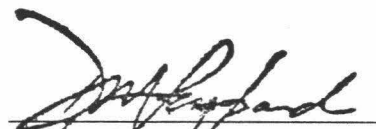
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CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the corrected version of page 1 to the joint Findings of Fact, Conclusions of Law, Decision and Order which was attached to the Stipulation, dated August 3, 1988, was made by hand delivering same as follows:

<u>Name</u>	<u>Date of Service</u>
Stephen Levine, Esq. 4365 Kukui Grove Street, Suite 103 Lihue, Kauai, HI 96766	August 4, 1988
Teresa Tico, Esq. 3016 Umi Street, Suite 211B Lihue, Kauai, HI 96766	August 4, 1988
Lorna Nishimitsu, Esq. Deputy County Attorney County of Kauai 4396 Rice Street Lihue, Kauai, HI 96766	August 4, 1988
Mr. Tom Shigemoto Kauai County Planning Commission 4280 Rice Street Lihue, HI 96766	August 3, 1988
Mr. Rick Tsuchiya Hearings Officer Planning Department County of Kauai 4280 Rice Street Lihue, Kauai, HI 96766	August 3, 1988

DATED: Lihue, Kauai, Hawaii, August 4, 1988.



DENNIS M. LOMBARDI
DAVID ALLAN FELLER
CASE & LYNCH

BRUCE L. LAMON
GOODSILL, ANDERSON, QUINN & STIFEL

Attorneys for
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.

AUG 9 1988

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT
ASSOCIATES and GROVE FARM
PROPERTIES, INC.,

Applicants.

) SPECIAL PERMIT SP-88-6;
) USE PERMIT U-88-31;
) SPECIAL MANAGEMENT AREA
) USE PERMIT SMA(U)-88-1
) CLASS IV ZONING PERMIT
) Z-IV-88-39

) ORDER RULING ON FINDINGS
) OF FACT PROPOSED BY
) INTERVENORS

LAND USE COMMISSION
STATE OF HAWAII
AUG 11 12:17 PM '88

ORDER RULING ON FINDINGS OF FACT
PROPOSED BY INTERVENORS

Pursuant to Hawaii Revised Statutes §91-12, the Planning Commission of the County of Kauai ("Commission") hereby rejects each and every Proposed Finding of Fact ("Findings") timely proposed by Intervenor MALAMA MAHA'ULEPU and OHANA O'MAHA'ULEPU on July 25, 1988 as inconsistent with the Commission's Findings of Fact and/or for the specific reasons set forth below:

1. The following Proposed Findings are rejected because the subject matter of each such Finding is more accurately or completely set forth in the Commission's Findings of Fact at the paragraphs thereof parenthetically indicated after the paragraph of the Findings hereby rejected: 1 (1, 17-20, 24, 25 and

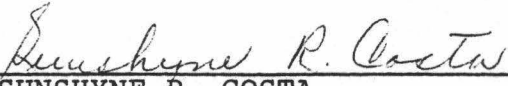
B-1h

35); 2 (18, 19, and 24); 3 (21); 4 (35-36);
10 (27, 93-98); 11 (21, 107-09); 12 (21,
107-09); and 20 (160).

2. The following Proposed Findings are rejected as contrary to the manifest weight of the evidence, unsupported by any competent evidence, and/or irrelevant to any issue before the Commission: 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.
3. The following Proposed Findings are rejected as constituting argument and/or erroneous conclusions of law rather than findings of fact: 11, 12, 13, 15, 16, 17, and 18.

This Order shall be and the same is hereby incorporated with the Findings of Fact, Conclusions of Law, Decision and Order duly adopted by the Commission herein.

DATED: Lihue, Kauai, Hawaii, August 30, 1988.



SUNSHYNE R. COSTA
Chairperson, Planning Commission
of the County of Kauai

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Attorneys for the Interveners
MALAMA MAHAULEPU and
OHANA MAHA'ULEPU

THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
OF)
AINAKO RESORTS ASSOCIATES and)
GROVE FARM COMPANY INCORPORATED;)
Special Management Area Use)
Permit SMA(U) 88-10; Class IV)
Zoning Permit Z-IV-88-39;)
Use Permit U-88-31; Special)
Permit SP-88-6)

INTERVENERS MOTION
TO DEFER FINAL
ARGUMENT TO PERMIT
EXCEPTIONS TO LATE
FILED PROPOSED
FINDINGS OF FACT;
AFFIDAVIT OF STEPHEN
LEVINE

INTERVENERS MOTION TO DEFER FINAL ARGUMENT TO PERMIT
EXCEPTIONS TO LATE FILED PROPOSED FINDINGS OF FACT

The Interveners, MALAMA MAHA'ULEPU and OHANA
O'MAHA'ULEPU, by and through counsel, hereby submit the
following Motion to Defer Final Argument:

(CERTIFICATE OF SERVICE ATTACHED)



Aug 29 12 32 PM '88
LAND USE COMMISSION
STATE OF HAWAII

B-10

This motion is brought pursuant to the Rules of Practice and Procedure of the Planning Commission, County of Kauai, (hereinafter "Rules") section 1-6-16. Although the motion is brought less than 14 prior to the scheduled final arguments in this matter, it is for good cause, as will be shown below.

The Planning Commission of the County of Kauai established a cut-off date for the submission of proposed Findings of Fact, Conclusions of Law, Decision and Order, as being 14 days after the complete transcript of the hearings in this matter were served on all the parties. See section 1-6-18, Rules of Practice and Procedure.

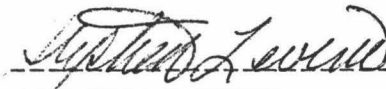
The final portion of the transcript in this matter was served by the Planning Department on 14 July 1988 on all parties. Therefore the cut-off date for all the parties proposed findings had to have been submitted by 28 July 1988. Under the rules each party then has 7 days to formulate and submit exceptions to the proposed findings. See Rules, 1-6-18(d).

In this matter the Planning Department and the Applicants' Grove Farm and Ainako Resorts, have submitted a set of proposed findings, mutually acceptable to both the Department and the Applicants. These proposed findings are contained in 46 single-spaced pages. They were served upon counsel for Malama Maha'ulepu on August 3, 1988, one day before the cut-off for the filing of exceptions in this

matter. This made it impossible to adequately review, and therefore respond to the new proposed findings by the established cut-off date agreed to by the parties.

The Interveners request that they be allowed the full time permitted by the rules to submit exceptions to these late entering findings, and that they be permitted adequate time to prepare for final argument in light of the new submission to the Planning Commission. It is therefore requested that the Interveners be permitted to submit exceptions to the findings submitted by the Department and the Applicants for consideration by the Planning Commission, and that the time for final arguments be rescheduled for a later date.

DATED: Lihue, Kauai, Hawaii, 8 August, 1988.



STEPHEN LEVINE
TERESA TICO

Attorneys for Interveners

THE PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
OF)
AINAKO RESORTS ASSOCIATES and)
GROVE FARM COMPANY INCORPORATED;)
Special Management Area Use)
Permit SMA(U) 88-10; Class IV)
Zoning Permit Z-IV-88-39;)
Use Permit U-88-31; Special)
Permit SP-88-6)
_____)

AFFIDAVIT OF STEPHEN
LEVINE

AFFIDAVIT OF STEPHEN LEVINE

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

STEPHEN LEVINE, being first duly sworn on oath,
deposes and says:

1. That he is an attorney licensed to practice
law in the State of Hawaii;
2. That he represents the Interveners in this
case and is familiar with the proceedings in this matter;
3. That the Planning Commission established a 14
day period for the submission of proposed findings of fact,
conclusions of law, decision and order, following the
issuance of a full transcript from the proceeding;

4. That the full transcript distribution was completed on July 14, 1988;

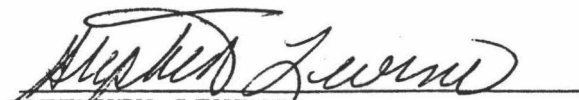
5. That under the Administrative Rules of Practice and Procedure of the Planning Commission, County of Kauai, (hereinafter "Rules"), section 1-6-18(c), all parties had to have submitted their proposed findings by July 28, 1988;

6. That under the Rules, section 1-6-18(d), each party has thereafter 7 days to August 4, 1988 to present exceptions to such proposed findings;

7. That the Planning Department and the Applicants in this matter submitted joint findings of fact on August 3, 1988;

8. That this late filing does not permit adequate time to prepare and submit exceptions to these new proposed findings by the original deadline, and to have them considered by the Commission before the presentation of final arguments in this matter scheduled for August 10, 1988.

FURTHER THE AFFIANT SAYETH NAUGHT

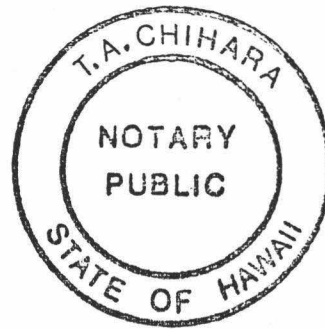

STEPHEN LEVINE

Subscribed and sworn to before me
this 8th day of August, 1988.

T.A. Chihara

Notary Public, State of Hawaii

My Commission expires: 12/18/90



CERTIFICATE OF SERVICE

I hereby certify that a copy of the INTERVENERS MOTION TO DEFER FINAL ARGUMENT TO PERMIT EXCEPTIONS TO LATE FILED PROPOSED FINDINGS OF FACT; AFFIDAVIT OF STEPHEN LEVINE were duly served upon the following parties by hand delivery:

DENNIS M. LOMBARDI (court jacket)
Case & Lynch
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, HI 96813

Attorney for Ainako Resorts Associates
and Grove Farm Properties, Inc.

LORNA NISHIMITSU, ESQ.
Deputy County Attorney
4396 Rice Street
Lihue, Hawaii 96766

Attorney for the Planning Commission
County of Kauai

DATED: Lihue, Hawaii 8 August, 1988.


TERESA S. TICO
STEPHEN LEVINE

PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN RE AINAKO RESORT	)	SPECIAL PERMIT SP-88-6;
ASSOCIATES and GROVE FARM	)	USE PERMIT U-88-31;
PROPERTIES, INC.,	)	SPECIAL MANAGEMENT AREA
	)	USE PERMIT SMA(U)-88-10;
Applicants.	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39
	)	
	)	ORDER RULING ON FINDINGS
	)	OF FACT PROPOSED BY
	)	INTERVENORS
	)	

ORDER RULING ON FINDINGS OF FACT
PROPOSED BY INTERVENORS

Pursuant to Hawaii Revised Statutes §91-12, the Planning Commission of the County of Kauai ("Commission") hereby rejects each and every Proposed Finding of Fact ("Findings") timely proposed by Intervenor MALAMA MAHA'ULEPU and OHANA O'MAHA'ULEPU on July 25, 1988 as inconsistent with the Commission's Findings of Fact and/or for the specific reasons set forth below:

1. The following Proposed Findings are rejected because the subject matter of each such Finding is more accurately or completely set forth in the Commission's Findings of Fact at the paragraphs thereof parenthetically indicated after the paragraph of the Findings hereby rejected: 1 (1, 17-20, 24, 25 and

LAND USE COMMISSION
STATE OF HAWAII
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35); 2 (18, 19, and 24); 3 (21); 4 (35-36);
10 (27, 93-98); 11 (21, 107-09); 12 (21,
107-09); and 20 (160).

2. The following Proposed Findings are rejected as contrary to the manifest weight of the evidence, unsupported by any competent evidence, and/or irrelevant to any issue before the Commission: 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.
3. The following Proposed Findings are rejected as constituting argument and/or erroneous conclusions of law rather than findings of fact: 11, 12, 13, 15, 16, 17, and 18.

This Order shall be and the same is hereby incorporated with the Findings of Fact, Conclusions of Law, Decision and Order duly adopted by the Commission herein.

DATED: Lihue, Kauai, Hawaii, August _____, 1988.

SUNSHYNE R. COSTA
Chairperson, Planning Commission
of the County of Kauai

Tom H. Shigemoto,
Planning Director
Roland D. Sagum III,
Deputy Planning Director
The Planning Department
County of Kauai
4280-A Rice Street
Lihue, Hawaii 96766

Telephone: 245-3919

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LAND USE COMMISSION
STATE OF HAWAII

PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

IN RE AINAKO RESORT ASSOCIATES	)	SPECIAL PERMIT SP-88-6;
and GROVE FARM PROPERTIES, INC.,	)	USE PERMIT U-88-31;
	)	SPECIAL MANAGEMENT AREA
Applicants.	)	USE PERMIT SMA(U)-88-10;
	)	CLASS IV ZONING PERMIT
	)	Z-IV-88-39

CERTIFICATION AS TO TRANSCRIPTS
OF THE PROCEEDINGS

COMES NOW the Planning Department of the County of Kauai,
by and through the undersigned, and hereby certifies that the
transcripts of the proceedings conducted in the above-captioned
matter conducted on May 25, 1988, June 16, 1988, June 23, 1988 and
June 24, 1988, and consisting of a total of six volumes filed with
and maintained by the Planning Department in the files of said
above-captioned matter, together with any corrections made by action
of the Planning Commission of the County of Kauai, are correct.

DATED: Lihue, Kauai, Hawaii, AUGUST 5, 1988.



TOM H. SHIGEMOTO
Planning Director
ROLAND D. SAGUM III
Deputy Planning Director

RECEIVED

AUG 9 1988

PLANNING DEPT.
COUNTY OF KAUAI

LAND USE COMMISSION
STATE OF HAWAII
AUG 29 12 32 PM '88

Attorneys for Applicants
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.

080988/2653K/0315A/6390-11

Applicants Ainako Resort Associates and Grove Farm Properties, Inc., object to the motion filed by Intervenor Malama Mahaulepu and Ohana Maha'u lepu to defer final arguments on this application in view of the stipulation reached by the Applicants and the Planning Director of the County of Kauai on

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August 3, 1988. Intervenors argue that the proposed stipulated findings of fact are too long for him to prepare a response.

The Applicants strenuously object to any further delay in these proceedings. The August 3, 1988 Stipulation was nothing more than a synthesis of the proposed findings of fact earlier submitted by the Planning Department and the Applicants.

As noted by the Intervenors, Rule 1-6-18(c) of the Rules of Practice and Procedure of the Planning Commission (the "Rules") established July 28, 1988 as the submission date for findings of fact proposed by the parties to the proceedings. The Applicants and the Planning Department each filed and personally served on Intervenors' counsel independent proposed findings on July 28, 1988. Intervenors' counsel do not dispute their receipt of those timely filed proposed findings and acknowledge that the seven (7) days afforded to them under the Rules to file objections passed without any action on their part. The Intervenors have waived any right they may have had to file objections to the Proposed Findings of Fact, Conclusions of Law, Decision and Order filed by the Planning Department and the Applicants. Cf. Associated Engineers and Contractors v. State of Hawaii, 58 H. 187, 214-215 (1977) (citing the black letter law that the failure to timely object and state grounds for objection constitutes a waiver of that right and the grounds for objection); Ferguson-Steere Motor Co. v. State Corporation Commission of New Mexico, 288 P.2d 440 (S.C. N.M. 1955) (holding that a failure to timely file

specific findings of fact, was a waiver of the right to require specific findings under the Commission's Rules of Practice and Procedure).

The Stipulation between the Planning Department and the Applicants does not enlarge Intervenor's rights or relieve them from their obligations under the rules to file objections to proposed findings of fact in a timely manner. As detailed in Exhibit A, there is virtually nothing in the proposed stipulated findings of fact which does not appear in either the findings of fact proposed by the Applicants or by the Planning Department. Indeed, there is nothing new in the stipulated findings of fact; it is merely an integrated document containing findings of fact, conclusions of law and conditions compiled nearly verbatim from the Applicants' and Planning Department's proposed findings of fact. If Intervenor's counsel were prepared to assert objections to the proposed findings of fact, they are prepared to submit objections to the proposed stipulated findings of fact and could have easily done so had they wished. The Intervenor's motion is merely another delaying tactic, which has been the underpinning of this entire strategy in this proceeding.^{1/}

^{1/} The Intervenor's failure to level any objections to the proposed findings of fact submitted by the Planning Department and the Applicants when they were due on August 4, 1988 or at any time thereafter strongly suggests that the Intervenor has seized upon the Stipulation as a pretext to justify their own lack of diligence in preparing objections to the findings proposed by the Applicants and the Planning Department.

According to Rule 1-6-10^{2/} of the Rules of Practice and Procedure of the Planning Commission:

Stipulation as to Findings of Fact, Conclusions of Law. Nothing in these rules shall prohibit parties from entering into appropriate stipulations as to findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.

The apparent purpose of this provision is to encourage the parties to resolve their differences by stipulation so as to reduce the necessity for the Planning Commission to resolve differences between parties. In order to reduce the burden on the Planning Commission, there is nothing which would prevent the parties from stipulating to any proposed findings, conclusion, or conditions, even up to the very day of final argument.

Here, the Applicants and the Planning Department were able to agree 7 days prior to final argument, and the Intervenor admits in their motion that they were served with the Stipulation 7 days before the final argument. Therefore, even if the Planning Commission were to regard the Stipulation

^{2/} Applicants believe that the cited Rule controls the timing of when stipulations regarding findings of fact and conclusions of law may be submitted to the Planning Commission for consideration. Rule 1-6-10(2) provides that stipulated findings should be filed with the Commission seven (7) days in advance of a scheduled hearing date unless otherwise permitted by the presiding officer. In this instance the Planning Department/Applicants' stipulation was filed in compliance with this section of the Rule, 7 days in advance of the August 10 hearing date.

as, in effect, an entirely new set of proposed findings of fact proposed by a party, the Intervenor would still be permitted to submit their exceptions within 7 days as set forth in Rule 1-6-18(d) of the Rules. Their failure to do so should be at their own risk. The Intervenor should not be permitted to utilize their voluntary election to waive their right to object as a basis to prejudice the other parties to this proceeding through further delay.

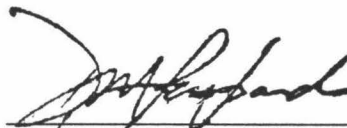
The August 10, 1988, date for final argument and the action hearing on the application was chosen by the members of the Planning Commission after some discussion, and partially as an accommodation as to Intervenor's counsel who indicated that he would not be available on earlier dates which were proposed. With the Commission's busy schedule, the Intervenor undoubtedly know that granting their motion will lead to a significant delay. This delay not only inconveniences the Planning Commission but the various personnel affiliated with both the Planning Department and the Applicants who have rearranged their schedules and worked hard to meet their deadlines in view of the August 10 date. Delay is also prejudicial to the Applicants in view of rising construction costs and carrying costs should the Planning Commission grant approval.

Furthermore, it is questionable what good a delay will do the Intervenor, who have not filed any exceptions or objections to the findings proposed by either the Applicants or

by the Planning Department. Rather, Intervenor's counsel have apparently invested the five (5) days which elapsed between the filing of the Stipulation and the filing of the motion to defer final argument working on that motion instead of determining that the Stipulation injected no new issues into the proceeding.

For all of the foregoing reasons, and for the reasons set forth in Exhibit A, a letter from Applicants' counsel to Intervenor's counsel, it is respectfully submitted that the motion to defer final argument should be denied.

DATED: Honolulu, Hawaii, August 9, 1988.



DENNIS M. LOMBARDI
BRUCE L. LAMON

Attorneys for Applicants
AINAKO RESORT ASSOCIATES and
GROVE FARM PROPERTIES, INC.

CASE & LYNCH

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NELSON K. DOI

* A LAW CORPORATION

August 8, 1988

HAND DELIVERED

Stephen Levine, Esq.
4365 Kukui Grove Street
Suite 103
Lihue, Kauai, HI 96766

Re: Ainako Resort Associates/
Grove Farm Properties, Inc.
Golf Course Application/
Intervenors' Motion to Defer Final Argument

Dear Mr. Levine:

We have received your Motion to Defer Final Argument on Ainako's and Grove Farm's application. We view it as another transparent and meritless attempt to further delay the proceedings in this matter. Your motion omits the salient facts and argues erroneously that the Stipulation between the Applicant and the Planning Department was not timely filed.

As you are aware, the Planning Department and the Applicants each filed their respective Proposed Findings of Fact, Conclusions of Law and Decision and Order on July 28, 1988, as required by Section 1-6-18 of the Planning Commission's Rules of Practice and Procedure. Pursuant to those rules, the Intervenors had through and including August 4, 1988, to file objections to either the Department's or the Applicants' proposed findings. The Intervenors did neither, notwithstanding the fact that you have apparently had the time to issue press releases and make various presentations concerning the Intervenors' position on the application for a golf course.

EXHIBIT "A"

Stephen Levine, Esq.
August 8, 1988
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The Stipulation which has been entered into between the Planning Department and the Applicants is specifically authorized by the Commission's rules at Section 1-6-10. Significantly, the Stipulation was filed on August 3, 1988, 7 days prior to the scheduled hearing for final argument. Moreover, if you review the Stipulation, you will notice that the findings set out in the Stipulation are merely a compilation of the findings contained in the proposed findings filed on July 28, 1988, by the Applicants and the Planning Department. The stipulated findings contain no new material of a substantive nature entitling the Intervenor to a response which they have voluntarily elected to waive by not filing any objections to the proposed findings of the Planning Department and the Applicants.

For your information, the stipulated findings incorporate those findings proposed by the Applicant and filed on July 28, 1988, with the following changes:

Paragraph 1. The definition of Applicant was clarified to insure that the singular reference included both Ainako Resort Associates and Grove Farm Properties, Inc.

Paragraph 70. A typographical error was corrected changing the word "affect" to "effect".

Paragraph 71. This paragraph was deleted in its entirety. Paragraph 27(e) from the Planning Department's proposed findings, filed July 28, 1988, was substituted and corrected to reflect that no "conclusive" evidence had been presented.

Paragraph 72. This paragraph from the Applicant's proposed findings was deleted in its entirety in the stipulated version.

Paragraph 73. This paragraph was renumbered paragraph 72 in the stipulated findings along with the balance of the paragraphs.

Paragraph 74 (stipulated findings, paragraph 73). The phrase "at this time" was added following the word "unnecessary" in the Applicant's proposed draft of this provision.

Stephen Levine, Esq.
August 8, 1988
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Paragraph 95 (stipulated findings, paragraph 94). A typographical error was corrected in this provision deleting the duplication of the verb "has" from the paragraph.

Paragraph 99 (stipulated findings, paragraph 98). The last sentence of this provision was deleted as a finding of fact and replaced as a conclusion of law at paragraph 12 of the stipulated conclusions of law.

Paragraph 108(a) (stipulated findings, paragraph 107(a)). A typographical error was corrected, changing the word "and" to "in" in this provision.

Paragraph 118 (stipulated findings, paragraph 117). The reference contained in Ainako's proposed findings to the Department of Health Standards and product label compliance relative to the use of herbicides and pesticides was deleted to cause the provision to comport with stipulated finding 71 (former Planning Department finding 27e).

Paragraph 155 (stipulated findings, paragraph 154). The modifying phrase "in the 1960's" was deleted.

In summation, the Applicants believe that the Intervenor's have waived their right to object to either the Applicants' proposed findings or the Planning Department's proposed findings in that you failed to object and to timely file your objections on or before August 4, 1988, as required by the rules. The Stipulation between the Planning Department and the Applicant was filed in accordance with the Planning Commission's rules 7 days prior to the scheduled final argument hearing. There is no rule of the Planning Commission which permits objections to be filed by the Intervenor's. Even assuming such a rule existed, the Stipulation is a mere compilation of findings proposed by the Planning Department and the Applicant, each of which were filed previously, and thus, the Intervenor's should not be entitled to additional time to object to findings where no objections had been previously filed. Even if the rules provided the Intervenor's time to object to the stipulated findings filed with the Planning Commission, Intervenor's have had an adequate opportunity after the August 3, 1988, service of the stipulated findings and prior to the scheduled hearing on August 10, 1988, to file objections.

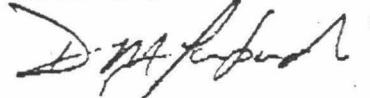
Stephen Levine, Esq.
August 8, 1988
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The Applicant will, of course, be filing a formal response to the Intervenor's motion citing the grounds we believe support the denial of your Motion. This letter is not intended to limit, nor shall it limit, the scope of that response.

Lastly, I would appreciate the same courtesy I have afforded to you with respect to pleadings filed by the Intervenor in connection with this matter. Please serve them on me at my office in Honolulu. In each instance that I have served you with materials, I have had them personally delivered to you or Ms. Tico. I do not deem that service on my Kauai office's court jacket is adequate to provide to me notice of actions which you intend to take in this matter and I believe it has been misused by you in the past to delay my receipt of materials which you have filed with the Planning Commission. As an alternative, a simple phone call to my Kauai office will insure my receipt of materials which you file with the Planning Department. Any one of the staff at the Kauai office would be pleased to travel to your office to pick up materials that you file in this matter. I should also note that in reviewing the certificate of service which is attached to your motion, you have omitted to serve Mr. Lamon who is co-counsel for the Applicants. I am aware that Mr. Lamon has requested of you, in writing, that Mr. Lamon be served with materials filed in this case. I believe your omission is notable and should be avoided in the future.

Yours truly,

CASE & LYNCH



Dennis M. Lombardi

DML:smc/2649(6390-11)

cc Teresa Tico, Esq.

Bruce L. Lamon, Esq.

Mr. Tom Shigemoto, Planning Director

Lorna Nishimitsu, Deputy Corporation Counsel

Mr. David W. Pratt

Mr. Mel Ventura

- Runoff - "prohibited" vs. "limited"
- Need municipal golf course rather than private.

SP88-369 AINAKO RESORT ASSOCIATES
AND GROVE FARM PROPERTIES,
INC (KAUAI)

FOLDER 2 of 3