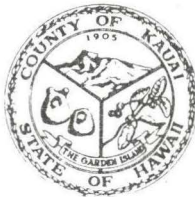


SP88-369 AINAKO RESORT ASSOCIATES AND GROVE FARM
PROPERTIES, INC. (3 of 3)



COUNTY COUNCIL

RONALD KOUCHI, Chairman
JAMES TEHADA, Vice Chairman
BILL KAPO ASING
MAXINE CORREA
JESSE FUKUSHIMA
MAURICE MUNECHIKA
JOANN A. YUKIMURA
Ph. (808) 245-4771



4396 RICE STREET
LIHUE, KAUAI, HI 96766

OFFICE OF THE COUNTY CLERK

JEROME Y. K. HEW, County Clerk
C. BUNJI SHIMOMURA, Deputy Clerk

Ph. (808) 245-4785

September 8, 1988

Mr. Renton L.K. Nip, Chairman,
and Members of the State
Land Use Commission
Old Federal Bldg., Room 104
335 Merchant Street
Honolulu, HI 96813

SEP 12 12 15 PM '88
LAND USE COMMISSION
STATE OF HAWAII

Chairman Nip and Members:

As directed, we are transmitting a copy of Resolution No. 97, Draft 1, entitled, RESOLUTION URGING THAT THE AREA PROPOSED FOR A GOLF COURSE AT PA'A, POIPU, REMAIN IN THE STATE LUC "AGRICULTURAL DISTRICT". This resolution was adopted by the Kauai County Council at its meeting held on September 6, 1988.

If you have any questions, please call the Council Services Division at 245-4771.

Sincerely,

JEROME Y.K. HEW
County Clerk

/bhd

enc.

COUNTY COUNCIL

COUNTY OF KAUAI

Resolution

No. 97, Draft 1

SEP 12 12 16 PM '88
LAND USE COMMISSION
STATE OF HAWAII

RESOLUTION URGING THAT THE AREA PROPOSED FOR A GOLF COURSE AT PA'A, POIPU REMAIN IN THE STATE LUC "AGRICULTURAL DISTRICT"

WHEREAS, An 18-hole championship caliber golf course is proposed for a 210-acre site in the Pa'a area at Poipu, Kauai; and

WHEREAS, The site of the golf course and related facilities, TMK: 2-9-1: Por. 1, is designated "Agricultural" by the State Land Use Commission (LUC), classified "Agricultural" in the Kauai General Plan (Chapter 7, Kauai County Code 1987), zoned "Agriculture" and "Open" in the County of Kauai's Comprehensive Zoning Ordinance (Chapter 8, K.C.C. 1987), and supplemented by the Koloa-Poipu-Kalaheo Development Plan Ordinance (Chapter 10, Article 6, K.C.C. 1987) in regulating use and development practices in the area; and

WHEREAS, The Koloa-Poipu-Kalaheo Development (KPKD) Plan report, which serves as the basis of the KPKD Plan Ordinance, recommends that development toward Maha'ulepu should not occur beyond the existing State Urban District and that coastal lands particularly should remain undeveloped, other than compatible, open space recreational uses; and

WHEREAS, The applicant represented that it was not seeking urban districting from the LUC; and

WHEREAS, The Planning Commission approved the golf course without recommending that the applicant seek urban districting; and

WHEREAS, While there is diverse opinion in the local community about the development of said golf course, there is a common concern about the overall, future development of the Maha'ulepu area and a strong consensus that any development in this area would be premature at this time; and

WHEREAS, The Koloa/Poipu area presently lacks sufficient infrastructure to support resort development beyond the existing urban district; and

WHEREAS, There is a strong community consensus, among both opponents and supporters of the golf course, that the golf course area should remain in its current LUC "Agricultural" classification, which would still allow for the development of a golf course and also allay concerns about urban encroachment into the Maha'ulepu area enjoyed by residents and visitors alike; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, That it urges the State Land Use Commission not to require redistricting of the site of the proposed golf course and related facilities in the Pa'a area of Poipu, Kauai (TMK: 2-9-1: Por. 1), to "Urban" as part of the requested special permit processing.

BE IT FURTHER RESOLVED, That this resolution be forwarded to the State Land Use Commission; Ainako Resort Associates; Grove Farm Properties, Inc.; Malama Maha'ulepu; Ohana o Maha'ulepu; 1000 Friends of Kauai; Sierra Club; and Kauai Planning Commission/Department.

INTRODUCED BY: /s/ JoAnn A. Yukimura

CERTIFICATE OF ADOPTION

	Aye	No	A/C
Asing	X		
Correa	X		
Fukushima	X		
Kouchi	X		
Munehika	X		
Tehada	X		
Yukimura	X		
	7	0	0

We hereby certify that Resolution No. 97/Draft 1 was adopted by the Council of the County of Kauai, Lihue, Kauai, Hawaii, on September 6, 1988.

JoAnn A. Yukimura
County Clerk

Ronald Kouchi
Chairman & Presiding Officer

Dated 9/6/88

205-5.2 PLANNING AND ECONOMIC DEVELOPMENT

- (1) Hearings shall be held at locations which are in close proximity to those areas proposed for designation. A public notice of hearing, including a description of the proposed areas, an invitation for public comment, and a statement of the date, time, and place where persons may be heard shall be published and mailed no less than twenty days before the hearing. The notice shall be published on three separate days in a newspaper of general circulation statewide and in the county in which the hearing is to be held. Copies of the notice shall be mailed to the department of planning and economic development, and the planning commission and planning department of the county in which the proposed areas are located.
- (2) The hearing shall be held before the board, and the authority to conduct hearings shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments either orally or in writing. The department of planning and economic development and the county planning department shall be permitted to appear at every hearing and make recommendations concerning each proposal by the board.
- (3) At the close of the hearing, the board may designate areas as geothermal resource subzones or announce the date on which it will render its decision. The board may designate areas as geothermal resource subzones only upon finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area.
- (e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to the provisions of chapter 91. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation; provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from geothermal sources is taking place.
- (f) This Act shall not apply to any active exploration, development or production of electrical energy from geothermal sources taking place on June 14, 1983, provided that any expansion of such activities shall be carried out in compliance with its provisions. [L 1983, c 296, pt of §3]

Note

In subsection (f) "This Act" refers to L 1983, c 296.

Revision Note

"June 14, 1983" substituted for "the effective date of the Act".

§205-6 Special permit. 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. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for

permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The county planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

Special permits for land the area of which is greater than fifteen acres shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant.

A copy of the decision together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres shall be transmitted to the land use commission within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure. [L 1963, c 205, pt of §2; Supp. §98H-6; HRS §205-6; am L 1970, c 136, §1; am L 1976, c 4, §2; am L 1978, c 166, §1; am L 1979, c 221, §1; am imp L 1984, c 90, §1]

Attorney General Opinions

Special permits cannot be granted to authorize uses which have effect of making boundary change or creating new district. Att. Gen. Op. 63-37.

Authority of land use commission to modify permit approved by county commission discussed. Att. Gen. Op. 68-30.

Land use commission is not authorized to review county planning commission's denial of request for modification of special permit. Att. Gen. Op. 77-4.

Case Notes

Former provision requiring that a public hearing on an application for a special permit be held within one hundred twenty days was directory not mandatory. 62 H. 666, 619 P.2d 95.

Validity of attaching conditions for approval of special permit. 62 H. 666, 619 P.2d 95.

Recreational theme park on agricultural land was not "unusual and reasonable use" which would qualify for special permit. 64 H. 265, 639 P.2d 1079.

§205-7 Adoption, amendment or repeal of rules. The land use commission shall adopt, amend or repeal rules relating to matters within its jurisdiction in the manner prescribed in chapter 91. [L 1963, c 205, pt of §2; Supp. §98H-7; HRS §205-7; am L 1975, c 193, §6]

PETITION RECEIVED: August 18, 1988

SP88-369 AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.

PETITIONER'S ATTORNEY

Dennis Lombardi, Esq.
Case & Lynch
Suites 2500 & 2600, Grosvenor Center
Mauka Tower
737 Bishop Street
Honolulu, HI 96813
PH: 547-5400

PETITIONER'S ATTORNEY

Bruce L. Lamon, Esq.
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813
PH: 547-5600

COUNTY

TOM SHIGEMOTO, Planning Director
Planning Dept., County of Kauai
4280 Rice Street
Lihue, HI 96766

COUNTY'S ATTORNEY

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

INTERVENOR

TERESA TICO, Esq.
Attorney for Malama Mahaulepu
3016 Umi Street, Suite 211B
Lihue, HI 96766
PH: 245-9696

INTERVENOR

STEPHEN LEVINE, Esq.
Attorney for Ohana Maha'Ulepu
4365 Kukui Grove Street, Suite 103
Lihue, HI 96766
PH: 245-1855

Docket No. and Petitioner: SP88-369 AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.

Page No. : 2

[illegible]



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

November 29, 1988

NOTIFICATION OF SPECIAL PERMIT
DECISION BY STATE LAND USE COMMISSION

To all concerned agencies:

The Findings of Fact, Conclusions of Law and Decision
and Order for the following special permit petition has been
filed by the Land Use Commission:

<u>Petition</u> <u>Docket No.</u>	<u>Special Permit Requested</u>	<u>LUC Action on September 29, 1988</u>	<u>Date of</u> <u>Decision</u> <u>and Order</u>
SP88-369 AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.	For a Special Permit to Establish an 18-Hole Golf Course, Driving Range, Putting Green, Clubhouse and Parking, and Accessory Related Uses and Structures on Approximately 210 Acres of Land Situate Within the Agricultural District at Pa'a, Koloa, County of Kauai	Approved special permit for approximately 210 acres at Pa'a, Koloa, County of Kauai, TMK: 2-9-01: portion of parcel 1 (see map attached)	Nov. 23, 1988

Should you have any questions on the above, please do
not hesitate to contact this office.

Sincerely,

ESTHER UEDA
Executive Officer

EU:to
Att.

NOTIFICATION OF BOUNDARY AMENDMENT DECISIONS BY LUC

Concerned Agencies

State (all petitions)

1. Office of State Planning - (1) Harold Masumoto
(2) LUD-Abe Mitsuda
2. Dept. of Transportation - Office of the Director
3. Board of Land & Natural Resources - Office of the Chairman
4. Dept. of Education - Facilities & Auxiliary Services Branch
5. Office of Environmental Quality Control
6. USDA Soil Conservation Service - Attention: Harry Sato
7. Board of Agriculture - Office of the Chairman
8. C&C, Dept. of Finance - Mapping Section
9. Deputy Attorney General - Robert A. Marks

City & County of Honolulu (Oahu petitions only)

1. Dept. of General Planning - Chief Planning Officer
2. Dept. of general Planning - Division Head,
Policy Analysis Division
3. Dept. of Land Utilization - Director
4. Planning Commission - Executive Secretary
5. Board of Water Supply - Manager and Chief Engineer
6. Dept. of Public Works - Director
7. C&C, Dept. of Finance - Property Assessment Section
8. C&C, Dept. of Finance - Property Technical Office

Hawaii County (Hawaii petitions only)

1. Dept. of Planning - Director
2. Planning Commission - Chairman
3. Dept. of Water Supply
4. Dept. of Public Works
5. Real Property Tax Office

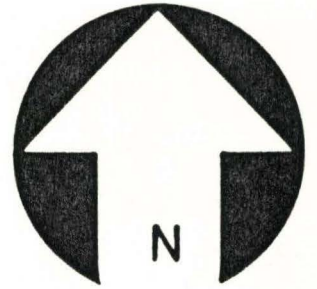
Maui County (Maui petitions only)

1. Dept. of Planning - Director
2. Planning Commission - Chairman
3. Dept. of Water Supply
4. Dept. of Public Works
5. Real Property Tax Division

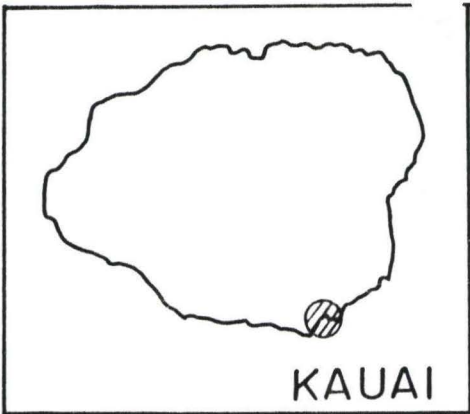
Kauai County (Kauai petitions only)

1. Dept. of Planning - Director
2. Planning Commission - Chairman
3. Dept. of Water Supply
4. Dept. of Public Works
5. Real Property Division

M
A
H
A
U
L
E
P
U



SCALE:
1" = ±2000'



KAUAI



KOLOA MILL

PUUHI
RESERVOIR

W
E
L
I
W
E
L
I

POIPU ROAD

POIPU

KEONILOA
BAY

MAKAWEHI

MAKAHUENA

LOCATION MAP

SP88 - 369

AINAKO RESORT -
ASSOCIATES AND
GROVE FARM PROPERTIES

T. M. K.: 2 - 9 - 01: POR 01

PAA, KOLOA, KAUAI



APPROVED AREA

EXHIBIT B

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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

DOCKET NO. SP88-369

AINAKO RESORT ASSOCIATES
AND GROVE FARM
PROPERTIES, INC.

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

NOV 23 1988

Date

by

Esther [Signature]
Executive Officer

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

NOV 23 11 39 AM '88
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

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

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

FINDINGS OF FACT

Procedural Matters

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Description of the Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of Proposed Use

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

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

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

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

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

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

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

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

State and County Plans and Programs

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

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

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

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

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

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

Hydrology and Drainage

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

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

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

Fauna

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

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

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

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

Flora

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

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

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

64. The Applicant and 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.

Air Quality

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

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

Noise

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

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

68. The proposed implementation of the Project at the Property is not expected to increase noise levels in the long-term. An increase in traffic, which would be principal source of long-term noise level increase, is not expected by virtue of implementation of the proposed Project.

Consequently, the development will not have any substantial adverse environmental or ecological effect in terms of noise. To the extent that noise may be a concern, roadside landscaping will buffer noise emanating from automotive vehicles.

Archaeological and Historical Resources

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

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

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

71. The 8 sites recommended for preservation by both the Applicant's and the 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 Property. Site T-9 is located within the golf course boundary. Site T-2 is within the overall Property located atop Pu'u Ainako and therefore not within the limits of golf fairways nor within any area proposed for improvement by Applicant. Site T-3 is a large stone-stepped platform situated on the seaward side of Pu'u Ainako and is seemingly located on the Property boundary. Site T-3, however, is not within an area proposed for construction on the golf course or any improvements associated with the golf course. Sites T-10, T-11 and Site 3216 should be considered a single site complex consisting of stepped platforms, the larger of which, T-10 is located within the Conservation District outside the boundary of the Property. The smaller platforms, sites T-11 and 3216 appear to be within the Property.

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

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

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

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

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

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

Views

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

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

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

Biological/Ocean Marine Resources

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

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

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

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

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

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

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

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

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

Economic Impact

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

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

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

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

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

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

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

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

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

Public Facilities and Services

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

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

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

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

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

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

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

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

Access

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

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

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

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

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

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

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

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

Grove Farm's Plans

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

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

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

109. Grove Farm Company's Pa'a/Maha'ulepu plans, 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 Property require substantial further study and may require substantive change before Grove Farm Company, Incorporated, will be in a position to seek governmental approval of any of the proposed land uses considered.

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

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

Need

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

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

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

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

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

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

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

Hawaii State and County General Plan

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

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

Agency Comments

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

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

Conformance With Special Permit Tests

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

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

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

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

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

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

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

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

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

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

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

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

Recommendations of the Planning Commission

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

acres of land subject to the following conditions and restrictions:

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

- c. a stand-by or emergency power source for electrical powered equipment; and
 - d. provisions to ensure that storm water does not enter the facility.
- "3. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.
- "4. The project shall be provided with potable water through the County water system.
- "5. Prior to the issuance of a building permit the Applicant shall prepare and obtain the Department of Water's approval of construction drawings for necessary water system facilities and shall either construct said facilities or post a performance bond for construction. These facilities shall include: the domestic service connection and the fire service connection. The Applicant shall also submit to the Department of Water the interior plumbing plans with the appropriate backflow prevention device reflected, if the same is required.
- "6. If applicable, a refund agreement between the Department of Water and the Applicant must be completed, whereby the developer contributes its share to Blackfield Hawaii as provided in the Department of Water's Rules.
- "7. The Applicant shall pay all applicable charges of the Department of Water as required by the Department's Rules.
- "8. Grubbed material created in the construction phase of the Project shall be disposed of at a site approved by the Department of Health. Open burning is prohibited.
- "9. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:
- a. building elevations, roof design, material color schemes and/or samples;

- b. landscaping plan(s);
 - c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;
 - d. any and all grading plan(s).
- "10. The Applicants shall identify the boundaries on the Conservation District with survey stakes or pins and shall notify the Planning Department and attorneys of record for the 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."

CONCLUSIONS OF LAW

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

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

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Done at Honolulu, Hawaii, this 23rd day of November, 1988
per motions on September 29, 1988 and November 17, 1988.

LAND USE COMMISSION
STATE OF HAWAII

By *T. P. Tacbian*
TEOFILO PHIL TACBIAN
Commissioner

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

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

By *Toru Suzuki*
TORU SUZUKI
Commissioner

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

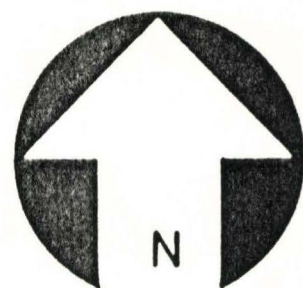
Table 1.

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

Preservation Measures	Site Number							
	T-2	T-3	T-7	T-8	T-9	T-10	T-11	3216
<u>Further Data Collection</u>								
Detailed Recording	+	+	+	+	+	+	+	+
Planetable mapping	+	+	+	+	+	+	+	+
Surface profiles	+	+	+	+	+	+	+	+
Photographs	+	+	+	+	+	+	+	+
Written description	+	+	+	+	+	+	+	+
Surface Collections (artifacts/midden)	+	+	+	+	+	+	+	+
Test Excavations	+	+	-	-	+	+	+	+
Structural data	+	+	-	-	+	+	+	+
Dating samples	+	+	-	-	+	+	+	+
Portable remains	+	+	-	-	+	+	+	+
Human burials	-	-	-	-	-	-	?	?
<u>Treatments - Conservation</u>								
Resource Barking	-	-	+	+	-	-	-	-
Clearing/Cleaning	-	-	+	+	-	-	-	-
<u>Treatments - Interpretation</u>								
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.

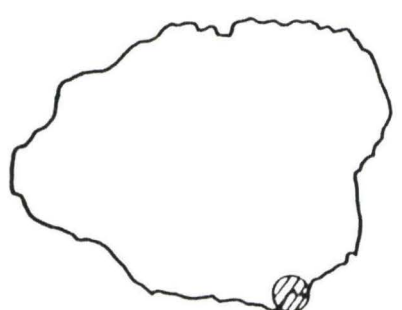
EXHIBIT A



SCALE:
1" = ±2000'

M
A
H
A
U
C
L
E
P
U

P
A
A



KAUAI

KOLOA MILL

PUUHI
RESERVOIR

W
E
L
I
W
E
L
I

POIPU ROAD

POIPU

KEONILOA
BAY

MAKAWEHI

MAKAHUENA

LOCATION MAP

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

 APPROVED AREA

EXHIBIT B

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

CERTIFICATE OF SERVICE

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

CERT. TOM H. SHIGEMOTO, Planning Director
 Planning Department, County of Kauai
 4280 Rice Street
 Lihue, Hawaii 96766

CERT. DENNIS LOMBARDI, ESQ., Attorney for Petitioner
 Case & Lynch
 Suites 2500 & 2600, Mauka Tower
 737 Bishop Street
 Honolulu, Hawaii 96813

CERT. BRUCE L. LAMON, ESQ., Attorney for Petitioner
 Goodsill, Anderson, Quinn & Stifel
 1600 Bancorp Tower
 130 Merchant Street
 Honolulu, Hawaii 96813

CERT. TERESA TICO, ESQ.
 Attorney for Intervenor Malama Mahaulepu
 3016 Umi Street, Suite 211B
 Lihue, Hawaii 96766

P-555 274 255

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

SP88-369/Ainako Resort Associates & Grove Farm Prop.

Sent to Tom H. Shigemoto	
Street and No. 4280 Rice Street	
P.O., State, and ZIP Code Lihue, HI 96766	
Postage	\$ 2.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 4.00
Postmark or Date	



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



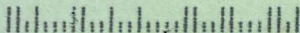
PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813



P 555 274 256

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to

Bruce L. Lamon, Esq.

Street and No.

737 Bishop St. Ste. 1600

P.O. State and ZIP Code

Honolulu, HI 96813

Postage

\$ 2.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date Delivered

.90

Return Receipt showing to whom,
Date, and Address of Delivery

TOTAL Postage and Fees

4.00

Postmark or Date



SP88-369/Ainako Resort Associates & Grove Farm Prop.

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/Ainako Resort Assoc. & Grove Farm

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

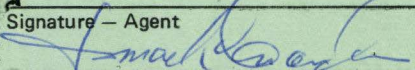
3. Article Addressed to:
 Bruce L. Lamon, Esq.
 Goodsill, Anderson, Quim & Stifel
 1600 Bancorp Tower
 130 Merchant Street
 Honolulu, HI 96813

4. Article Number
 P-555 274 256

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
 X

6. Signature — Agent
 X 

7. Date of Delivery
 11-25-88

8. Addressee's Address (*ONLY if requested and fee paid*)

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813

P-555 274 257

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to

Dennis Lombardi, Esq.

Street and No.

737 Bishop, Ste. 2500&2600

P.O. State and ZIP Code

Honolulu, HI 96813

Postage

\$ 2.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date Delivered

.90

Return Receipt showing to whom,
Date, and Address of Delivery

TOTAL Postage and Fees

\$ 4.00

Postmark or Date



SP88-369/Ainako Resort Associates & Grove Farm Prop.

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/Ainako Resort Assoc. & Grove Farm

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person, delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

Dennis Lombardi, Esq.
Case & Lynch
Suites 2500 & 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, HI 96813

4. Article Number

P-555 274 257

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

Stephen D. Whittaker

7. Date of Delivery

11-25-88

8. Addressee's Address (*ONLY if requested and fee paid*)

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813

P 555 274 254

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

P'S Form 3800, June 1985

SP88-369/Ainako Resort Associates & Grove Farm Prop.

Sent to

Teresa Tico, Isq.

Street and No.

3016 Umi St., Ste 211B

P.O., State and ZIP Code

Lihue, HI 96766

Postage

\$ 2.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date Delivered

.90

Return Receipt showing to whom,
Date, and Address of Delivery

TOTAL Postage and Fees

\$ 4.00

Postmark or Date



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/Ainako Resort Assoc.& Grove Farm

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

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

4. Article Number

P-555 274 254

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

C. W. Shinoda

7. Date of Delivery

11/25/88 SJA

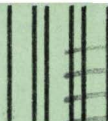
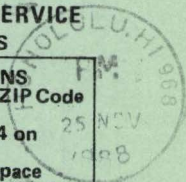
8. Addressee's Address (ONLY if requested and fee paid)

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below.

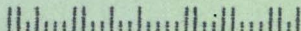
State of Hawaii

LAND USE COMMISSION

Rm. 104, Old Federal Bldg.

335 Merchant Street

Honolulu, Hawaii 96813



555 274 253

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to Stephen Levine, Esq.	
Street and No. 4365 Kukui Grove St., #103	
P.O., State and ZIP Code Lihue, HI 96766	
Postage	\$ 2.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 4.00
Postmark or Date	



SP88-369/Ainako Resort Associates & Grove Farm Prop.

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/Ainako Resort Assoc. & Grove Farm

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

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

4. Article Number

P-555 274 253

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

8. Addressee's Address (*ONLY if requested and fee paid*)

6. Signature — Agent

X *Robina Pimental*

7. Date of Delivery

11/28/88

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

**RETURN
TO**



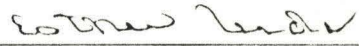
Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813

DOCKET NO. SP88-369/AINAKO RESORT ASSOCIATES AND GROVE FARM
PROPERTIES, INC.

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

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



ESTHER UEDA
Executive Officer

SIERRA CLUB
KAUA'I GROUP OF THE HAWAI'I CHAPTER
P.O. BOX 3412
LIHU'E, HI 96766

ORIGINAL

September 26, 1988

Land Use Commission
Old Federal Building
335 Merchant Street
Room 104
Honolulu, HI 96766

LAND USE COMMISSION
STATE OF HAWAII
OCT 4 1 09 PM '88

Ladies & Gentlemen:

Re: Special Management Area Use Permit; TMK:2-9-01: Por.1

The Kaua'i Group of the Sierra Club wishes to go on record requesting the Land Use Commission to deny the application by Ainako Resort Associates and Grove Farm Properties, Inc., for the above-mentioned permit. We feel that the land in question for their proposed 210-acre golf course should remain in agriculture and conservation land classifications.

We are also requesting the Land Use Commission to require the applicants to submit an environmental impact statement, which has been a precedent in all golf course applications previously proposed in this state.

Sincerely,



Janis Lyon
Chair

cc: Phil T. Tacbian
Sierra Club, Hawai'i Chapter

State Land Use Commission
Old Federal Building
335 Merchant St. Rm 104
Honolulu, HI 96766

LAND USE COMMISSION
STATE OF HAWAII
OCT 4 1 14 PM '88

To our honorable appointees to the State Land Use Commission:

Regarding the area on the South Shore of Kauai, known as Paa-Mahaulepu: We appeal to you to deny any request to upzone this location from its current designation as Agriculture/and Conservation zoning as directed by our most recent General Plan and Regional Plan.

We further urge denial of the Special Use Permit (or S.M.A.) ^{T.M.K. 2-9-01} being requested by Ainaiko/Ventura Associates for the purpose of constructing a golf course plus amenities on land designated as prime agricultural (A or B) which is specifically prohibited by State law 205-A.

Furthermore we strongly urge you to require Ainaiko Associates to provide an Environmental Impact Statement (EIS) for the Paa-Mahaulepu ahupuaa as has been done for other golf courses.

in the state.

Mahalo for your consideration
Aloha

~~Debrah C. Carter~~
~~Debrah C. Carter~~

P.O. Box 826
Kalaheo, Kauai, HI 96741

c.c. Phil Jackson

ORIGINAL

2829 Milo Hae Loop
Koloa, Hi. 96756
September 26, 1988

LAND USE COMMISSION
STATE OF HAWAII
OCT 4 1 13 PM '88

Land Use Commission
State of Hawaii

Dear Commission Members:

You are hearing the request from the Ainako Developers to build a golf course in the Pa'a/Maha'ulepu area. We have been deeply disturbed by this plan as this area is of great significance to the community at large. The fact is that the community has clearly asked that there be no development in this area beyond the Hyatt Hotel itself (see Koloa/Poipu General Plan). In addition, there seems to be a clear statement by the legislature to prevent golf course development on A&B ag land.

Beyond these points, we ask you to require an EIS (Environmental Impact Statement) to be prepared for this area. It is appalling to think of impacting this special wild area without seriously considering the ramifications of that decision. We understand that you have had the benefit of an EIS on all your other golf course decisions and hope that you will seek the same thorough information again.

Thank you for your consideration of our views.

Sincerely,

Tom Cassidy
Annette Cassidy

Tom Cassidy
Annette Cassidy

We, the undersigned, request the
Land Use Commission to require an
EIS (Environmental Impact Statement)
for the land of Pea/Makani
which is involved in the Airaka
Application.

Name

Address

Kathryn G. Thompson
W. Stephen Bogardus
Adrienne Fukuyama
CISO LAGMAY
MUCHO SARONITMAN

P.O. Box 1147 Kalahao, Kauai 96741
P.O. Box 1006, LAAHAI, Kauai 96765
323 Kamohila rd Wailua
Kauai 96746
5171 KULA RD. KAPAA, KAUAI, 96746
RR# 1 BOX 366-K Kapaa kauai 9674
6938 POMAIIKAI ST Kapaa
420 WAILUA KII ST KAPAA HI 96746
6034 KOLOPU ST KAPAA HI 96746
6034 KOLOPU ST KAPAA HI 96746
346 Kamohila Rd, Kapaa, HI 96746
P.O. Box 528, Kapaa HI 96746

MARY DICKENS
Sharon A. Blith
Selen Zwick
Russ MacPherson
Carole Rivard
Chris Sheaffer
Robert Thompson
Kaleo Parters

P.O. Box 1147 Kolohe 96741
P.O. Box 113 Kapaa 96746

Oct 4 1 13 PM '88
LAND USE COMMISSION
STATE OF HAWAII

ASTON

Hotels & Resorts

STATE OF HAWAII
LAND AND NATURAL RESOURCES
DIVISION

DEC 4 1 13 PM '88

Sept 26, 1988

Land Use Commission

ORIGINAL

As residents of Kauai we are opposed to the application being made for a golf course in the Pa'ā Maha'ulepu area for the following reasons:

OCT 14 1 20 PM '88
LAND USE COMMISSION
STATE OF HAWAII

- ① We wonder whether the application met the Special Management area permit requirements and we feel an E.I.S. should be required.
- ② Approval of the golf course is inconsistent with the Area Development Plan that recommended no development along the Maha'ulepu Coast beyond the Hyatt Hotel. We feel the Koloa, Poipu, Kahalo Development Plan is more definitive than the County general plan and should be the leading document on the subject.
- ③ The land should remain in sugar according to Hawaii revised statutes Sec. 205-4.5, which prohibits golf courses on ag. land rated A or B

Thank you

Fred + Diane Jager
1951 Muku Pl Koloa, Kauai

ORIGINAL

LAND USE COMMISSION
STATE OF HAWAII

Oct 4 1 10 PM '88

Box 8636

KIHUE, HI

96766

September 25, 1988

10:

STATE LAND USE COMMISSION

I am writing to you in reference to
the Mahalapuu-Paa area of Kauai.

I ask your careful consideration of the
request for land use in this area which
constitutes one of the last untouched
coast lines in Kauai, as well as the
site of archaeological relics and the highest
sand dunes in the state.

We also believe that an Environmental Impact
Study should be conducted in this area,
as the ocean biomass is considerable
and varied, and there are some
species which will be uprooted with
possibility of extinction.

We ask your consideration of this area,
and for preservation of the land in
its natural and pristine beauty.

Thank you for your consideration.

Sincerely,

Elizabeth WILCOX

Sept. 25, 1988

ORIGINAL

OCT 4 1 12 PM '88
LAND USE COMMISSION
STATE OF HAWAII

DEAR LAND USE Commission members,
AS A PAST MEMBER OF THE KOLOA-
POLOU - KALAHED DEVELOPMENT PLAN.
WHICH RECOMMENDED THE FOLLOWING.
LAND USE USAGE - NO DEVELOPMENT
PAST THE URBAN ZONE OF THE
POLOU / PAA DISTRICT. (HYATT HOTEL
SITE) WE SPENTED HUNDREDS OF
HOURS & MONEY TO PLAN THE
ZONING FOR SAID LANDS IN THE
ENTIRE DISTRICT. THE WISH OF THE
PEOPLE WAS NO DEVELOPMENT OF ANY
SORTS ON THE COASTLINE IN THE
MAHAULEPU AREA. PLEASE DENY
APPROVAL OF THE GOLF COURSE
APPLICATION FOR AINAKO DEVELOPMENT.

DAVID CHANG
P.O. BOX 1119
KOLOA, HI 96756

ALOHA
David Chang.

ORIGINAL

September 22, 1988

Land Use Commission
Old Federal Bldg.
335 Merchant Street Room 104
Honolulu, HI 96813

LAND USE COMMISSION
STATE OF HAWAII
OCT 4 1 12 PM '88

Re: Ainako Development's Proposed Golf Course in Pa'a

Dear Commissioners:

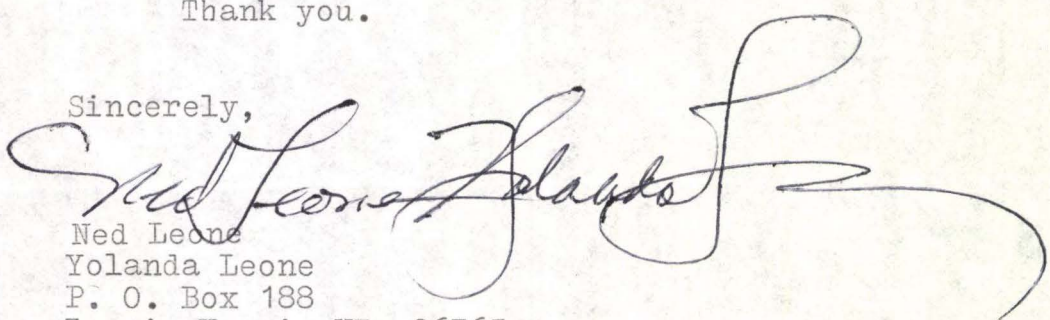
If development on this property now zoned Agriculture should be approved, it should be done only after very careful study of the effects on the environment. There is now very little undeveloped coastal land on the South shore and should development begin, there will be many adverse effects.

Recently, I have witnessed flocks of Nene geese, monk seals and turtles in this coastal area. Not only endangered animals frequent this area, but many residents and tourists enjoy this natural undeveloped coastline (which is now becoming more and more limited).

Please consider the importance of an "EIS" from the developer before any decision is made on this golf course and its many structures. Once development begins, we can never return this area to its beautiful, open and necessary environment.

Thank you.

Sincerely,


Ned Leone
Yolanda Leone
P. O. Box 188
Lawai, Kauai, HI 96765

LAND USE COMMISSION
STATE OF HAWAII
SEP 30 1 39 PM '88

Land Use Commission
335 Merchant St.
Honolulu, HI 96813

To: Land Use Commission

Re: Rezoning of "B" ag land for golf course/
clubhouse / restaurant at Paa, Kauai

Dear board members,

On Sept. 29 you will be asked to grant a variance for a present law so that development may proceed at this area.

If this variance is granted, I feel it will further dissolve the public's belief in the "system" as well as set a dangerous precedence.

I feel an EIS, Enviromental Impact Statement, is necessary before a decision should be made.

Thank you for your time.

Sincerely,

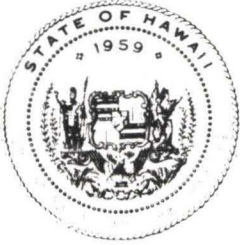
Linda J. Oshiro
Linda J. Oshiro
Waimea, Kauai



Land Use Commission
Old Federal Bldg, Rm 104
335 Merchant St.
Honolulu, Hawaii 96813

Urgent

Linda B. Hines
Box 1005
Warner, Ar 96796



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 Kajioka
Robert Tamaye
Frederick P. Whitemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 29, 1988

MEMORANDUM

TO: Land Use Commission

FROM: Staff *Esther Ueda*

SUBJECT: Special Permit Docket Number 88-369 Filed by Ainako Resort Associates and Grove Farm Properties, Inc.

Procedural Matters

The Special Permit application (Permit) by Ainako Resort Associates and Grove Farm Properties, Inc. (Applicant) and application fee was received by the Kauai Planning Department (Planning Department) on April 18, 1988.

On April 21, 1988, the Planning Commission (Commission) conducted a field trip of the Project Site pursuant to notice posted on April 15, 1988.

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

On May 10, 1988, Ohana O Maha'ulepu filed a timely petition to intervene.

On May 17, 1988, Malama Maha'ulepu filed a timely petition to intervene.

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

The Commission conducted public hearings on this matter on Wednesday, May 25; Thursday, June 16; Thursday, June 23; and Friday, June 24, 1988.

During the Permit proceedings, numerous public witness testimonies for and against the proposed project were submitted to the Planning Department or Commission. In addition, various petitions with signatures for and against the project were submitted.

On May 25, 1988, Applicant filed its Memorandum Re: Exclusion of Irrelevant Evidence Introduction. On this same date, the Commission allowed Ohana O Maha'ulepu and Malama Maha'ulepu to intervene as a consolidated party (hereinafter "Intervenors"). Intervenors' interests generally included environmental, archaeological, sociological, land use planning, need and recreational concerns. (For specific points raised by Intervenors, see Petition to Intervene by Ohana O Maha'ulepu filed with the Planning Department on May 10, 1988 and Petition to Intervene by Malama Maha'ulepu filed with the Planning Department on May 17, 1988.)

On June 3, 1988, Intervenors filed its Memorandum in Support of the Review of the Grove Farm Master Development Plan as Required by Statute in opposition to Applicant's Memorandum Re: Exclusion of Irrelevant Evidence Introduction.

On June 14, 1988, Intervenors filed its Motion for Declaratory Order; Memorandum in Support of Motion For Declaratory Order; Exhibit A; Exhibit 1; and Exhibit B.

On June 15, 1988, Intervenors filed its Request For Subpoenas requiring the following witnesses to attend the continued hearing of June 23, 1988: Charlie Ortega, William Kikuchi, David Boynton, Avery Youn, Trinette Kauai, Michael Hahn, Representative of the State Unemployment Office, David Pratt, Paul Rosendahl, Joe Vierra, Mel Ventura and Don Heacock.

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

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

On June 22, 1988, Intervenors filed its Request For Issuance of Subpoena and Subpoena Duces Tecum and Affidavit to require Ken Uyeda to attend the continued hearing of June 23, 1988 and to place into evidence a letter to Sports Shinko from Ken Uyeda dated October 10, 1988. On this same date, Intervenor filed its Motion to Continue Testimony of Subpoenaed Witnesses and Affidavit to allow Michael Hahn or Other Representative of Tax Office to testify on June 28, 1988 or any other date which is convenient. In addition, Intervenor filed its Motion For Order Allowing Witnesses to Testify Out of Order.

On June 23, 1988, the Commission filed its Order Granting Motion For Declaratory Order and Granting in Part and Denying in Part Requests For Production of Documents which directed Applicant to produce certain documents to Intervenors.

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

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

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

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

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

On August 4, 1988, Applicant and the Planning Department filed its Stipulation and Joint Findings of Fact, Conclusions of Law, Decision and Order and Certificate of Service.

On August 8, 1988, Intervenors filed Intervenors Motion to Defer Final Argument to Permit Exceptions to Late Filed Proposed Findings of Fact and Certificate of Service. Intervenors argue that they did not have sufficient time to respond to said Stipulation.

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

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

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

On August 18, 1988, the Land Use Commission (LUC) received the record of the County's proceedings on the Permit from the County of Kauai Planning Department.

On August 29, 1988 and September 1, 1988, the LUC received additional materials on the Permit from the Planning Department.

On August 30, 1988, Sunshyne Costa, Commission Chairperson filed an Order Ruling on Findings of Fact proposed by Intervenor.

Reports and related materials submitted in connection with the Permit include but are not limited to the following:

- A) Kauai Planning Department Staff Report
- B) Schematic Route Plan of Proposed Golf Course dated April 15, 1988 (Applicant's Exhibit No. 1)
- C) Marine Biology Report dated June 18, 1988 (Applicant's Exhibit No. 2)
- D) 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
- E) Revised Interim Report for the report listed as "D" dated June 1988 (Applicant's Exhibit No. 6)
- F) Memorandum Regarding Recommended Preservation Measures for Identified Archaeological Sites, dated June 20, 1988 (Applicant's Exhibit No. 7)
- G) Survey of the Avifauna and Feral Mammals at Grove Farm Properties, Poipu, Kauai, dated January 20, 1988
- H) Letter dated April 27, 1988 from Phillip Bruner updating the survey listed as "H" above
- I) Botanical Survey dated January 1988
- J) Environmental Assessment dated April 1988
- K) Golf Course Demand Study dated March 2, 1988
- L) Letter dated April 13, 1988 to Planning Commission from Charlie Ortega (Intervenor's Exhibit B)
- M) Portion of the Cultural Sensitivity Map of Koloa, Hawaii (K-10) (Intervenor's Exhibit D)
- N) Paa-Mahaulepu Beaches, A Report of the Property Owned by Grove Farm Co., Ltd. Along the Koloa Coastline Prepared for the Directors of the Company (Intervenor's Exhibit E)
- O) Copy of Page 1 of the Labor Area News, dated May 1988 (Intervenor's Exhibit F)

Description of the Property

The Project Site is located adjacent to the proposed Hyatt Regency Kauai Hotel (also referred to as "Hotel") on the eastern perimeter of the Poipu resort community in South Kauai. The site generally lies along and parallel to the southern shoreline of the area.

Immediately to the west of the Project Site 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.

The Project Site consists of approximately 210+ acres (portion of a larger parcel that totals 1,229.262 acres) and is identified by Kauai Tax Map Key 2-9-01: por. 1, Pa'a, Koloa, County and Island of Kauai, State of Hawaii (also referred to as "Property").

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

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

The Property is owned by Grove Farm Company, Inc. Pursuant to a letter dated February 12, 1988 and February 22, 1988 (not part of official record), the landowner has authorized Grove Farm Properties, Inc. to apply for the Permit. A portion of the Property is leased to McBryde Sugar Company, Limited ("McBryde") for planting and harvesting of sugarcane. The portion of the land which remains subject to the McBryde lease is subject to withdrawal by the landowner under the terms of a 1974 lease agreement.

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

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

The Land Study Bureau classifies a majority of the soils on the Property as Master Productivity rating "B" and "E" soils on a scale of "A" to "E", "E" being the lowest productivity.

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

Offshore waters in the vicinity of the Property are classified as Class AA Waters by the State Department of Health.

No endangered nor endemic bird species were observed on the Property. Indigenous bird species observed were the Pacific Golden Plover and Wedge-tailed Shearwater. Other mammals identified in the area included dogs, rats and mice.

No threatened or endangered plant species were found on the Property. Plant species that are considered rare or depleted occurred outside of the Property with the shoreline Conservation District.

Existing air quality in the area is considered very good.

Current noise levels are relatively low due to the rural character of the area.

A surface and subsurface archaeological survey of the Property and surrounding areas identified a total of 18 sites (7 of which have been previously identified in 1974).

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 with respect to those sites. The remaining eight sites are important both for their information and for their potential as good examples of site types and/or for their cultural value.

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

Summary of Proposed Use

Applicant proposes to develop an 18-hole championship golf course, a driving range, putting green, clubhouse and parking within the State Land Use Agricultural District. The clubhouse will be located near the planned Hyatt Regency Kauai Hotel and will include parking and access from Poipu Road extension. The clubhouse will include a golf pro shop, restaurant, golf club storage room and golf cart maintenance area. Also proposed are a golf course maintenance building and temporary field nursery that will be located within the golf fairways away from the golf clubhouse.

The proposed golf course layout will be configured to consist of three holes mauka of the proposed Hyatt Regency Kauai Hotel and the remainder in an area east of the clubhouse

generally following the coastline. The makai holes are intended to take advantage of the area's scenic amenities, as well as preserve, in perpetuity, the shoreline's open space environment.

Applicant also proposes a public shoreline trail within the Conservation District, outside of the Property, along the length of the proposed golf course. The trail which will be kept in a natural state and the actual trail alignment will be laid out in the field to be integrated with the existing topography and other natural features. Access will be provided for fishermen and for recreation purposes.

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

Applicant proposes to operate the proposed golf course in association with the planned 605-room Hyatt Regency Kauai Hotel but will be open to the public for play.

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

Applicant proposes to subdivide the Property to isolate the ownership of the golf course from the remainder of the parcel in a future application to be processed by the County of Kauai.

Grove Farm Company, Incorporated's Plans for the Area

Since 1960, Grove Farm Company, Incorporated (Grove Farm) has been developing conceptual plans for its coastal land holdings for the Pa'a and Maha'ulepu Districts. The Applicant states these plans are in its conceptual stages and it is not ready to submit its plans to any government body until further studies are done and more public input is obtained.

Grove Farm indicated that land use plans depicted in Intervenor's Exhibit E are not reasonably probable of implementation in the reasonably anticipated future.

Applicant also indicates that the proposed golf course on the Property is not economically or functionally dependent on the implementation of any land use concept for areas surrounding the Project Site and conceived by Grove Farm in its conceptual plans.

Public Facilities and Services

Applicant proposes to fund and construct the infrastructure required to support the golf course. Applicant proposes to extend Poipu Road along the mauka boundary of the proposed Hyatt Regency Kauai Hotel site as well as a driveway to the proposed golf clubhouse, a distance of approximately of 2,000 feet. Applicant proposes a two-lane paved road in compliance with County standards including 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 Keoneloa Bay to afford public access to the planned public beach park at the Hotel site parcel.

Potable water for the golf course operation will be available through the 12-inch water line running along the existing portion of Poipu Road. Applicant estimates 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 supply is currently sufficient to satisfy the projected demand.

Applicant proposes to develop irrigation wells and use treated effluent from the proposed Hyatt Regency Hotel to irrigate the golf course. Applicant also indicates that recycled surface runoff from mauka lands may be used.

There is no public sewage disposal system for the area. All existing systems are under private control. Applicant proposes to treat wastewater generated by the golf course and from the propose Hyatt Regency Hotel at a sewage treatment plant designed to serve these two projects. Sludge will be disposed of in accordance with Department of Health requirements. No cost to the County is anticipated to develop the facilities.

Applicant indicates that solid waste will be disposed of by private contractor.

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.

Access

Applicant proposes to construct on and off-site public parking at the western end of the proposed golf 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 Applicant's Exhibit 1.

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 provided to the public. The existing shoreline trail within the Conservation District provides lateral access along the entirety of the coastline adjacent to the Project Site. This trail will also be made available to the Applicant 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 provided to the public in the general area reflected on Applicant's Exhibit 1, thereby affording lateral pedestrian public access along the coastline from the Hotel site to the northeastern most boundary of the Property. The existing shoreline trail in the Conservation District will be maintained and be unobstructed in the general area reflected by a dotted line and labeled as shoreline trail on Applicant's Exhibit 1.

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.

State and County Plans and Programs

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

The Property is zoned Agriculture District and Open District.

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

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

Summary of Concerns of State and County Agencies
and the Kauai Historic Preservation Review Commission

Information contained in the County of Kauai Planning Department's staff report reflects the following agency comments:

The Department of Public Works of the County of Kauai (hereinafter "Public Works") 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 problems 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."

The Department of Water of the County of Kauai (hereinafter "Water Department") had no objection to the Zoning, Use, Special Management Area Use and Special Permit Application provided the building permit not be granted until:

- "1. 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:
 - A. The domestic service connection.
 - B. The fire service connection.
 - C. The interior plumbing plans with the appropriate backflow prevention device (if required).
- "2. Payment of any applicable charges in effect at the time of building permit approval.
- "3. 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."

The Fire Department of the County of Kauai 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."

The Department of Health of the State of Hawaii (hereinafter "DOH") stated the following:

- "1. 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.
- "2. 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.

- "3. 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.
- "4. The owner shall obtain approval for the effluent irrigation system under authority in item #2.
- "5. 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.
- "6. Developers/owners shall be aware that odor nuisances may occur during the operation of the proposed PWTW.
- "7. 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:
 - a. 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.
 - b. 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.
 - c. A stand-by or emergency power source should be provided for electrical powered equipment.
 - d. Provisions should be made to ensure that storm water does not enter the facility.
- "8. The project shall be provided with potable water through the County water system.
- "9. 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.
- "10. 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)

- "11. 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.
- "12. Grubbed material shall be disposed of at a site approved by the DOH. Open burning is prohibited.
- "13. Effective dust and soil erosion control measures shall be implemented during all phases of development by the developer. The project area is located upwind 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.
- "14. Only non-terrigenous 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.
- "15. The golf course area being withdrawn from sugarcane 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.
- "16. A horse stable located adjacent to golf course mauka property may be a source of odor nuisances in the future.
- "17. 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."

The Department of Agricultural 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 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.""

(Applicant responded to the above issues by letter to Planning Commission dated May 27, 1988.)

The Kauai Historic Preservation Review Commission of the County of Kauai (hereinafter "KHPRC") had the following recommendations: (Source: Letter from KHPRC to Sunshyne Costa dated June 1, 1988)

"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."

Mitigation of Environmental Concerns (as reflected in the County Planning Commission's Decision and Order)

Hydrology and Drainage

Applicant proposes that 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.

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. Applicant believes that with increased landscaping at the Project Site, surface runoff will be reduced by permitting more ground percolation to take place and consequently less flow into coastal waters will occur.

Sewage

Applicant proposes that sewage generated by the proposed clubhouse facilities and on-site restroom facilities will be collected and conveyed to a wastewater treatment facility proposed for the new Hyatt Regency Kauai Hotel.

Fauna

Applicant believes that 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. The development will not adversely impact any birds including seabirds such as the shearwater or migratory shorebirds. In addition, the prohibition of inappropriate vehicular access along the coast may improve the habitat for the shearwater and other coastal nesting avifauna.

Flora

Applicant believes that 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 Site 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.

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 to be incorporated into the golf course landscaping plans.

Air Quality

Applicant believes that no substantial adverse environmental or ecological effect will result from the development of the course. The placement of the course within the Project Site will reduce direct long-term air quality impacts associated with cane harvesting in adjacent areas.

Noise

Applicant believes that 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.

Biological/Ocean Marine Resources

Applicant indicates that 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.

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

Applicant indicates that current qualitative evaluations of the nearshore water quality reflect no evidence of pollution of any sort or any sort of adverse effect attributable to chemical infiltration through runoff or groundwater attributable to sugarcane operation.

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.

Applicant estimates that 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.

Applicant believes that the conversion of the Project Site to golf course 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.

Furthermore, 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.

Issues Raised By Intervenor In Its Proposed Findings of Fact, Conclusions of Law and Decision and Order

Intervenor indicates that Grove Farm Properties plans to develop the remainder of the parcel, approximately 1,012 acres, and the rest of its shoreline holdings in a unified and coordinated manner.

Intervenor believes that Applicant should provide more information regarding its plans for its remaining land holdings. In support of this contention, Intervenor in its Proposed Findings of Fact, Conclusions of Law and Decision and Order, stated the following:

"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.

"The piecemeal development of the Pa'a and Maha'ulepu region will result in the elimination of viable planning options.

"The Applicant Grove Farm Properties should not be allowed to develop the Pa'a and Maha'ulepu coastline in a piecemeal fashion.

"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 and the Koloa-Poipu-Kalaheo Development Plan.

"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.

"The proposed golf course is not a development that is coastally dependent."

Intervenor also believes that 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);

and that 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".

Intervenor states that this provision of Chapter 205-2, HRS, specifically prohibits the construction of a golf course in the Agricultural District if the land is rated "B" by the Land Study Bureau.

Conformance With Special Permit Tests

In its Findings of Fact, Conclusions of Law and Decision and Order, the Commission provided the following in support of its conditional approval for the proposed golf course:

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

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

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

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

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

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

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

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

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

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

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

Recommendations of the Planning Commission

The Commission concludes in its Findings of Fact, Conclusions of Law and Decision and Order that the procedural requirements of Chapter 205-6, Hawaii Revised Statutes; the Hawaii Land Use Commission Rules, Chapter 15-15-15, Administrative Rules; Chapter 205-A, Hawaii Revised Statutes, the Coastal Zone Management Act; the Kauai County Revised Code of Ordinances; and the Special Management Rules, and Chapter 91, Hawaii Revised Statutes, the Hawaii Administrative Practice Act have been met.

The Commission further concludes the submission and acceptance of an Environmental Impact Statement is not required for the proposed project.

On August 10, 1988 and by Findings of Fact, Conclusions of Law and Decision and Order filed on August 11, 1988, the Kauai Planning Commission recommended approval of the subject special permit to develop a golf course and accessory related uses and structures on approximately 210 acres of land subject to the following conditions and restrictions:

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

- a. A new PWTW or the expansion of the Poipu Kai PWTW shall be designed, installed and operated in accordance with the applicable requirements of Hawaii Rev. Stat., Chapter 27, as amended, and the plans for the proposed PWTW or the Poipu Kai PWTW expansion shall be submitted to the Wastewater Treatment Works Construction Grants Branch of the Department of Health for review and approval.
 - b. In connection with Health Department's review and approval of such plans, Applicant shall obtain approval of its proposed effluent irrigation system under the applicable requirements of Hawaii Rev. Stat. § 282-1, et seq.
- "2. As stated in Hawaii Rev. Stat. § 27-21.6, the engineer designing the proposed PWTW is given flexibility and design responsibility; provided, however, the engineer should consider incorporating into the design:
- a. A sludge holding tank to allow the operator better control over the solids inventory and to concentrate the sludge for disposal at a County sewage treatment plant; and
 - b. exposing to the atmosphere the water surface in the aeration tank and clarifier to facilitate ease of operation, repair and maintenance of the facility; and
 - c. a stand-by or emergency power source for electrical powered equipment; and
 - d. provisions to ensure that storm water does not enter the facility.
- "3. Any proposed PWTW shall be operated by qualified personnel certified by the Board of Certification of Operating Personnel in Wastewater Treatment Facilities as stated in Chapter 340D of the Hawaii Rev. Stat.
- "4. The project shall be provided with potable water through the County water system.
- "5. Prior to the issuance of a building permit the Applicant shall prepare and obtain the Department of Water's approval of construction drawings for

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

- "6. If applicable, a refund agreement between the Department of Water and the Applicant must be completed, whereby the developer contributes its share to Blackfield Hawaii as provided in the Department of Water's Rules.
- "7. The Applicant shall pay all applicable charges of the Department of Water as required by the Department's Rules.
- "8. Grubbed material created in the construction phase of the Project shall be disposed of at a site approved by the Department of Health. Open burning is prohibited.
- "9. The Applicants shall submit to the Planning Department for review and approval prior to any County permit application:
 - a. building elevations, roof design, material color schemes and/or samples;
 - b. landscaping plan(s);
 - c. site layout development plan(s) of the entire off-street parking areas, total number of parking stalls (improved and unimproved), and street lighting plans. The final parking plan shall be subject to approval by the Planning Director upon confirmation by the State Land Use Commission;
 - d. any and all grading plan(s).
- "10. The Applicants shall identify the boundaries on the Conservation District with survey stakes or pins and shall notify the Planning Department and attorneys of record for the 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."

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room - Kohala 3
Hyatt Regency Hotel
Waikoloa, Hawaii

September 29, 1988

*approved
10/13/88*

COMMISSIONERS PRESENT: Renton L.K. Nip, Chairman (Portion of
Proceeding)
Lawrence Chun, Vice-Chairman
Allen K. Hoe
Toru Suzuki
Robert Tamaye
Frederick P. Whittemore (Portion of
Proceeding)
Allen Kajioka
Sharon R. Himeno (Portion of
Proceeding)
Teofilo Phil Tacbian

COMMISSIONERS ABSENT:

STAFF PRESENT: Esther Ueda, Executive Officer
Terence Yamamoto, Esq, Deputy Attorney
General
Raymond Young, Staff Planner
Darlene Kinoshita, Chief Clerk

Jean Marie McManus, Court Reporter

Vice-Chairman Chun called the meeting to order.

Chairman Nip did not participate in this proceeding
due to a declared conflict of interest.

ACTION

* SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM
PROPERTIES, INC. (Kauai)

Vice-Chairman Chun announced that the Commission would
take action in the matter to allow the establishment of an
18-hole golf course, a driving range, a clubhouse including
limited retail and food service, and a parking and maintenance
facility on approximately 210 acres of land within the
Agricultural District between Weliweli and Mahaulepu, Koloa,
Kauai.

Appearances

Dennis Lombardi, Esq., Attorney for Petitioner

Lorna Nishimitsu, Esq., Deputy Corporation Counsel,
County of Kauai

Tom Shigemoto, Director, Planning Department, County
of Kauai

Teresa Tico, Esq., Attorney for Malama Mahaulepu

Napua Emery, Malama Mahaulepu

Stephen Levine, Esq., Attorney for Ohana Maha'Ulepu
was not present to the proceeding.

Commissioner Himeno moved to go into executive session to consult with our Deputy Attorney General on legal powers of the Land Use Commission regarding special use permits and court cases pertaining to these permits. The motion was seconded by Commissioner Whittemore and unanimously carried by voice votes.

Raymond Young, Staff Planner, gave a summary report of the special use permit request by Petitioner and also oriented the Commission to the area on the USGS and tax maps.

A lunch recess was taken at 12:00 p.m. to reconvene at 1:00 p.m.

- 1:24 p.m. -

Mr. Lombardi, Ms. Nishimitsu, Ms. Tico, and Ms. Emery were allowed 15 minutes oral arguments. After hearing arguments, parties were questioned by the Commissioners.

Commissioner Hoe moved to go into executive session to discuss legal issues with our Deputy Attorney General regarding this special use permit. The motion was seconded by Commissioner Suzuki and unanimously carried by voice votes.

Commissioner Tacbian moved that Special Use Permit Docket Number 88-369 filed by Ainako Resort Associates and Grove Farm Properties, Inc. to establish a golf course and accessory related uses and structures on the Property,

consisting of approximately 210 acres, situate within the State Land Use Agricultural District at Pa'a, Koloa, County of Kauai, Kauai Tax Map Key Number 2-9-01: portion of parcel 1, be approved subject to 28 conditions by the Kauai Planning Commission.

The motion was seconded by Commissioner Suzuki.

The Commissioners were polled as follows:

Ayes: Commissioner Tacbian, Kajioka, Whittemore, Suzuki, and Vice-Chairman Chun.

Nays: Commissioner Himeno, Tamaye, and Hoe.

Commissioner Himeno was absent from the proceeding at this time and Chairman Nip joined the proceeding at this time.

A88-620 - KOHALA JOINT VENTURE (Hawaii)

Chairman Nip announced that the Commission would take action in the matter of the petition by Kohala Joint Venture to reclassify approximately 1,288 acres of land currently in the Agricultural District into the Urban District at Kahua and Waika, North Kona, Hawaii for a residential community.

Appearances

R. Ben Tsukazaki, Esq., Attorney for Petitioner

Harry Otsuji, Petitioner

Albert Lono Lyman, Planning Director, Planning Department, County of Hawaii

Virginia Goldstein, Planning Department, County of Hawaii

John Anderson, Esq., Deputy Attorney General, Office of State Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Jean Nishida, Land Use Division, Office of State Planning

Closing arguments were heard from Mr. Tsukazaki, Mr. Lyman, and Mr. Anderson. After hearing arguments, parties were questioned by the Commissioners.

It was determined by Chairman Nip that all of the Commissioners present were eligible to participate in the action on the petition.

Commissioner Chun moved that the Property, consisting of approximately 1,288 acres, being the subject of this Docket Number A88-620 by Kohala Joint Venture, situate at Kahua and Waika, North Kona, Island of Hawaii, and identified as Hawaii Tax Map Key Numbers 5-9-01: Portion of 10, 5-9-09: Portion of 54, 5-9-10: 31-55, 57, 58, 60, and portion of 56, and 5-9-11:1, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved and the district boundaries are amended subject to the following conditions:

1. The affordable housing requirement shall be satisfied as follows:

A. The Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least ten percent (10%) of the units at prices which families with an income range below 80% of Hawaii County median income can afford, twenty percent (20%) of the units at prices which families with an income range of 80 to 120 percent of Hawaii County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Hawaii County's median income can afford. This condition may be fulfilled with the approval of the State Housing Finance and Development Corporation and the County of Hawaii through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation or other appropriate County or State governmental agency. This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation and the County of Hawaii, through the construction of rental units to be made available at rents which families in the specified income ranges can afford.

B. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the

County of Hawaii and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site or off-site housing units or cash payments or other in lieu of contributions that satisfy the then current housing needs, or other necessary or desirable community or infrastructural facilities as determined above.

2. Petitioner shall coordinate its project planning with the Department of Hawaiian Home Lands and County of Hawaii Planning Department with respect to urban design, as well as infrastructural and service systems.

3. The Petitioner shall participate in the funding and construction of transportation improvements at project access points as identified by the State Department of Transportation. The Petitioner shall also participate in the funding and construction of other on-site and off-site transportation improvements necessitated by the proposed development and in designs and schedules accepted and coordinated with the State Department of Transportation and the Department of Hawaiian Home Lands, provided that the extent of the Petitioner's participation shall not exceed Project IV's share of the increased community traffic impacts in the region and, provided further, that in the event the County adopts an impact fee for transportation improvements, the foregoing requirements shall not include or double-count the cost of any specific traffic improvements which may also be included in the County's impact fee computation.

4. The Petitioner shall fund and develop the necessary measures to obtain the required water for the proposed Project IV development.

5. A drainage study, acceptable to the County of Hawaii shall be provided by the Petitioner to assess both off-site and on-site drainage impacts associated with the proposed project.

6. The Petitioner shall provide at no cost a site or sites for police, park, and fire facilities, to the satisfaction of the County of Hawaii, and shall also provide at no cost, a site for an elementary school as may be required by and to the satisfaction of the State Department of Education.

7. The Petitioner shall provide an archaeological survey acceptable to the State Historic Sites Section of the Department of Land and Natural Resources and the County of

Hawaii Planning Department. This survey shall include an assessment of how the proposed drainage system will impact archaeological sites known to exist within the proposed project boundaries, and on adjacent properties as applicable. The Petitioner shall also provide professional archaeological monitoring of the project site during all grading, digging, or other earthworking phases of project development. Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, the Petitioner shall immediately stop work and contact the State Historic Site Section and County of Hawaii Planning Department.

8. The Petitioner shall inform all prospective occupants of possible odor, noise, and dust pollution resulting from surrounding agricultural operations, and that the Hawaii Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

9. The Petitioner shall provide an analysis of the commercial and office park proposals as they relate to proposed commercial and industrial uses at Kawaihae and the Department of Hawaiian Home Lands' master plan for the area. The analysis shall be submitted with any subsequent application for County land use approvals for the proposed commercial and office park uses.

10. The Petitioner shall submit an application for approval of the proposed project through the County of Hawaii's rezoning process.

11. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the property covered by the approved petition, prior to development of the property.

12. Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the property.

13. Petitioner shall provide annual report to the Land Use Commission, the Office of State Planning and the County of

Hawaii Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed.

14. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

The motion was seconded by Commissioner Kajioka.

The motion to approve Kohala Joint Venture's petition subject to fourteen (14) conditions was unanimously approved as follows:

Ayes: Commissioner Chun, Whittemore, Suzuki, Tamaye, Hoe, Kajioka, Tacbian, and Chairman Nip.

CONTINUED HEARING

A87-617 - SIGNAL PUAKO CORPORATION (Hawaii)

Chairman Nip announced that the present matter before the Commission is a continuation of the hearing which had begun on July 21 and 22, 1988.

Appearances

Jan Sullivan, Esq., Attorney for Petitioner

Roy Takeyama, Esq., Attorney for Petitioner

Robert McIntosh, Petitioner

Albert Lono Lyman, Planning Director, Planning Department, County of Hawaii

Virginia Goldstein, Planning Department, County of Hawaii

John Anderson, Esq., Deputy Attorney General, Office of State Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Jean Nishida, Land Use Division, Office of State Planning

Matthew Bailey's untimely letter dated July 19, 1988 was admitted into evidence by the Land Use Commission.

EXHIBITS

1. Petitioner's Exhibits GG through LL were admitted into evidence by the Land Use Commission.

2. County's Exhibits Nos. 2 through 4 were admitted into evidence by the Land Use Commission.

3. State's Exhibit No. 2 was admitted into evidence by the Land Use Commission.

PETITIONER'S WITNESS (Recalled)

1. Robert McIntosh
2. Francis Oda

COUNTY'S WITNESS (Recalled)

1. Albert Lono Lyman

Chairman Nip instructed all parties of the post-hearing procedures and declared the hearing closed.

Commissioner Whittemore was absent from the proceeding at this time.

A88-621 - KAHALA CAPITAL CORPORATION (Awake'e)

Chairman Nip announced that the present matter before the Commission is a continuation of the hearing which had begun on July 14 and 15, 1988.

Appearances

Sandra Pechter Schutte, Esq., Attorney for Petitioner

Glenn Hara, Esq., Attorney for Petitioner

Albert Lono Lyman, Planning Director, Planning Department, County of Hawaii

MINUTES - September 29, 1988
Page 9

Virginia Goldstein, Planning Department, County of
Hawaii

John Anderson, Esq., Deputy Attorney General, Office
of State Planning

Abe Mitsuda, Land Use Division, Office of State
Planning

Jean Nishida, Land Use Division, Office of State
Planning

Christopher Yuen, Esq., Attorney for Intervenors

Kristy Van Pernis' untimely letter dated September 29,
1988 was admitted into evidence by the Land Use Commission.

PETITIONER'S WITNESS

1. Mark Hastert (Continued)

The meeting was adjourned at 6:30 p.m.

STATE OF HAWAII
LAND USE COMMISSION

NOTIFICATION OF LAND USE COMMISSION MEETING

DATE, TIME AND PLACE

September 29, 1988 - 10:30 a.m.
September 30, 1988*

Conference Room - Kohala 3
Hyatt Regency Waikoloa Hotel
Waikoloa, Hawaii

REC'D. BY

1988 SEP 20 PM 2 19

LI. GOVERNOR'S OFFICE

A G E N D A

I. ACTION

1. ✓ SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM
PROPERTIES, INC. (Kauai)

To allow the establishment of an 18-hole golf course, a driving range, a clubhouse including limited retail and food service, and a parking and maintenance facility on approximately 210 acres of land within the Agricultural District at Weliweli and Mahaulepu, Koloa, Kauai.

2. A88-620 - KOHALA JOINT VENTURE (Hawaii)

To reclassify approximately 1,288 acres of land currently in the Agricultural District into the Urban District at Kahua and Waika, North Kohala, Hawaii for a residential community.

II. CONTINUED HEARING

1. A87-617 - SIGNAL PUAKO CORPORATION (Kona)

To reclassify approximately 1060 acres of land currently in the Agricultural District into the Urban District at Waikoloa, South Kohala, Hawaii for residential, commercial, golf course, and light industrial uses.

2. A88-621 - KAHALA CAPITAL CORPORATION (Kona)

To reclassify approximately 349.05 acres of land currently in the Conservation District into the Urban District at Awake'e, North Kona, Hawaii for intermediate resort and golf course uses.

III. MISCELLANEOUS

1. Adoption of Minutes
2. Adoption of Decision and Orders
3. Tentative Meeting Schedule

*Meeting will continue on September 30, 1988 only if not completed on September 29, 1988.

SIERRA CLUB
KAUA'I GROUP OF THE HAWAI'I CHAPTER
P.O. BOX 3412
LIHU'E, HI 96766

SEP 28 12 05 PM '88
LAND USE COMMISSION
STATE OF HAWAII

September 26, 1988

Land Use Commission
Old Federal Building
335 Merchant Street
Room 104
Honolulu, HI 96766

Ladies & Gentlemen:

Re: Special Management Area Use Permit; TMK:2-9-01: Por.1

The Kaua'i Group of the Sierra Club wishes to go on record requesting the Land Use Commission to deny the application by Ainako Resort Associates and Grove Farm Properties, Inc., for the above-mentioned permit. We feel that the land in question for their proposed 210-acre golf course should remain in agriculture and conservation land classifications.

We are also requesting the Land Use Commission to require the applicants to submit an environmental impact statement, which has been a precedent in all golf course applications previously proposed in this state.

Sincerely,

Janis Lyon

Janis Lyon
Chair

cc: Phil T. Tacbian
Sierra Club, Hawai'i Chapter

Sierra Club
Kaua'i Group of the
Hawai'i Chapter
P. O. Box 3412
Lihu'e, HI 96766



LAND USE COMMISSION
Old Federal Building
335 Merchant Street
Room 104
Honolulu, HI 96813

P-555 274 401

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369/AINAKO/ASSOC. & GROVE FARM
RESORT
PROFESSIONAL, INC.

Sent to

Stephen Levine, Esq.

Street and No.

4365 Kukui Grove St.,

P.O., State and ZIP Code Ste. 103

Lihue, HI 96766

Postage

\$

.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date Delivered

Return Receipt showing to whom,
Date, and Address of Delivery

.90

TOTAL Postage and Fees

\$

2.00

Postmark or Date

U.S.G.P.O. 153-506

PS Form 3800, June 1985



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/AINAKO RESORT ASSOC. & GROVE

SENDER: Complete items 1 and 2 when additional services are desired and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
↑(Extra charge)↑

3. Article Addressed to:

Stephen Levine, Esq.
Attorney for Ohana Maha'Ulepu
4365 Kukui Grove St., Ste. 10
Lihue, HI 96766

4. Article Number

P-555-274-401

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature – Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii

LAND USE COMMISSION
Rm. 104, Old Federal Bldg.

335 Merchant Street
Honolulu, Hawaii 96813



STATE OF H
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 Kajloka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 20, 1988

Stephen Levine, Esq.
Attorney for Ohana Maha'Ulepu
4365 Kukui Grove Street, Suite 103
Lihue, Hawaii 96766

Dear Mr. Levine:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition(s)

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.
will be acted on at that time. We request that you or
your representative attend this meeting.

Should you have any questions on this matter, please
contact this office.

Very truly yours,

ESTHER UEDA
Executive Officer

Enclosure

P-555 274 400

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to	
Lorna Nishimitsu, Esq.	
Street and No.	
4396 Rice Street	
P.O., State and ZIP Code	
Lihue, HI 96766	
Postage	\$.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	.90
TOTAL Postage and Fees	\$ 2.00
Postmark or Date	

SP88-369/AINAKO RESORT ASSOC, & GROVE
FARM PROPERTIES, INC.



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813



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 Kajlaka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 20, 1988

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

Dear Ms. Nishimitsu:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition(s)

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.

will be acted on at that time. We request that you or
your representative attend this meeting.

Should you have any questions on this matter, please
contact this office.

Very truly yours,

ESTHER UEDA
Executive Officer

Enclosure

P-555 274 399

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

SP88-369/AINAKO RESORT ASSOC. & GROVE
FARM PROPERTIES, INC.

Sent to	
Bruce L. Lamon, Esq.	
Street and No.	
130 Merchant St.	
P.O., State and ZIP Code	
Honolulu, HI 96813	
Postage	\$.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	.90
TOTAL Postage and Fees	\$ 2.00
Postmark or Date	



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369-AINAKO RESORT ASSOC. & GROVE FARM

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

PROPERTIES, INC.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery
↑(Extra charge)↑ ↑(Extra charge)↑

3. Article Addressed to:

Bruce L. Lamon, Esq.
 Goodsill, Anderson, Quinn &
 Stifel
 1600 Bancorp Tower
 130 Merchant St.
 Honolulu, HI 96813

4. Article Number

P-555-274-399

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

9-21-88

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813



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 Tacblan
Allen Kajioke
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 20, 1988

Bruce L. Lamon, Esq.
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813

Dear Mr. Lamon:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition(s)

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.

will be acted on at that time. We request that you or
your representative attend this meeting.

Should you have any questions on this matter, please
contact this office.

Very truly yours,

ESTHER UEDA
Executive Officer

Enclosure

555 274 397

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369/AINAKO RESORT & GROVE FARM
PROPERTIES, INC.

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to

Dennis Lombardi, Esq.

Street and No.

737 Bishop St.

P.O., State and ZIP Code

Honolulu, HI 96813

Postage

\$

.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date Delivered

Return Receipt showing to whom,
Date, and Address of Delivery

.90

TOTAL Postage and Fees

\$

2.00

Postmark or Date



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369 - AINAKO RESORT ASSOCIATES &

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery
↑(Extra charge)↑ ↑(Extra charge)↑

3. Article Addressed to:

Dennis Lombardi, Esq.
 Case & Lynch
 Suite 2500 & 2600, Grosvenor
 Center
 737 Bishop Street
 Honolulu, HI 96813

4. Article Number

P-555-274-397

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

9-21-88

8. Addressee's Address (*ONLY if requested and fee paid*)

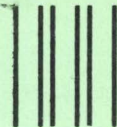
UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii

LAND USE COMMISSION

Rm. 104, Old Federal Bldg.

335 Merchant Street

Honolulu, Hawaii 96813



STATE OF HAWAII
DEPARTMENT OF LAND 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 Kajloka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 20, 1988

Dennis Lombardi, Esq.
Case & Lynch
Suites 2500 & 2600, Grosvenor Center
737 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. Lombardi:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition(s)

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.

will be acted on at that time. We request that you or
your representative attend this meeting.

Should you have any questions on this matter, please
contact this office.

Very truly yours,

ESTHER UEDA
Executive Officer

Enclosure

P-555 274 402

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369

AINAKO RESORT ASSOC. &

GROVE FARM PROPERTIES, INC.

Sent to

Teresa Tico, Esq.

Street and No.

3017 Umi St., Ste. 211B

P.O., State and ZIP Code

Lihue, HI 96766

Postage

\$

.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date Delivered

Return Receipt showing to whom,
Date, and Address of Delivery

.90

TOTAL Postage and Fees

\$

2.00

Postmark or Date



U.S.G.P.O. 153-506

PS Form 3800, June 1985

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/AINAKO RESORT ASSOC. & GROVE FARM

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
↑(Extra charge)↑

3. Article Addressed to:

Teresa Tico, Esq.
Attorney for Malama Mahaulepua
3016 Umi Street, Ste. 211B
Lihue, HI 96766

4. Article Number

P-555-274-402

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and **DATE DELIVERED**.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

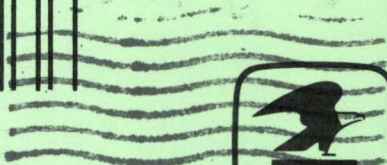
8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below:

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



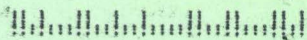
PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813





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 Kajlaka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 20, 1988

Teresa Tico, Esq.
Attorney for Malama Mahaulepu
3016 Umi Street, Suite 211B
Lihue, Hawaii 96766

Dear Ms. Tico:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition(s)

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.

will be acted on at that time. We request that you or
your representative attend this meeting.

Should you have any questions on this matter, please
contact this office.

Very truly yours,

ESTHER UEDA
Executive Officer

Enclosure

P-555 274 398

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369/AINAKO RESORT, ASSOC. & GROVE
FARM PROPERTIES, INC.

Sent to

Tom H. Shigemoto

Street and No.

4280 Rice St.

P.O., State and ZIP Code

Lihue, HI 96766

Postage

\$.25

Certified Fee

.85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing
to whom and Date ReceivedReturn Receipt showing to whom,
Date, and Address of Delivery

.90

TOTAL Postage and Fees

\$ 2.00

Postmark or Date



U.S. S.P.O. 153-506

S Form 3800, June 1985

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369/AINAKO ASSOC, & GROVE FARM PROPERTIES,

SENDER: Complete items 1 and 2 when additional services are desired ~~and~~ ^{ING} complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery
↑(Extra charge)↑ ↑(Extra charge)↑

3. Article Addressed to:

Tom H. Shigemoto
 Planning Director, Co. of
 Kauai
 4280 Rice Street
 Lihue, HI 96766

4. Article Number

P-555-274-398

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

Kelly Alaraza

7. Date of Delivery

9/21/88

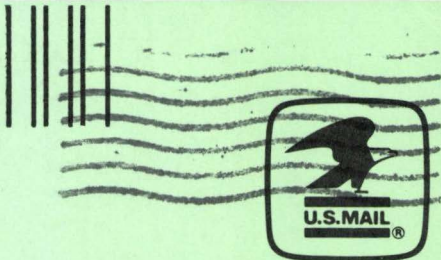
8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



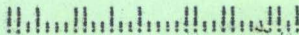
PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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

September 20, 1988

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

Dear Mr. Shigemoto:

Enclosed is a Land Use Commission meeting agenda.

Please note that petition(s)

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC.
will be acted on at that time. We request that
you or your representative attend this meeting.

Should you have any questions on this matter, please
contact this office.

Very truly yours,

ESTHER UEDA
Executive Officer

Enclosure

ORIGINAL

IN THE LAND USE COMMISSION

STATE OF HAWAII

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

DOCKET NO.: SP88-369

Applicants.)

DML 091988 2732K

TABLE OF CONTENTS

TABLE OF AUTHORITIES

BRIEF OF APPLICANTS
AINAKO RESORT ASSOCIATES AND
GROVE FARM PROPERTIES, INC.
IN SUPPORT OF ISSUANCE OF SPECIAL PERMIT

EXHIBIT A

CERTIFICATE OF SERVICE

SEP 19 4 19 PM '88
LAND USE COMMISSION
STATE OF HAWAII

Of Counsel:

CASE & LYNCH

DENNIS M. LOMBARDI 3071-0
DAVID ALLEN FELLER 3671-0
Suite 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813
Telephone No. (808) 547-5400

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

Of Counsel:

GOODSILL ANDERSON QUINN & STIFEL

BRUCE L. LAMON 2738-0
CAROL EBLEN 4508-0
1600 Bancorp Tower
Financial Plaza of the Pacific
130 Merchant Street
Honolulu, Hawaii 96813
Telephone No. (808) 547-5600

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

TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION AND SUMMARY	2
II. FACTS	6
A. Substance of the Application	6
B. Procedural History	12
III. DISCUSSION	17
A. Jurisdiction	17
B. The Application Meets All Of The Criteria For The Issuance Of A Special Permit	26
C. The Intervenor's Procedural Objections are Without Merit	30
D. The Intervenor's were granted more than ample discovery to protect their due process rights	35
E. Kamaaina Rates	44
IV. CONCLUSION	45

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<u>Agustin v. Dan Ostrow Constr. Co.</u> 64 Haw. 80, 84, 636 P.2d 1348 (1981)	20
<u>Cazimero v. Kohala Sugar Co.</u> 54 Haw. 479, 483, 510 P.2d 89, 92 (1973)	38, 42
<u>Cella v. United States</u> 208 F.2d 783, 789 (7th Cir. 1953)	33
<u>Chock v. Bitterman</u> 5 Haw. App. 59, 67, 678 P.2d 576 (1984) 5 Haw. App. at 67 5 Haw. App. 59, 666-667 5 Haw. App. at 66-67	37, 40 37 37 37, 39
<u>First Nat. Bank v. Oklahoma Sav. & Loan Bd.</u> 569 P.2d 993 (Okl. 1977)	33
<u>First National Bank of Worland v. Financial Inst. Board</u> 616 P.2d 787 (Wyo. 1980)	34
<u>Fish v. Cardwell</u> 523 F.2d 976, 978 (9th Cir. 1976)	37
<u>In Re Hawaii Electric Light Co., Inc.</u> 67 Haw. 425, 690 P.2d 274 (1984)	41, 42
<u>In Re Wind Power Pacific Investors - III</u> 67 Haw. 342, 343 (1984)	32
<u>International Brotherhood of Electrical Workers - Local 1357 v. Hawaiian Telephone</u> 713 P.2d 943 (1986)	40
<u>Mathews v. Eldrige</u> 424 U.S. 319 (1976) 424 U.S. 319, 47 L.Ed.2d 18, 96 S.t. 893 (1976) .	32
<u>Medeiros v. Maui Land & Pineapple Co.</u> 66 Haw. 290, 297, 660 P.2d 1316 (1983)	43
<u>Mezines</u> 1 Admin. Law. §1.02[3], at 1-57 (1977)	20, 33

	<u>Page</u>
<u>Neighborhood Board v. Land Use Commission</u>	
64 Haw. 265, 637 P.2d 1097 (1982)	28
<u>Perry v. Planning Commission</u>	
62 Haw. 666, 619 P.2d 95 (1980)	27
<u>Sabine Bank v. State Banking Board</u>	
630 S.W.2d 523 (Tex. Civ. App.)	35
judgment set aside as moot	
639 S.W.2d 303 (Tex. 1982)	35
<u>Shively v. Stewart</u>	
55 Cal. Rptr. 217, 421 P.2d 65, 68 (1967)	37
<u>Silverman v. Commodity Futures Trading Comm'n</u>	
549 F.2d 18, 33 (7th Cir. 1977)	37
<u>State v. Tengan</u>	
67 Haw. 451, 458, 691 P.2d 365 (1984)	19
<u>Town v. Land Use Commission</u>	
55 Haw. 538, 524 P.2d 84 (1974)	42

HAWAII REVISED STATUTES:

Section 91	37, 41, 43
Section 91.14(g)	33
Section 92	37
Section 92.16	37
Section 92.16(a)(1)	37
Section 98H-6 (1961)	37
Section 205	5, 19, 20, 24, 27
Section 205A	5, 19 , 20, 24 , 27
Section 205-2	5, 27 17, 18, 19, 22,
Section 205-4.5(b)	5, 19, 25
Section 205-6	5, 17, 18, 19, 25
Section 205-16	27, 29
	24, 25, 26

TREATISES:

Davis, Administrative Law Treatise	<u>37</u>
--	-----------

RULES:

Hawaii Land Use Commission Rules	
Chapter 15-15-95(b)	<u>26</u>
Chapter 15-15-97	<u>25</u>
Planning Commission Rules	
1-6-10	<u>31</u>
1-6-11(c)	<u>39</u>
1-6-13	<u>38</u>
1-6-13(a)	<u>38</u>

SESSION LAWS:

Land Use Law	
Act 187 § 1(a)	<u>20, 21</u>
Act 205 §1	<u>21</u>

STANDING COMMITTEE REPORTS:

Standing Committee Report 442 on House Bill 1063 (1985)	<u>23</u>
--	-----------

LAND USE COMMISSION PROCEEDINGS:

Hemmeter/VMS Kauai Co. III	
Docket No.: SP86-361	<u>25</u>

Applicants Ainako Resort Associates and Grove Farm Properties, Inc. ("Applicants") submit this brief in support of Applicants' request for the issuance of a special permit by the Land Use Commission ("LUC" or "Commission").

I. INTRODUCTION AND SUMMARY

Applicants seek a special permit to authorize the development of an 18-hole championship caliber golf course and related facilities, including a driving range, putting green, clubhouse, field nursery and maintenance building, on approximately 210 acres situate in the State Land Use Agricultural District at Pa'a, Island and County of Kauai, State of Hawaii, adjacent to the Hyatt Regency Kauai Hotel. There are not sufficient lands adjacent to the hotel within the abutting Urban District upon which to construct a golf course.

Located at the eastern end of the Poipu resort destination area, the golf course will it in competing with similar resorts around the world. By providing kamaaina rates for residents, the golf course will also take some of the pressure off the County course at Wailua, which is used over twice as much as the average municipal golf course in sunbelt states. The requested special permit, and necessary County permits, were approved by the County of Kauai Planning Commission by a 6 to 1 vote on August 10, 1988. See County of Kauai Planning Commission Findings of Fact, Conclusions of Law, Decision and Order entered August 11, 1988 (hereinafter

sometimes "D&O" or "Decision and Order"), a copy of which is attached as Exhibit A.

This application for a special permit has been exhaustively reviewed by the County Planning Commission in the context of a contested case proceeding in which Malama Maha'uilepu ("Malama") and Ohana Maha'uilepu ("Ohana" but sometimes referred to with Malama as the "Intervenors") were permitted to intervene, subject to an order of consolidation entered by the Planning Commission at the Public Hearing in respect of this matter. T., V.I., Pub. Hrg., Pgs. 22-24^{1/}

Over twelve hundred pages of transcript, an environmental assessment, and independent reports on topics ranging from need to archaeology help complete the record. During the County Planning Commission hearings on the golf course, the focus of the opposition by Malama and Ohana was initially on environmental concerns, but now is upon legal procedural issues. In response to community concerns, the course had been moved entirely out of the State Conservation District prior to filing this Application, which required the use of more Land Study Bureau Class B soil than originally

^{1/} References to Transcripts of the various hearings before the Planning Commission shall be to the Volume, the particular hearing and page cited in the following format: "T., V. __, (Hearing), Pg. ____." References to the Public Hearing, conducted May 25, 1988, shall be abbreviated "Pub. Hrg.", to the Prehearing conducted June 16, 1988, as "Pre-Hrg.", to the Contested Case portion of the proceedings conducted June 23-24, 1988, as "CCH" and to the Final Argument conducted August 10, 1988, as "F.Hrg."

conceived. Witnesses from both the Applicants and the Intervenor agreed, however, that the golf course will have positive environmental effects. The development will make it possible to preserve archaeological sites and curtail harmful use by off-road vehicles. Public access to the shoreline for fishermen and other users will for the first time be guaranteed and improved by roads and parking facilities provided the Applicants.

Furthermore, the evidence produced at the County Planning Commission hearings shows clearly that the Applicants have satisfied each of the conditions necessary to secure a special permit. The Planning Commission has found that the proposed golf course use is consistent with the intent and the letter of the Land Use Law. Further, the proposed use is consistent with a variety of the goals, themes and objectives of the Hawaii State Plan and County General Plan. It is an environmentally sound use without adverse impacts and is compatible with surrounding resort and agricultural uses. The site consists predominantly of former sugarcane lands which were relatively unproductive in comparison to other agricultural locations, notwithstanding their Class B soil rating. The proposed golf course, an open space use, will allow a productive use of the land in a way which is consistent with the essential character of the Agricultural District. Moreover, the course is needed for recreational and economic health of the County as a whole as well as the Hyatt Regency Kauai Hotel.

These facts cannot be disputed and seemingly are not by the Intervenor. Rather, they argue, as explained in greater detail in the body of this brief, that this Commission lacks the power to issue a special permit for a golf course where a portion of it will be on Land Study Bureau productivity rated Class B lands, which is the case here, and alternatively that the Planning Commission denied them due process by refusing to postpone the final hearing and by not permitting certain pre-hearing discovery. In so arguing, Intervenor ignore both the plain language of Haw. Rev. Stat. § 205-6 and authorities showing that they were in no way denied due process.

Under the State Land Use Law, Chapter 205 of the Hawaii Revised Statutes, the special permit process may be utilized to authorize unusual and reasonable uses in an Agricultural District where those uses are not expressly permitted by statute (H.R.S. § 205-4.5(b) and § 205-6) and do not change the essential character of the land. The Intervenor's reliance on the 1985 amendment to Haw. Rev. Stat. § 205-2 in support of their prohibition argument is misplaced. Actually, a golf course (and other uses) are now specifically and freely permitted on C, D, E and U land by virtue of that amendment but still require the scrutiny of the special permit process on Class A and B land.

The Land Use Commission has utilized the special permit mechanism in many instances in the past to approve a variety of open space recreational uses. These uses include

overnight camping facilities throughout the State, drag strips, and two drive-in theaters. More specifically, the Land Use Commission has issued special permits for golf courses in the Agricultural District at the Kauai Surf and Princeville on Kauai, Alohilani and Waikoloa on the Big Island, Wailea, Kapalua and Kaanapali Kai on Maui, and most recently for the expansion and improvement of one course and the creation of an additional 18-hole course at the Westin Kauai, these latest following the 1985 amendment to the law.

The Intervenor's' procedural arguments are also without merit. As detailed in the body of this brief, due process was afforded to the Intervenor's throughout the proceeding and there was complete adherence to and compliance with the Planning Commission's Rules. Indeed, the Intervenor's were in fact granted discovery of all relevant material and afforded the opportunity to object to consolidated findings notwithstanding a willful failure to earlier file objections.

II. FACTS

A. Substance of the Application

Before discussing the Intervenor's' procedural objections, this memorandum will address the substance of the special permit application.

On August 10, 1988, the Planning Commission approved the special permit application by a 6 to 1 vote. Exhibit A at 47. This result was amply supported by the voluminous record which has been transmitted to the LUC. Only the highlights of the application will be presented here.

The golf course site is located in Pa'a on Kauai. It is immediately east of the Poipu resort destination area and it borders the site of the proposed Hyatt Regency Kauai Hotel. The golf course will consist of 18 holes, a driving range, a putting green, a clubhouse and a field nursery and maintenance building. The site is within the State Land Use Agricultural District and will be partially located on Land Study Bureau Class B lands. Less than one quarter of the site is currently in cultivation. D&O, Introduction, ¶¶ 17-20, 23.

The Planning Commission found that the golf course will meet important public needs on Kauai, will contribute to the fulfillment of the objectives of state and county plans, will not have any adverse affect on the surrounding environment, and will preserve a parklike open space in a way which will not change the essential character of the Agricultural District or be inconsistent with it. D&O, ¶¶ 99-105, 106-108, 151.

Planning Commission found that the golf course will have no significant adverse environmental impacts and several positive ones. Although the site is extremely well-drained, D&O, ¶ 37, with the increased landscaping the golf course entails, surface runoff will be reduced by permitting more ground percolation to take place and consequently less flow into coastal waters. D&O, ¶ 39. Development of the golf course will not have an adverse impact on any of the plant or animal life in the area. In fact, the development of the

course will probably improve the habitat remarkably for a variety of bird species. D&O, ¶ 45 and ¶ 48. Likewise, long term air quality will be slightly enhanced by eliminating impacts associated with current sugar cane harvesting on a portion of the site. D&O, ¶ 51.

Other positive environmental impacts include a 95% reduction in the amount of nitrogen introduced into the ground water compared with that introduced by present sugarcane usage at the site. Actually, the current sugarcane operation along the coast has a more detrimental effect in general on near shore water quality than will golf course use. D&O, ¶ 72.

In all other respects, development of the golf course will have no known adverse environmental impacts. D&O, ¶ 137.

The golf course will have a number of positive effects beyond improving the quality of the environment. Construction and operation of the proposed golf course can be expected to result in increased employment, personal income and government revenues. Construction of the golf course is expected to require approximately 20 months to complete and to create 12 full-time jobs during that time. D&O, ¶ 77. Once constructed, the golf course and related facilities are expected to employ 86 people. D&O, ¶ 78. Public tax revenues will increase. D&O, ¶ 79.

Development of the golf course will improve and legitimize public access to scenic coastal areas outside the project site. Roads will be extended towards the beach at

Keoneloa Bay to afford public access to the planned public beach park at the hotel site parcel. At the northeast end of the site, access to the coast for fishermen and other users will be provided with parking facilities sited in areas most commonly utilized to access the coastline. Shoreline access will also be improved. D&O, ¶ 90.

Although the site as a whole has only marginal archaeological significance, there are eight archaeological sites which will be preserved through the development of the golf course. These sites, which are within or adjacent to the proposed golf course, will be clearly flagged during the construction period, D&O, ¶ 58, and will be preserved through effective maintenance and control thereafter. D&O, ¶ 59.

The development of the golf course will be a scenic addition to the area and will improve existing views. Golf course development will result in the opening up of views towards the ocean and mountains. The 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. D&O, ¶ 63.

The Planning Commission found that the site was unsuited for uses permitted within the Agricultural District. D&O, ¶¶ 155-159. The site consists of predominantly vacant and uncultivated land. As mentioned above, less than a quarter of the site is currently under sugarcane cultivation. D&O, Introduction, ¶ 23.

The portion of the property under cultivation is leased to McBryde Sugar Company, Ltd. ("McBryde"). McBryde's yields at the site are among the lowest in the industry -- approximately 22% below average. McBryde has been withdrawing portions of its leased acreage from cane over the last several years. It now appears that McBryde may not continue its lease at the site and surrounding environs when the lease expires in 1994.^{2/} Thus, development of the golf course will have no adverse affect on McBryde's operations. D&O, ¶ 156

Although millions of dollars in agricultural diversification studies have been conducted, including some adjacent to the golf course site, none have yielded a productive, successful or economically viable crop that can substitute for cane in the area of the golf course. Indeed, 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 sugar plantations in the state. D&O, ¶¶ 158-159.

This and other evidence presented to the Planning Commission lead to the finding that the evidence was both clear and convincing that the land upon which the golf course will be developed is unsuited for uses permitted within the Agricultural District. D&O, ¶s 155 & 156.

^{2/} Haw. Rev. Stat. §§ 205-1, et seq. an 205A-1, et seq. and Chapter 15-15 Hawaii's Administrative Rules entitled "Hawaii Land Use Commission Rules".

The Planning Commission also found that there was a compelling private and public need for more golf courses on Kauai. D&O, ¶ 105. The percentage of golfers in the United States has grown 24% over the last 2 years. Existing golf courses on Kauai are inadequate to meet current demand, and the existing county golf facility at Wailua is overused. Currently 120,000 to 130,000 rounds of golf are played annually at Wailua, compared to an average of 55,000 annual rounds at municipal courses in other sun belt states. To satisfy existing and anticipated need, Kauai must significantly increase the number of golf courses currently available. In addition to a public need for this course, the Hyatt Regency Kauai Hotel itself creates a need. It alone will generate a demand for approximately 35,000 rounds of golf annually, and demand from other sources is expected to bring the course to its projected capacity of 48,000 annual rounds. D&O, ¶s 99-105.

The golf course will help the Poipu Resort destination area compete in today's market. The Planning Commission found the focus of many resort endeavors has expanded to include not only conventions and the free independent traveler but also the incentive group market, which cannot be attracted effectively without on-site golf facilities. D&O, ¶ 99.

This need can be satisfied through development of the proposed golf course without changing the essential character of the Agricultural District nor being inconsistent therewith, as found by the Planning Commission. D&O, ¶ 152. Creation of

a golf course at the site will not result in the infusion of major urban uses into the Agricultural District; but, instead, will introduce a landscaped parklike open space recreational experience into the district. D&O, ¶ 151.

In summation, the golf course is an environmentally sound development which makes productive use of land which is no longer practically suited for agricultural purposes. It responds to a large and growing demand for golf courses on Kauai, and will be a scenic addition to the area while protecting archaeological sites and giving public access to the coastline.

B. Procedural History

Applicants filed their application for a special permit with the County of Hawaii on April 18, 1988. D&O, ¶ 1. The site is owned by Grove Farm Company, Incorporated, which has authorized Grove Farm Properties, Inc., to pursue this Application. Applicant Ainako Resort Associates is a proposed lessee of the property.

On May 25, 1988, the Planning Commission permitted the Intervenor to intervene at the time of public hearing on the Application. D&O, ¶ 8.

A prehearing was held before the Planning Commission on June 16, 1988, to consider various matters, including the Intervenor's Motion for a Declaratory Order, which requested the Planning Commission to enter orders directing that discovery be made available in the proceeding and requiring the

Applicants to produce various documents. The Planning Commission granted the Motion for a Declaratory Order and ordered the production of documents pertaining to the golf course site. However, it refused, on the grounds of lack of relevance, to turn over documents pertaining to the Hyatt Regency Kauai Hotel, except insofar as the Planning Commission ordered the production of a demand study pertaining to the relationship between the hotel and the golf course. D&O, ¶¶ 14 and 15. See also Order Granting Motion for Declaratory Order.

At that hearing, the Planning Commission also required the Applicants to turn over Grove Farm's conceptual plans for the development of adjoining property, and issued various subpoenas to compel the attendance of unwilling witnesses for the Intervenor at the contested case hearing. Id.

Extensive contested case hearings were held by the Planning Commission on June 23-24, 1988. All of the witnesses called by Malama/Ohana were permitted to testify without any significant limitation upon the scope of their testimony, and all of the exhibits offered by Intervenor were admitted into evidence and are part of the record before the LUC. Intervenor's counsel was permitted free and full cross examination of all witnesses by the Planning Commission and were given every opportunity to submit rebuttal evidence. T., V.I-III, CCH.

After the contested case hearing, the Planning Commission established July 28, 1988, as the date for all

parties to file and to serve proposed findings of fact and conclusions of law; August 4, 1988, as the date for each party to file any objections to the other parties' proposed findings of fact and conclusions of law; and August 10, 1988, as the hearing date for final argument. In accordance with the Planning Commission Rules any stipulations relating to the record were to be filed by August 3, 1988.

All parties timely filed proposed findings of fact and conclusions of law. The findings proposed by the Planning Department and by the Applicants were essentially similar, in that they recommended approval of the project. The findings proposed by the Intervenor took the opposite view. Although the findings of fact and conclusions of law proposed by the Planning Department and the Applicants were not identical, every significant finding of fact and conclusion of law ultimately adopted by the Planning Commission was originally contained either in the proposed findings of the Planning Department or of the Applicants.

By August 3, 1988, the Planning Department and the Applicants were able to resolve the differences between their proposed findings of fact and conclusions of law. This resolution culminated in the filing of a single set of proposed findings of fact and conclusions of law which had been stipulated to as between the Planning Department and the Applicants. As Applicants' counsel explained to the Planning Commission, the Applicants entered into the consolidated

proposal with the Planning Department in lieu of having to file objections to the Planning Department's proposed findings of fact and conclusions of law by August 4, 1988, and represented as explained by Applicants' before the Planning Commission counsel, a concession by the Applicants of their position on all areas of substantive differences between the Applicants' proposed findings and the Planning Department's proposed findings. T., V.I., F. Hrg., Pgs. 44-52. The consolidated findings of fact and conclusions of law were served upon the Intervenor on August 3, 1988, seven days prior to final arguments, as required by the County Rules.

The Intervenor filed no objections to any of the proposed findings of fact or conclusions of law by the August 4, 1988, deadline for doing so. Instead, on August 8, 1988, one of the Intervenor, Malama filed a Motion to Defer Final Argument to Permit Exceptions to Late Filed Proposed Findings of Fact ("Motion to Defer"). This motion requested the Planning Commission to delay the August 10, 1988, hearing on final argument in view of the fact that the Planning Department and the Applicants had reached agreement on proposed findings of fact and conclusions of law. The Motion to Defer was filed notwithstanding the fact that Intervenor's counsel had earlier stated that the August 10, 1988, hearing date was "no problem . . . at all" with him. T., V.III., CCH, Pgs. 58-60. This date was later insisted upon by the Intervenor's co-counsel when an effort was made to move the hearing date to August 9, 1988.

During the course of oral argument on the Motion to Defer, it appeared that one of the Intervenor's counsel had initially accepted responsibility for presenting final argument, but became involved in another matter and neglected to make arrangements for co-counsel to handle the final argument. T., V.I., F. Hrg., Pgs. 1-4.

Although the Planning Commission denied the Motion to Defer, it did recess for several hours to give Intervenor's co-counsel a further opportunity to prepare final argument in the matter, including additional time to prepare objections to any of the proposed findings of fact, which objections were ultimately presented to the Planning Commission in considerable detail.

In short, then, the Intervenor's had seven days in which to respond to the consolidated findings of fact and conclusions of law. Effectively, the Intervenor's had 13 days in which to prepare their response since there was no substantive finding of fact or conclusion of law in the consolidated proposal which did not appear in either the Planning Department's or Applicants' proposed findings of fact and conclusions of law filed on July 28, 1988. Furthermore, to the extent their motion requested leave to file exceptions to the consolidated findings, the motion was granted by the Planning Commission and the Intervenor's were allowed to present any and all objections they wished.

III. DISCUSSION

A. Jurisdiction

Before addressing the manner in which the application satisfies all of the criteria for the issuance of a special permit, the argument advanced by the Intervenor below that the LUC is without jurisdiction to issue a special permit will be explored.

As an initial matter, it is clear that H.R.S. § 205-6 gives the LUC the jurisdiction, and in fact the duty, to approve the application, approve it with modifications, or deny it upon receipt of the record from the Planning Commission. On this point, there is no dispute. Disagreement arises because the Intervenor contend that a special permit is not available for a golf course which, like this one, will be partially located on Land Study Bureau productivity rated Class B soil.

Intervenor erroneously claim that H.R.S. § 205-2 absolutely prohibits development of a golf course on A or B rated lands. Intervenor 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^{3/} principal land use district classifications utilized

^{3/} Rules of Practice and Procedures of the Planning Commission, County of Kauai, September 1987 (hereinafter sometimes the "County Rules" or "Planning Commission Rules"). specifically permitted uses of those lands, respectively. Thus, under § 205-2, agricultural district lands generally are characterized by:

by the 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, 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.

Two points emerge from the statute. First, § 205-2 is a descriptive list of permitted uses which contains no words of prohibition. Second, a golf course is not an expressly permitted use of Class A or B lands. This is precisely the reason that § 205-6 applies to the pending application. As stated in § 205-6:

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 the Planning Commission and the LUC 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 never been a need for the legislature to enact § 205-6.

The Intervenors mistakenly argue that the 1985 amendment to H.R.S. § 205-2 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, 691 P.2d 365 (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 205-4.5(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 LUC should presume that the Legislature said what is meant. Medeiros v. Maui Land & Pineapple Co., 66 Haw. 290, 297, 660 P.2d 1316 (1983); Agustin v. Dan Ostrow Constr. Co., 64 Haw. 80, 84, 636 P.2d 1348 (1981). Nevertheless, because the Intervenor has suggested that the specific intent of the Legislature was to prohibit absolutely the development of golf courses on A and B lands, it is useful to examine what the Legislature has actually said in developing the regulatory scheme under Chapter 205. What the LUC 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 to review 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, rural 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].

This amendment to the 1961 Land Use Law further provided that uses not expressly permitted within the redefined agricultural district uses 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 permissible 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 are absolutely prohibited. There were merely those uses for which a permit was not required, and those uses which might be authorized by a special permit provided the criteria for issuance are satisfied. Indeed, until 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.

Indeed, on this basis the LUC has, since 1963, approved a wide variety of seemingly non-agricultural uses for development on agricultural lands, including golf courses. In fact, prior to 1985, the LUC issued special permits for no fewer than seven golf course facilities on agricultural land: the Kauai Surf golf course 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).^{4/} Although Section 205-2 has undergone a number of amendments

^{4/} Act 298 amending Haw. Rev. Stat. § 205-2 increasing the scope of permissible uses within the uses specifically authorized in Agricultural Districts.

reflecting changing social and economic needs for those lands^{5/}, 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 less-than-prime agricultural areas (those with productivity ratings of C, D, E, or U) 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 of the 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).

^{5/} The Intervenors' objections are detailed at T., V.I., F. Hrg. Pgs. 52-75. Applicants' response to the oral objections is set out at T., V.I., F. Hrg., Pgs. 75-97.

In order to make those lands more readily available for recreational use, the Legislature amended Section 205-2 to exempt C, D, E and U 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 permissible uses, i.e., uses for which a special permit is not required, on agricultural lands with an Land Study Bureau productivity rating of C, D, E or U). 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, E and U lands does not, as the Intervenor suggests, mean that golf courses cannot be developed on A or B lands as well. The relaxing of the requirements for golf course development on C, D, E and U lands 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.

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 LUC itself has issued various special permits to build golf courses on B lands both before and after the 1985 amendments to the Land Use Law.

Perhaps the most recent special permit granted for a golf course on Class "B" land was on Kauai in 1987. In re Hemmeter/VMS Kauai Co. III, SP 86-361, 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, the LUC 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 LUC 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.

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 LUC's own implementation of the Act over the last two decades.

B. The Application Meets All Of The Criteria
For The Issuance Of A Special Permit.

Given that the Commission has jurisdiction to issue the permit, the criteria upon which it is to base its decision are set forth in H.R.S. § 205-6 and § 15-15-95(b) of the LUC Rules. As quoted above, special permits are available for "unusual and reasonable uses." In determining whether a use is "unusual and reasonable", § 15-15-95(b) sets forth the following five guidelines:

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;

- (4) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

In addition, the grant of a special permit must conform to the Hawaii State Plan under H.R.S. § 205-16.

The Planning Commission specifically found that all of the criteria for the issuance of a special permit had been met. D&O ¶¶ 33-34.

First, the golf course is not contrary to the objectives sought to be accomplished to Chapter 205 and 205A of the Hawaii Revised Statutes. In Perry v. Planning Commission, 62 Haw. 666, 619 P.2d 95 (1980) explained that the original purpose of the Land Use Laws was to preserve, protect and encourage the development of lands for uses to which they were best suited:

State primacy in the area of land use was established in 1961 through legislative action prompted by the perception of a necessity for controls on a broader basis "to preserve, protect and encourage the development of lands . . . for . . . uses to which they are best suited for the public welfare."

62 Haw. at 674 (footnote omitted). Two years later the land use laws were amended in view of the hardship to landowners seeking to develop lands included in the Agricultural District that were not suitable for agricultural uses:

Two years later, the Legislature found it necessary to revamp the law to facilitate the implementation of the purposes and policies of the pioneering legislation. Among other problems, it specifically noted "the hardship caused to land owners who wish to develop lands included in agricultural districts but where such lands are not at all suitable for agricultural uses.

62 Haw. at 674-75 (Footnotes omitted). See also Neighborhood Board v. Land Use Commission, 64 Haw. 265, 637 P.2d 1097 (1982) (Land Use Laws enacted to redress the problem of inadequate controls resulting in long term loss to the income and growth potential of our economy.)

As the Planning Commission found, the golf course will not substantially alter the essential character of the land and will be the highest and best use of the land as it remains in the Agricultural District. By making productive use of property approval of the Application will contribute to the public welfare in a manner which is entirely consistent with the Land Use Law and the rules of this Commission.

Second, the desired use would not adversely affect the surrounding property. The Planning Commission specifically so held, and the Applicants are unaware of any dispute on this point.

Third, it is clear that the use will not unreasonably burden public agencies to provide roads, sewers, drainage, schools or police and fire protection. Again, there appears to be no dispute as to this point.

Fourth, as the Planning Commission found, unusual trends, conditions and needs have arisen in the visitor industry, the golfing industry and the agricultural industry since the district boundaries and rules were established. As discussed above, the destination resort is now geared more toward the incentive group in addition to the convention and free independent traveler market. In order to attract incentive group business, an on site golf is a virtual necessity. Demand for golf course facilities has exploded nationwide and on Kauai over the past several years. In the meantime, the economic viability of the area for agricultural use has declined, and the property is no longer suitable for agricultural use. Moreover, the Poipu Resort destination area has seen dramatic growth since the district boundaries were first set.

Fifth, and as discussed in greater detail above, the land upon which the golf course will be developed is not suitable for agricultural uses. Only a portion of the site is devoted to marginal sugar cane use, and even that may end by 1994 when the McBryde lease expires. Granting the special permit will allow the Applicants to make reasonable use of the property where no proven productive, economically viable agricultural alternate is available.

In addition to meeting the criteria of the LUC rules, the application also meets the requirement of compliance with the Hawaii State Plan set forth in H.R.S. § 205-16. The

Planning Commission found that development of the golf course will contribute to no fewer than twenty-two of the goals, objectives, or policies of the Hawaii State Plan. D&O ¶ 24-26. This again appears to be an area which is not in dispute.^{6/}

C. The Intervenors Procedural Objections are Without Merit.

In the proceeding before the Planning Commission, the Intervenors made two separate arguments that the Planning Commission deprived them of due process by failing to abide by the Planning Commission rules. However, the specific finding of the Planning Commission was that its rules had been complied with, and it is respectfully submitted that the LUC need look no further in order to resolve these arguments against the Intervenors. Nevertheless, the Planning Commission's determination was undoubtedly correct inasmuch as the Intervenors' arguments are completely without merit. The Intervenors' arguments are essentially that (1) they were given insufficient time to respond to the consolidated findings of fact proposed by the Planning Department and the applicants, and (2) that they were denied discovery of relevant documents from the applicants. The Intervenors have argued that these alleged shortcomings deprive them of due process.

^{6/} The lease permits Grove Farm to withdraw the golf course site from the McBryde lease. Such withdrawal will not occur until the harvest of the current crop is completed.

As discussed above, the Intervenor had ample opportunity to file written objections to the consolidated findings and conclusions. Since the consolidated findings are specifically allowed by the County Rules, Planning Commission Rule 1-6-10, which authorizes parties to stipulate to findings of fact, conclusions of law and conditions (or portions thereof), and involved the mere adaptation of the Applicants' proposed findings and conditions to those of the Planning Department, it is impossible that the Intervenor would have had objections to any consolidated finding that it did not have to the separately-submitted findings. Nevertheless, the Intervenor submitted no written objection to either of the separate findings.

Moreover, the Intervenor never submitted any written objections to the consolidated findings either, even though they had between August 3, 1988 and August 10, 1988 to do so. Nevertheless, the Intervenor presented a detailed list of oral objections to the proposed findings at the August 10, 1988 hearing. T., V.I., F. Hrg., Pgs. 52, 60-76.

The simple fact is that the Intervenor had from July 28, 1988, to prepare any objections they may have had to any portion of the ultimate D & O which was initially proposed by the Planning Department or the Applicants. They consciously chose not to do so, and now pretend that they were denied their due process rights.

It is clear that due process does not require that an intervenor be given more than seven days (effectively thirteen days) in which to respond to findings of fact proposed by a party. The Intervenor has cited no case which holds or even remotely suggests that their due process rights were offended by the Planning Commission's refusal to further delay the hearing.

"Compliance with due process requirements does not mandate any specific, rigid adjudicatory procedures." Mezines, 1 ADMIN.LAW § 1.02[3], at 1-57 (1977). The United States Supreme Court in Mathews vs. Eldridge, 424 U.S. 319 (1976):

"underscore[d] the truism that "[d]ue process, unlike some legal rules is not a technical conception with a fixed content unrelated to time, place and circumstances" . . . [rather], [d]ue process is flexible and calls for such procedural protection as the particular situation demands.

The Hawaii Supreme Court concurs with the United States Supreme Court that procedural due process protections are flexible. One firm requirement of a successful due process claim, prejudice, has not even been addressed by the Intervenor. See In Re Wind Power Pacific Investors-III, 67 Haw. 342, 343, 687 P.2d 831 (1984). ("While the PUC may not have followed the procedural requirements to the letter, we hold that the irregularities complained of do not prejudice the substantial rights of [the petitioner]").

The Seventh Circuit Court of Appeals reasoned that "administrative convenience or even necessity cannot override

the constitutional requirements of due process. . . .

However, in administrative hearings the hearing examiner has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed." Cella v. United States, 208 F.2d 783, 789 (7th Cir. 1953).

The Hawaii Supreme Court has "repeatedly held that where a trial court has reached a correct conclusion, its decision will not be disturbed on the grounds that the reasons it gave for its actions were erroneous." Medeiros v. Maui Land & Pineapple Co., 66 Haw. 290, 660 P.2d 1316 (1983).

The same deference must be afforded an administrative decision in light of H.R.S. 91-14(g) of the Administrative Procedures Act which precludes judicial reversal or modification of an administrative decision . . . unless substantial rights of the petitioner may have been prejudiced.

66 Haw. at 293.

In First Nat. Bank v. Oklahoma Sav. & Loan Bd., 569 P.2d 993 (Okla. 1977), the appellants argued that a continuance should have been granted in order to permit them adequate preparation time to oppose the granting of a charter to First National Bank's application to establish a branch office. The appellants argued that they had failed to receive statutory notice of the hearing and were unable to properly prepare their opposition to the grant of the charter. The Oklahoma court held that "One who urges more time to prepare must produce evidence of his due diligence during the period which he had to prepare." Id. at 997 (emphasis added).

The Supreme Court of Wyoming established a gauge to determine whether there has been an abuse of discretion in denying a motion for continuance. First National Bank of Worland v. Financial Inst. Board, 616 P.2d 787, (Wyo. 1980), involved First National's appeal of the Board's approval of a new state bank. One issue on appeal was whether the board improperly denied appellant's motion to continue the hearing when they had received data for review only one day before the hearing. The court reasoned that the same gauge is applied to a motion in an administrative hearing as is applied to a motion in a trial court. Thus,

A court does not abuse its discretion unless it acts in a manner which exceeds the bounds of reason under the circumstances. In determining whether there has been an abuse of discretion, the ultimate issue is whether or not the court could reasonably conclude as it did.

Id. at 792.

The court gauged the existence, or nonexistence, of prejudice to the appellants from the denial of a continuance by reviewing the material which had been furnished to the appellants the day before the hearing. The court ruled that:

The board did not exceed the bounds of reason under the circumstances. It could reasonably conclude that additional time was not necessary for examination of the material. The record does not reflect a showing of prejudice by appellants as a result of the ruling. An abuse of discretion is not evidenced.

Id. at 793.

One court has observed that "Notice defective for undue surprise may be cured by allowing time in the administrative proceeding for the affected party to prepare a response to the matter which constitutes a surprise." Sabine Bank v. State Banking Board, 630 S.W.2d 523 (Tex. Civ. App.) judgment set aside as moot, 639 S.W.2d 303 (Tex. 1982). The Texas court based its decision "upon a clear demonstration in the record that appellants were not surprised or misled as to the issues of fact and law . . ." Id. at 526.

The Planning Commission at the hearing on August 10, 1988, provided a further opportunity for the Intervenors to prepare objections to the findings of fact by recessing for several hours. Objections prepared during this recess were eventually presented to the Planning Commission in great detail. Indeed some of the modifications urged by the Intervenors were, in fact, adopted by the Planning Commission.

Under the cases cited above the Intervenors have no room to complain of a denial of procedural due process nor is there any evidence of an abuse of discretion on the part of the Planning Commission.

D. The Intervenors were granted more than ample discovery to protect their due process rights

As discussed above, the Planning Commission granted the Intervenors' request for a declaratory order permitting them to obtain discovery of certain documents and issued subpoenas to compel several of their witnesses to appear at the

contested case hearing. Although the evidence ultimately adduced through discovery turned out to be marginally relevant at best, the Intervenor's protested that their due process rights were denied by the Commission's refusal to order wholesale production of virtually every document in the Applicants' files. Most of these documents pertain to the Hyatt Regency Kauai hotel development which had already been approved. For example, the Intervenor's sought economic feasibility studies, plans and projections done for the Hyatt Regency Kauai hotel site, planning and projections for the physical plan of the hotel site, and negotiations and agreements with potential and actual operators for the hotel and the financial backers for the hotel.

Intervenor's claimed that this information was relevant because the Applicants were holding the hotel "hostage" for the golf course. T., V.I., Pre-Hrg., Pge. 64. However, it was stipulated that the hotel was feasible without the golf course, (T., V.I., Pre-Hrg., Pgs. 77, 93) and the Planning Commission made no finding of fact or conclusion of law based upon the impact of the golf course upon the hotel.

From the foregoing discussion of the criteria for the issuance of a special permit, the LUC can readily appreciate that the document requests were not pertinent to any of them.

It is settled law that in the absence of a specific statutory provision or administrative regulation, there is no right to discovery in an administrative proceeding. See

generally Davis, Administrative Law Treatise § 8.15 at 588. Accord, Chock v. Bitterman, 5 Haw. App. 59, 67, 678 P.2d 576 (1984); Fish v. Cardwell, 523 F.2d 976, 978 (9th Cir. 1976)); Silverman v. Commodity Futures Trading Comm'm, 549 F.2d 28, 33 (7th Cir. 1977). The facility and scope of any administrative discovery may be created only through the passage of specific enabling statute, or administrative rules promulgated under an agency's enabling statute. Chock v. Bitterman, 5 Haw. App. at 67.

The rationale behind that principle is simple: discovery is essentially a tool where a party is faced with the loss of personal liberty or property interests, e.g., civil and criminal trials, or administrative proceedings resulting in punitive orders or actions. See, e.g., Chock v. Bitterman, 5 Haw. App. at 666-67 (medical review board rules may allow discovery to parties threatened with loss of license). See also Shively v. Stewart, 55 Cal. Rptr. 217, 421 P.2d 65, 68 (1967) (medical review board).

Where proceedings deal merely with the dispensation of licenses and permits, the notion of due process does not extend to the various individuals presenting testimony to the administrative body.

Haw. Rev. Stat. Chapters 91 and 92 generally provide agencies and public administrative bodies, such as the Planning Commission, with the ability to conduct hearings and to marshall before it what evidence it may require to make sound

and reasonable determinations of the questions brought before it. In that regard, Haw. Rev. Stat. § 92-16 provides the Planning Commission with the authority to issue subpoenas exclusively for the purpose of requiring witnesses to appear to testify at a scheduled hearing. Haw. Rev. Stat. § 92-16(a)(1). There is no provision in the administrative procedure law for a party to conduct pre-hearing discovery of another party or witnesses who may appear at the hearing. This is in accord not only with the scope of the due process principles discussed above, but also with the Federal Administrative Procedure Act on which the Hawaii statute is based. See Cazimero v. Kohala Sugar Co., 54 Haw. 479, 483, 510 P.2d 89, 92 (1973).

Pursuant to the provisions of Haw. Rev. Stat. § 92-16, the Planning Commission has adopted rules governing the issuance and purpose of subpoenas. Planning Commission Rule 1-6-13 provides that subpoenas may be issued "requiring the attendance of a witness for the purpose of taking oral testimony before the Commission." The subpoena shall be issued only upon the written request of a party to the intended proceeding, which application shall state the name and address of the witness, and explain why the testimony of the proposed witness is relevant and material to the issues before the Commission. Planning Commission Rule 1-6-13(a).

In contrast, where the legislature or the agency involved have recognized the need for pre-hearing discovery,

the applicable rules have specifically provided for it. Chock v. Bitterman, 5 Haw. App. at 66-67 (Medical Review Board Rules allowing pre-hearing discovery on showing of good cause).

Limiting pre-hearing discovery is clearly in keeping with the concept of open and fair public hearings on land development issues. Were parties allowed to conduct discovery of adverse witnesses, potential testifiers (including the applicants, interested parties, and public witnesses) would be subjected to hours of intrusive and harrassing oral or written examination, severely inconveniencing them and discouraging them from being witnesses at all. The chilling effect such discovery might have on the public at large could very well cripple the administrative process by discouraging the public from participating in the planning process, and muting relevant public testimony on important development proposals. Cf., Planning Commission Rule 1-6-11(c) (prohibiting cross-examination of public witnesses by petitioner or intervenors).

In arguments to the Fifth Circuit Court in support of their now withdrawn motion to enjoin the LUC, the Intervenors have cited a number of cases in support of their argument that the denial of their motion to defer final argument and partial denial of their discovery requests denied them due process. These cases are, without exception, inapplicable.

None of the cases cited by Intervenors even speak to the length of time to respond to proposed findings of fact and

only one speaks to discovery in administrative hearings, although it was cited by Intervenor for another proposition. Chock vs. Bitterman, 5 Haw. App. 59, 678 P.2d 576 (1984), involved an appeal from the Board of Medical Examiners' suspension of a physician's license. One of the points on appeal was whether the hearing officer's denial of discovery adversely affected the appellant's rights. The court held:

that the hearing officer did not abuse his discretion in denying the application for depositions. Rule 3.28 gives the hearing officer discretion to order discovery and his order will not be set aside absent a clear abuse of discretion. Appellant did not have an absolute right to discovery, but could have discovery only in accordance with the rule.

5 Haw. App. at 67.

Similarly, Intervenor did not have an absolute right to discovery. The Planning Commission exercised its discretion and permitted discovery within the rules. Its decision can be overturned only for abuse of discretion.

Other cases cited by Intervenor are clearly distinguishable. Intervenor rely upon International Brotherhood of Electrical Workers - Local 1357 vs. Hawaiian Telephone, 713 P.2d 943 (Haw. 1986), for the proposition that deference is not given to administrative agency decisions regarding legal conclusions and are freely reviewable by this Court. In contrast, "[a]gency fact findings are reviewable [only] for clear error." 713 P.2d at 950. Intervenor's allegations, however, are based upon the agency's

interpretation of the rules and agency fact finding, rather than agency's legal conclusions. "An agency's interpretation of its rules receives deference unless [the interpretation] is plainly erroneous or inconsistent with the underlying legislative purpose." Id.

Intervenors contend that a full hearing under due process and H.R.S. 91-9 requires that the parties be given the meaningful opportunity to be heard and that this implies the right to submit evidence and argument on the issues. Intervenors rely upon In re Hawaii Electric Light Co. Inc., 67 Haw. 425, 690 P.2d 274 (1984) for support. In that case, however, the Supreme Court affirmed the Public Utilities Commission's ("PUC's") decision to exclude evidence. The Company appealed the Decision and Order regarding rate increases and revised rate schedules, claiming inter alia, that it was denied due process when the PUC did not allow its witness to testify at a reconsideration hearing. The PUC determined that the proposed testimony of the Company's witness consisted of argument, facts already on record, and irrelevant facts regarding accounting procedures. The court held that it was not error for the PUC to refuse the proposed testimony as being cumulative or not relevant. 67 Haw. at 431.

In the instant case, a full hearing under due process and in full compliance with H.R.S. Chapter 91 was held by the Planning Commission of Kauai County on June 23-24, 1988. Intervenors were present, were afforded a meaningful

opportunity to be heard, submitted evidence and argument on the issues, and cross-examined witnesses. In re Hawaiian Electric Light Company, supra.

Intervenors rely heavily on a 1973 Hawaii Supreme Court case reversing a decision by the Department of Labor and Industrial Relations (DLIR) Board. In that case, Cazimero vs. Kohala Sugar, 54 Haw. 479, 510 P.2d 89 (1973), the survivors of Cazimero were awarded hospital service costs, burial expenses, and weekly benefits to be paid by Kohala Sugar, the employer of deceased Cazimero. The benefits were awarded by the Director of the DLIR due to his determination that Cazimero's death was work-related. Kohala Sugar appealed and the DLIR refused to admit testimony of Dr. Silver, who was the advisor to the Director, and upon whose determination the Director had based his decision. On direct appeal after the board denied benefits, the court stated that any and all evidence should be admitted at contested administrative hearings limited only by considerations of relevancy, materiality and repetition.

Cazimero is totally different from the instant case. In Cazimero, the board refused to admit testimony on appeal that had been the determining factor in the decision below. Intervenors's evidence was heard and considered. Intervenors can point to no such exclusion of relevant material evidence.

Intervenors cite Town vs. Land Use Commission, 55 Haw. 538, 524 P.2d 84 (1974), for the innocuous proposition that

administrative procedure is quasi-judicial in nature. More importantly, the case depicts the egregious behavior required to move the court to find prejudicial error. The Hawaii State Supreme Court upheld the decision of the LUC that a boundary amendment is a contested case, but declared null and void the LUC's decision to approve the petitioner's request to change the land designation from agriculture to rural. The court found prejudicial error when the LUC approved the petitioner's request although the person contesting the application was not present, not given an opportunity to present argument, or to cross-examine or to present rebuttal evidence of his own to counter the ex parte evidence presented by the petitioner.

"Compliance with due process requirements does not mandate any specific, rigid adjudicatory procedures." Mezines, 1 ADMIN.LAW § 1.02[3], at 1-57 (1977). The United States Supreme Court in Mathews vs. Eldrige, 424 U.S. 319, 47 L.Ed.2d 18, 96 S.t. 893 (1976)

Underscore[d] the truism that "[d]ue process, unlike some legal rules is not a technical conception with a fixed content unrelated to time, place and circumstances" . . . [rather], [d]ue process is flexible and calls for such procedural protection as the particular situation demands.

47 L.Ed.2d at 33.

The procedural protections in this case are set forth in H.R.S. Chapter 91 and the Planning Commission of Kauai County Rules. Intervenors were afforded all the due process protection of these statutes and rules.

The foregoing discussion establishes that the Intervenors were not denied any due process right, that the LUC has jurisdiction over this application, and that all the criteria for the issuance of a special permit have been satisfied. On this basis, it is respectfully submitted that the action of the Planning Commission be approved.

E. Kamaaina Rates

As this Commission is aware, the Applicants are advocates of kamaaina rates at the golf course. Indeed, they have represented that such rates will be made available and have always been prepared to have that representation attach as a condition to the requested permit. The Applicants, however, have some concern over the scope of the condition which was adopted by the Planning Commission notwithstanding recommended revisions by the Applicants. That condition number 17 provides:

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 tie. Should there be no requests made within this time frame, such times can be sold or given away.

The Applicants are uncertain of the effect of condition number 17 on golf course operations over the next ten years. The fixed kamaaina rate was established by the Planning Commission based on the rate charged at the neighboring Kiahuna Golf Course. T., V.I., F. Hrg., Pg. 115. Although the final cost figures for the golf course have not been determined, it is certain that the final expense will be substantially in excess of the cost of building the Kiahuna Golf Course. Id. Moreover, it is anticipated that kamaaina play at the course may amount to as many as 13,000 rounds per year. Based on these facts and the starting time requirement, Applicants may in the future wish to seek modification of this condition by the Planning Commission.

IV. CONCLUSION

After pain-staking consideration of voluminous evidence and testimony, the Planning Commission properly determined that all the criteria for the issuance of a special permit were satisfied by the Applicants.

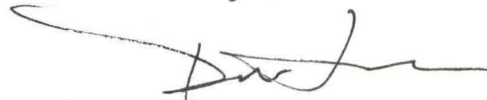
The Intervenors have not seriously challenged the merits of the Planning Commission's decision, but instead have focused on jurisdictional and procedural objections. This brief has shown those objections to be completely without merit.

It is respectfully submitted that the LUC should approve the Planning Commission decision.

DATED: Honolulu, Hawaii, September 19, 1988.



DENNIS M. LOMBARDI
DAVID ALLEN FELLER



BRUCE L. LAMON
CAROL EBLEN

Attorneys for
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
	)	

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,

EXHIBIT A

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 Keoneloa 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 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 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 *Reneshyne Costa*
Chairman of the Commission
Date: 8-10-88

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, unfiled copies of the foregoing BRIEF OF APPLICANTS AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC. IN SUPPORT OF ISSUANCE OF SPECIAL PERMIT; EXHIBIT A were served upon the following persons, by depositing said copies with the United States Postal Service, postage prepaid, as follows:

MICHAEL J. BELLES
County Attorney
LORNA A. NISHIMITSU
Deputy County Attorney
County of Kauai
State of Hawaii
4444 Rice Street, Room 230
Lihue, Kauai, HI 96766

Attorneys for the Planning
Commission, County of Kauai

MR. TOM SHIGEMOTO
Kauai County Planning Commission
4280 Rice Street
Lihue, Kauai, HI 96766

MR. RICK TSUCHIYA
Hearings Officer
Planning Department
County of Kauai
4280 Rice Street
Lihue, Kauai, HI 97666

TERENCE YAMAMOTO
Deputy Attorney General
Hawaii State Capitol
415 S. Beretania Street
Honolulu, HI 96813

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, unfiled copies of the foregoing BRIEF OF APPLICANTS AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC. IN SUPPORT OF ISSUANCE OF SPECIAL PERMIT; EXHIBIT A were served upon the following persons, by depositing said copies with the United States Postal Service, postage prepaid, as follows:

MICHAEL J. BELLES
County Attorney
LORNA A. NISHIMITSU
Deputy County Attorney
County of Kauai
State of Hawaii
4444 Rice Street, Room 230
Lihue, Kauai, HI 96766

Attorneys for the Planning
Commission, County of Kauai

MR. TOM SHIGEMOTO
Kauai County Planning Commission
4280 Rice Street
Lihue, Kauai, HI 96766

MR. RICK TSUCHIYA
Hearings Officer
Planning Department
County of Kauai
4280 Rice Street
Lihue, Kauai, HI 97666

TERENCE YAMAMOTO
Deputy Attorney General
Hawaii State Capitol
415 S. Beretania Street
Honolulu, HI 96813

BENJAMIN M. MATSUBARA, ESQ.
EDSEL M. YAMADA, ESQ.
Matsubara, Lee & Kotake
Charles R. Kendall Building
888 Mililani Street, 8th Floor
Honolulu, HI 96813

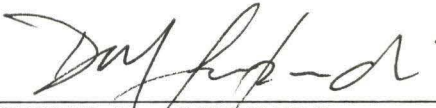
Attorneys for STATE LAND USE COMMISSION

STEPHEN LEVINE, ESQ.
4365 Kukui Grove Street
Suite 103
Lihue, Kauai, HI 96766

TERESA S. TICO, ESQ.
2959 Umi Street, 2nd Floor
Lihue, Kauai, HI 96766

Attorneys for MALAMA MAHA'ULEPU
and OHANA O'MAHA'ULEPU

Dated: Honolulu, Hawaii, September 19, 1988.



DENNIS M. LOMBARDI
CASE & LYNCH

BRUCE L. LAMON
GOODSILL, ANDERSON, QUINN & STIFEL

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

TONY T. KUNIMURA
MAYOR



MICHAEL J. BELLES
COUNTY ATTORNEY

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

September 16, 1988

Ms. Esther Ueda
Executive Officer
Land Use Commission
State of Hawaii
Old Federal Building, Room 104
335 Merchant Street
Honolulu, Hawaii 96813

SEP 19 12 14 PM '88
LAND USE COMMISSION
STATE OF HAWAII

Dear Ms. Ueda:

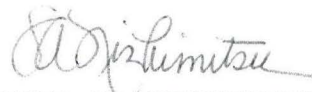
Re: SP-88-369, Ainako Resorts Associates
and Grove Farm Properties, Inc.

Enclosed for filing are an original and sixteen (16) copies of the Memorandum In Support Of Issuance Of Special Permit in the above-referenced matter.

Please return a file-stamped copy of said Memorandum to our office in the stamped, self-addressed envelope herein provided.

Thank you.

Very truly yours,


LORNA A. NISHIMITSU
Deputy County Attorney

LAN:bkm

Enclosures

DEPARTMENT OF BUSINESS
AND ECONOMIC DEVELOPMENTRENTON L.K. NIP
ChairmanLAWRENCE F. CHUN
Vice Chairman

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 Kajfoka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. HoeESTHER UEDA
Executive Officer

September 9, 1988

Dennis Lombardi, Esq.
Case & Lynch
Suites 2500 and 2600
Grosvenor Center Mauka Tower
737 Bishop Street
Honolulu, HI 96813

Dear Mr. Lombardi:

Subject: LUC Special Permit 88-369/Ainako Resort
Associates and Grove Farm Properties, Inc.

Please be advised that the Land Use Commission intends to schedule the subject special permit for action at its September 29, 1988 meeting which is tentatively scheduled for 10:30 a.m. at the Kohala 3 Conference Room of the Hyatt Regency Waikoloa Hotel in Kona, Hawaii. A copy of the Commission's agenda for this meeting will be forwarded to you at a later date.

Please be advised that the parties may submit legal memorandum prior to the action meeting date summarizing any legal issues and positions of the parties relating to this permit as reflected in the existing record on this proceeding. These legal memoranda should be submitted to the Commission by no later than September 19, 1988. Memoranda in excess of twenty pages should contain a subject index and table of authorities. Where factual matters are referenced, appropriate references to the record, for example, exhibits or testimony, should be made.

In addition, the Commission will permit the parties to give oral arguments, based on the record of the proceedings before the Planning Commission, at the time of the action meeting. Oral argument will be limited to 15 minutes for each side of

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the	)	SP-88-369 - AINAKO RESORTS
Petition of	)	ASSOCIATES AND GROVE FARM
	)	PROPERTIES, INC.
AINAKO RESORTS ASSOCIATES and	)	
GROVE FARM PROPERTIES, INC.	)	
	)	
For a Special Use Permit.	)	

MEMORANDUM IN SUPPORT OF ISSUANCE
OF SPECIAL USE PERMIT

EXHIBIT "A" - "D"

CERTIFICATE OF SERVICE

SEP 19 12 15 PM '88
LAND USE COMMISSION
STATE OF HAWAII

MICHAEL J. BELLES 1577
County Attorney
LORNA A. NISHIMITSU 2291
Deputy County Attorney
County of Kauai
State of Hawaii
4444 Rice Street, Room 230
Lihue, Hawaii 96766
Tel. No. 245-3688

Attorneys for PLANNING
COMMISSION, COUNTY OF
KAUAI

SUBJECT INDEX

	<u>Page</u>
Table of Citations	ii
Background	1
Argument	4
I. Whether or not a special permit, pursuant to Section 205-6, Hawaii Revised Statutes, may issue with respect to agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B?	4
II. Did Ainako/Grove Farm, pursuant to Section 15-15-95 of the LUC Rules, comply with the County Rules?	7
A. Did the County improperly deny Malama/Ohana an opportunity to file exceptions to the stipulation for a proposed findings of fact, conclusions of law, decision and order entered into by and between the Planning Department and Ainako/Grove Farm?	8
B. Did the stipulation for a proposed findings of fact, conclusions of law, decision and order conform with the requirements of the County Rules?	8
C. Did the County improperly deny certain requests of Malama/Ohana to obtain documents pertaining to the Hyatt Hotel located in the vicinity of the proposed golf course subject of the instant Special Use Permit SP-88-369?	17
III. Whether the proposed golf course is contrary to the Kauai General Plan or the Koloa-Poipu-Kalaheo Development Plan? . . .	20
Conclusion	23

TABLE OF CITATIONS

	<u>Page(s)</u>
<u>Hawaii Revised Statutes</u>	
§91-14	4
§205-2	4-6
§205-4.5(a) (6)	6
§205-4.5(c)	6
§205-5(b)	6
§205-6	3-4, 6-7
<u>Kauai County Ordinances</u>	
Ordinance No. 447, Koloa-Poipu-Kalaheo Development Plan	21-23
Ordinance No. 461, General Plan Update for the County of Kauai	20
<u>Land Use Commission Rules</u>	
§15-15-56	10
§15-15-69	17
§15-15-95	7, 18
§15-15-95(b)	18
§15-15-96	7
§15-15-96(b)	4
<u>Rules of Practice and Procedures of the County of Kauai Planning Commission</u>	
§1-6-10	8, 10, 12
§1-6-18(c)	9
§1-6-18(d)	9, 12

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the	)	SP-88-369 - AINAKO RESORTS
Petition of	)	ASSOCIATES AND GROVE FARM
	)	PROPERTIES, INC.
AINAKO RESORTS ASSOCIATES and	)	
GROVE FARM PROPERTIES, INC.	)	MEMORANDUM IN SUPPORT OF
	)	ISSUANCE OF SPECIAL USE
For a Special Use Permit.	)	PERMIT; EXHIBITS "A"-"D";
	)	CERTIFICATE OF SERVICE

MEMORANDUM IN SUPPORT OF ISSUANCE
OF SPECIAL USE PERMIT

COMES NOW PLANNING COMMISSION, COUNTY OF KAUAI ("County"), by and through its undersigned attorney, and hereby submits to the Land Use Commission of the State of Hawaii ("LUC"), a memorandum urging the approval of the Findings of Fact, Conclusions of Law, Decision and Order entered by the County with respect to the Special Permit SP-88-6 (at the County level), for the establishment of a golf course and the construction of improvements related to the golf course upon that certain real property comprising approximately 210 acres and more particularly designated as Kauai Tax Map Key No.: 2-9-1, portion 1.

Background

On August 11, 1988, County entered the Findings of Fact, Conclusions of Law, Decision and Order ("County D&O") in the matter relating to Special Permit SP-88-6, Special Management Area Use Permit SMA(U)-88-10, Use Permit U-88-31

and Class IV Zoning Permit Z-IV-88-39 (collectively, "County permits"), pertaining to an application of Ainako Resorts Associates ("Ainako") and Grove Farm Properties, Inc., ("Grove Farm").

Prior to the entry of the County D&O, several hearings on the matter had been conducted before the Planning Commission, the first of which commenced on May 25, 1988, at which time intervention of the groups known as Malama Maha'u-lepu ("Malama") and Ohana O' Maha'u-lepu ("Ohana") were allowed, subject to consolidation under Rule 1-4-5 of the Rules of Practice and Procedure of the Planning Commission of the County of Kauai ("County Rules"), to which neither Malama nor Ohana objected. Transcript of the Proceedings of May 25, 1988, Volume I ("Tr. 052588, Vol. I") at pages 22-24.

The hearing of May 25, 1988, largely consisted of the taking of testimony from members of the public either for or in opposition to the County permits. See also Transcript of the Proceedings of May 25, 1988, Volume II ("Tr. 052588, Vol. II").

On June 16, 1988, pre-hearings were conducted by the County to settle some motions and requests for the issuance of subpoenas pursuant to Rule 1-6-13, County Rules. See Transcript of the Proceedings of June 16, 1988 ("Tr. 061688").

On June 23 and 24, 1988, the County conducted the contested case hearing with respect to the County permits. See Transcripts of the Proceedings of June 23 and 24, 1988, consisting of four separate volumes, the first of which is numbered Volume I, pages 1 through 264 ("Tr. 062388, Vol. I(1)"), the second of which is numbered Volume I, pages 265 through 462 ("Tr. 062388, Vol. I(2)"), the third of which is numbered Volume II ("Tr. 062488, Vol. II"), and the fourth of which is numbered Volume III ("Tr. 062488, Vol. III").

After scheduling the filing of proposed decisions and orders and exceptions thereto pursuant to Rule 1-6-18, County Rules, final argument was conducted before the County on August 10, 1988. See Transcript of the Proceedings of August 10, 1988 ("Tr. 081088").

The LUC, pursuant to Section 205-6, Hawaii Revised Statutes ("HRS") and Subchapter 12 of Chapter 15, the Land Use Commission Rules ("LUC Rules"), acts to review the County's action on any Special Permit issued for non-agricultural or non-rural uses in agricultural or rural lands. The County's action on the LUC Special Use Permit SP-88-369 can be acted upon in the following ways by the LUC: 1) approval; 2) approval with modification; or 3) denial. The County's action on the remaining three permits, Special Management Area Use Permit SMA(U)-88-10,

Use Permit U-88-31 and Class IV Zoning Permit Z-IV-88-39, on the other hand, constitutes a final decision pursuant to Section 91-14, HRS, and is immediately appealable thereunder to the Circuit Court.

Subsequent to action of the LUC on the Special Use Permit the matter becomes immediately appealable to the Circuit Court. Section 15-15-96(b), LUC Rules, and Section 91-14, HRS.

Argument

While County is uncertain which issues Malama and/or Ohana may be raising at the LUC level with respect to SP-88-369, inasmuch as the filing of any legal memoranda by the parties hereto is to be simultaneous, County would like to address some of the issues raised by Malama/Ohana at the County level.

I. Whether or not a special permit, pursuant to Section 205-6, Hawaii Revised Statutes, may issue with respect to agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B?

At the County level, Malama/Ohana argued that the County was prohibited from allowing any golf course use on agricultural district lands with soil classifications of A or B. See Tr. 062488, Vol. II at 44-51. The argument appeared to be based on the language of Section 205-2, HRS, which provides in pertinent part as follows: "Agricultural districts shall include activities or uses . . . 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.] Malama/Ohana has argued that such a description of the permissible uses on agricultural district lands constitutes an absolute prohibition on golf courses, if the lands have soil classifications of either A or B.

This argument is apparently premised on the fact that, prior to Act 298, enacted on June 12, 1985, Section 205-2, HRS, had defined agricultural activities and uses without the inclusion of the language above-emphasized. To argue the legislative intent supportive of Malama/Ohana's position, the Standing Committee Report, SCRep. 442, prepared in connection with the ultimate enactment of Act 298, was provided to the County, a copy of which is attached hereto and incorporated herein as Exhibit "A". Malama/Ohana has argued that the legislative intent was to protect agricultural lands classified as A or B, resulting in the absolute prohibition of golf courses on such lands.

An examination of the pertinent statutes, however, and their 1985 revisions, lead inexorably to the following conclusions:

PRE-1985

Section 205-2, HRS - definition of uses on agricultural lands made no mention of golf courses and driving ranges

Section 205-4.5(a)(6), HRS - golf courses, ranges and country clubs are not permissible uses on soils with A or B classifications

Sections 205-4.5(c) and 205-5(b), HRS - uses on agricultural lands with soils classified as C, D, E and U are restricted to those described in Section 205-2

Prior to Act 298, then, for golf courses on agricultural lands with any soil classification ranging from A through and including U, a special permit under Section 205-6, HRS, was required to legitimize such use.

POST-1985

Section 205-2, HRS - definition of uses on agricultural lands amended to include golf courses and ranges, except on lands with soil classifications of A or B

Section 205-4.5(a)(6), HRS - no change

Sections 205-4.5(c) and 205-5(b), HRS - no change

The result, then, of the amendment to Section 205-2, HRS, had a direct effect on the reading of Sections 205-4.5(c) and 205-5(b), because of their specific reference to Section 205-2. As such, golf courses and ranges became outright permissible uses on agricultural lands with soil classifications of C, D, E, and U--no special permit was required to legitimize golf courses/ranges on those lands. With respect to the land classified as A or B, the process remained the same if golf

courses or ranges were thereupon proposed--application under Section 205-6, HRS (the special permit section).

Clearly, then, both the County, and the LUC, have the express authority to process Special Use Permit SP-88-369, and if the facts exist with respect to authorizing such use, to issue the same to Ainako and Grove Farm.

II. Did Ainako/Grove Farm, pursuant to Section 15-15-95 of the LUC Rules, comply with the County Rules?

In a Motion for Preliminary Injunction filed on September 2, 1988, in Civil No. 88-0154 in the Circuit Court of the Fifth Circuit, Malama sought to enjoin the LUC from proceeding with its review, pursuant to Section 15-15-96, LUC Rules, of the special use permit here at issue. That motion was subsequently withdrawn, obviating the need for a hearing originally scheduled for September 9, 1988. However, Malama appeared to argue therein (at page 4 of the Memorandum attached to the Motion) that there was a failure, on the part of Ainako/Grove Farm, to comply with the County Rules.

Without specifying in what fashion Ainako/Grove Farm failed to comply with the County Rules, Malama generally detailed the following procedural complaints, all of which revolved around the allegation that Malama/Ohana were not afforded a full and fair hearing pursuant to Chapter 91, HRS, and the County Rules:

1) that the County improperly denied Malama/Ohana an opportunity to file exceptions to the stipulation for a proposed findings of fact, conclusions of law, decision and order entered into by and between the Planning Department of the County of Kauai ("Planning Department") and Ainako/Grove Farm;

2) that the stipulation for a proposed findings of fact, conclusions of law, decision and order entered into by and between the Planning Department and Ainako/Grove Farm does not constitute a stipulation pursuant to County Rule 1-6-10;

3) that the County improperly denied certain requests of Malama/Ohana to obtain documents pertaining to the Hyatt Hotel located in the vicinity of the proposed golf course subject to Special Use Permit SP-88-369.

All three of the foregoing allegations of procedural defects deal not with Ainako/Grove Farm's failure to comply with the County Rules, but allege the County's failure to apply the County Rules.

A. Did the County improperly deny Malama/Ohana an opportunity to file exceptions to the stipulation for a proposed findings of fact, conclusions of law, decision and order entered into by and between the Planning Department and Ainako/Grove Farm?

B. Did the stipulation for a proposed findings of fact, conclusions of law, decision and order conform with the requirements of the County Rules?

Rule 1-6-18(c), County Rules, provides as follows:

"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."

The County hearing on the proposed golf course concluded on June 24, 1988. Transcripts were prepared in the County proceedings; thus, the time for submitting proposed decisions and orders started to run after copies of the transcripts had been served upon the parties. As such, the parties, if they chose to submit proposed decisions and orders to the County, were given the deadline of July 28, 1988, for such submittals. All three of the parties below (those parties being the Planning Department, Ainako/Grove Farm, and Malama/Ohana) met the deadline of July 28, 1988, and filed separate proposed decisions and orders.

Rule 1-6-18(d), County Rules, provides that: "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 . . ." The parties were advised, by written communication from the Planning Department, that the exceptions were due on August 4, 1988. Ainako/Grove Farm submitted its exceptions to Malama/Ohana's proposed decision and order on August 1,

1988. The Planning Department did not submit any exceptions to either of the other two parties' proposed decisions and orders.

Rule 1-6-10, County Rules, provides in its entirety as follows:

"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/}

^{1/}Section 15-15-56, LUC Rules, provides as follows with respect to stipulations as to findings of facts, conclusions of law and conditions of reclassification:

"At the hearing, all parties may enter into appropriate stipulations as to findings of fact, conclusions of law, and conditions of
(Footnote Continued)

The County Rules, first of all, recognize that parties who wish to enter into stipulations with respect to proposed decisions and orders may do so. As to those parties, then, for whom stipulation can be agreed to, the requirement is added that all such parties sign any stipulation. Malama's position on the matter is that there is a requirement that every party to any proceeding sign a stipulation. Such an argument is absurd, for in every contested case proceeding, it is unlikely that there would ever be a situation where

(Footnote Continued)

reclassification concerning the proposed boundary change as follows:

(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 of reclassification concerning the proposed boundary change;

(2) All parties shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, conditions of reclassification, and a proposed decision and order, if at all, and shall submit such stipulation to the commission ten days prior to the hearing date;

(3) At the hearing, the commission shall approve or deny the stipulation and proposed decision and order;

(4) The commission may require the parties to submit additional evidence concerning the stipulation and proposed decision and order;

(5) The commission may approve the proposed decision and order by amending or adopting the proposed decision and order. The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and section 205-4(g), HRS."

all of the parties could agree to stipulate. And if there are two or three parties in a multi-party contested case proceeding who can stipulate, but would be prevented from doing so because of an inability to obtain the signature of a non-stipulating party, Rule 1-6-10 would become meaningless, in that it would only provide for the entry of stipulations if everyone involved were to agree.

The Planning Department and Ainako/Grove Farm did, pursuant to Rule 1-6-10, enter into a stipulation as to a proposed decision and order, on August 3, 1988, within the time frame provided under the Rule (seven days prior to the hearing of August 10, 1988). In the meantime, Malama/Ohana had until August 4, 1988, to file exceptions to either the Planning Department's or Ainako/Grove Farm's proposed decisions and orders which were filed on July 28, 1988. Malama/Ohana did not file any exceptions on the deadline of August 4, 1988, to the proposed decisions and orders of either the Planning Department or Ainako/Grove Farm, both of which were filed on July 28, 1988.

With respect to the stipulated decision and order filed on August 3, 1988, Malama/Ohana still had the specified seven days permitted under Rule 1-6-18(d), or until August 10, 1988, to file exceptions thereto. August 10, 1988, was the date of the hearing at which final arguments were presented by all of the parties. No exceptions were

filed; however, Malama/Ohana instead chose to file, and argue, a motion for an extension of time within which to file exceptions to the stipulated proposed decision and order. That motion for an extension of time was denied by the Planning Commission after hearing thereon.

A summary of the chronology is as follows:

- June 24, 1988 - contested case hearing concludes
- July 28, 1988 - proposed decisions and orders due from all parties; all parties file
- August 1, 1988 - Ainako/Grove Farm files exceptions to findings of fact contained in proposed decision and order of Malama/Ohana
- August 3, 1988 - stipulation for proposed decision filed by Planning Department and Ainako/Grove Farm
- August 4, 1988 - exceptions to proposed decisions and orders filed on July 28, 1988 due
- August 10, 1988 - deadline for exceptions to findings of fact contained in stipulation for proposed decision and order; hearing before the Planning Commission

All deadlines are set forth within the Rules, as are the procedures by which matters are handled in contested case proceedings. Clearly, no irregularities, as alleged by Malama/Ohana, occurred with respect to the submittals of any decision and order, stipulation or requirement as to when exceptions were due. Nor was the stipulation for a proposed decision and order, filed by the Planning Department and

Ainako/Grove Farm, submitted "6 days after the deadline established by the rules". The record of proceedings at the County level do not support Malama/Ohana's contentions.

The LUC Rule regarding stipulations does not afford the guidance which might be expected in this matter. First of all, the LUC Rule regarding stipulations on proposed decisions and orders appear to be limited to petitions for reclassification of lands, rather than to the matter of special use permits. Even assuming, arguendo, that the LUC Rule does apply to special use permits, the past practice of the LUC has been to allow the filing of stipulations entered into only between some, as opposed to all, of the parties. (See LUC docket number A87-614, In the Matter of the Petition of HEMMETER-VMS KAUAI COMPANY III To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 299.70 acres at Kalapaki, Lihue, Hawaii, Tax Map Key Nos. 3-5-01:1, por. 6, por. 27, 83, por. 115, por. 116, por. 117, por. 118, 119, and por. 120; and 3-5-02: por. 15, in which the Petitioner and County of Kauai entered into a Stipulation for Proposed Findings of Fact, Conclusions of Law, and Order, and the Department of Business and Economic Development submitted its own Proposed Findings of Fact, Conclusions of Law and Decision and Order in November 1987.)

Secondly, the LUC Rule pertaining to stipulations, in its preface, requires that, at the hearing, all parties may enter into such stipulations, which, on its face, appears to be a requirement that the only stipulations which can be entertained are stipulations to which all parties have agreed. Such is not the case with the County Rule, which recognizes that nothing therein shall be deemed to prohibit parties (not all of the parties) from entering into stipulations.

The sequence of events clearly show that Malama/Ohana had the opportunity to file their exceptions both to the original proposed decisions and orders of the Planning Department and Ainako/Grove Farm (July 28, 1988 - due August 4, 1988) and the stipulation on the proposed decision and order (August 3, 1988 - due August 10, 1988). The failure to exercise their option, does not constitute a denial by the County of the right to file exceptions; indeed, there was a waiver by Malama/Ohana with respect to filing written exceptions.

Moreover, a review of the County record will show that on August 10, 1988, Malama/Ohana was allowed, notwithstanding the failure to file written exceptions, a period of two and one-half hours in which to present final oral arguments upon Malama/Ohana's Motion to Defer Final Argument. Tr. 081088 at pages 38-43. That time period for the

purposes of preparing and presenting final argument allotted to Malama/Ohana, resulted in oral presentation, by counsel, of exceptions to the stipulated Proposed Findings of Fact, Conclusions of Law, Decision and Order submitted by the Planning Department and Ainako/Grove Farm. Tr. 081088 at pages 52, 60-70. Indeed, review of the transcript of August 10, 1988, will reveal that Malama/Ohana meticulously addressed those proposed findings which appeared to be of import, and noted exceptions thereto. Tr. 081088 at pages 60-73, wherein exceptions were taken to paragraphs 21, 36, 39, 57, 64-69, inclusive, 89, 99, 101, 109, 148, 149, 150. Malama/Ohana also took exception to the proposed conclusions of law contained within the stipulation. Tr. 081088 at page 70, wherein an exception was noted to paragraph 4. And finally, Malama/Ohana noted exceptions to the proposed conditions contained within the stipulation. Tr. 081088 at pages 70-75, wherein exceptions were noted to paragraphs 10, 18, 22, 23 and 27.

It is the County's position, then, that Malama/Ohana was permitted to submit, orally, the very exceptions which they claim to have been prevented from submitting.

Accordingly, the answers to the two questions immediately above-posed should be answered, as to the first, in the negative, and as to the second, in the affirmative.

C. Did the County improperly deny certain requests of Malama/Ohana to obtain documents pertaining to the Hyatt Hotel located in the vicinity of the proposed golf course subject of the instant Special Use Permit SP-88-369?

The alleged denial of discovery raised by Malama/Ohana is a presumption on their part that discovery is a right conferred during the course of an administrative proceeding. Neither Chapter 91, HRS, nor the County Rules provide for the sort of discovery permitted under the Hawaii Rules of Civil Procedure ("HRCP").

Indeed, the County Rules (as does LUC Rule Section 15-15-69) recognize that before any subpoenas can be issued by a party, the matter must be addressed in the form of a request to the Planning Commission, which will render a decision as to whom any subpoena can be directed. Unlike the wide latitude of discovery allowed under HRCP, and unlike the rules governing criminal discovery pursuant to the Hawaii Rules of Penal Procedure, administrative agencies are free to fashion their own procedures with respect to discovery, Chapter 91, HRS being silent thereupon.

Certainly, then, under both the LUC Rules and the County Rules, subpoenas do not issue as a matter of course, and discovery is not a matter of right thereunder.

Malama/Ohana's complaint is that they were prohibited, by the County, from obtaining, and then presenting, any evidence relative to a hotel which had received County

approvals some time prior to the pendency of the proceedings on the proposed golf course. Malama/Ohana had argued that the documents relating to the hotel were relevant and material because Ainako/Grove Farm had either implied or expressly stated at the County proceedings that the proposed golf course was indispensable for the hotel's operations.

The argument of Malama/Ohana can basically be reduced as follows: that the need required to be established pursuant to Section 15-15-95, LUC Rules, is the need of the Hyatt Hotel for a golf course. On that premise, Malama/Ohana has rested its opposition, and had asked the County permission to subpoena various documents related to the hotel (which was the subject of an unrelated Planning Commission approval). What Malama/Ohana sought, then, was to inquire into whether or not there was really a need, by the hotel operators, for a golf course.

It is unfortunate that Malama/Ohana has construed the requirement of Section 15-15-95, LUC Rules, in that fashion, by interpreting the word "need" to mean the "need" expressed by the hotel for a course. Section 15-15-95(b) first of all, requires that, before a special permit can issue, the County must find that the proposed use is "unusual and reasonable", and establishes the guidelines which assist in determining what is "unusual and reasonable."

One of the guidelines, which Malama/Ohana has focused upon, is that "[u]nusual conditions, trends and needs have arisen since the district boundaries and rules were established" [Emphasis added.] The guideline does not purport to require that an applicant for a special permit establish a personal need for the activity or use; rather, that the County, and later the LUC, make a finding that there are certain conditions, trends and needs, in the general sense, for that particular use. The facts with respect to the certain unusual conditions, trends and needs, are found, not within any documents pertaining to the operation of the hotel, but in the Golf Course Study prepared by one of the consultants for Ainako/Grove Farm, which shows a general need for the proposed golf course. If the Planning Commission or the LUC were required to look at an applicant's need for a certain activity or use, it would be rare indeed for a challenge to succeed against any self-proclaimed or self-touted need.

The determination, then, as to the requirement to produce documents, was clearly within the discretion of the County, and that decision should only be scrutinized on a proper appellate review, pursuant to Chapter 91, HRS, of the record below.

Because the alleged procedural defects surrounding the County's proceedings have focused on purported

irregularities or defects on the administrative agency, rather than any charge that Ainako/Grove Farm failed to comply with any requirements of the County Rules, a review, by the LUC, of the alleged irregularities would be unwarranted, inasmuch as the jurisdiction over the same clearly rests with the Circuit Courts pursuant to Chapter 91, HRS.

If the LUC were to commence exerting jurisdiction over issues that include determining the meaning and intent of the County Rules, or of ascertaining the propriety of proceedings conducted at the County level, it would appear to be a preemption of the authority of the judiciary to conduct judicial reviews of administrative actions.

III. Whether the proposed golf course is contrary to the Kauai General Plan or the Koloa-Poipu-Kalaheo Development Plan?

At the proceedings below on the County level, Malama/Ohana challenged the proposed golf course on the basis that the same, if established, would be contrary to the Kauai General Plan and the Koloa-Poipu-Kalaheo Development Plan.

Ordinance No. 461, enacted on June 21, 1984, is the General Plan Update for the County of Kauai ("General Plan"). The General Plan describes a total of sixteen goals to be thereby attained (a copy of the sixteen goals is attached hereto and incorporated herein as Exhibit "B"), eight of which are recognized and will be satisfied in the

issuance of SP-88-369 (see County D&O), at pages 26-27, wherein the goals to be obtained are specified).

It is unquestioned that what the General Plan's goals represent are guidelines, or generalized ideals for planning in the County of Kauai, rather than constituting fixed and rigid requirements. Indeed, the General Plan recognizes, at Section 2.02(3), that "[f]ull attainment of some of the goals cannot be realized because either: a) the goals represent never-ending pursuits, progress toward which can only be measured relative to prior efforts; or b) specific goals may need to be balanced, in certain situations, when conflicts or trade-offs between degrees of pursuing specific goals become necessary; or c) the degree to which these goals can be attained is dependent on or is influenced by forces or circumstances beyond the control of the County."

As such, what the County's General Plan does is to direct, through ever more refined processes, planning and growth on the island. The next refinement is the Koloa-Poipu-Kalaheo Development Plan ("Development Plan"), represented in Ordinance No. 447, which took effect on February 22, 1983. The Development Plan contains a myriad of goals and objectives, which are set forth in Exhibit "C", attached hereto and incorporated herein, seven of which are recognized and will be satisfied in the issuance of

SP-88-369 (see County D&O), at page 27, wherein the specific goals and objectives to be obtained are specified).

Moreover, the Koloa-Poipu-Kalaheo Development Plan Report, which has been incorporated by reference in Ordinance No. 447, provides, as it discusses the various communities encompassed by the development area, the following recommendations for Poipu: "Continue to develop Poipu Area as major visitor designation [sic] area. Improve visual quality of existing roadways. Encourage development of appropriate visitor facilities and services."

No prohibition on development has been codified in Ordinance No. 447, nor in the report incorporated therein, which encumbers the real property subject of SP-88-369, contrary to the arguments raised by Malama/Ohana at the County level. Indeed, when Ordinance No. 447 was enacted, several charts accompanied the ordinance to reflect the proposed General Plan and Zoning changes for the properties in the Koloa-Poipu-Kalaheo area, including the real property subject of this proceeding, which is identified as Kauai Tax Map Key No.: 2-9-01-1. The recommendations for the parcel, then in Agricultural use and zoned Agricultural, indicate that the proposed changes were for Planned Development - Residential, Single Family Residential and Park. As such, the Development Plan clearly recognized future urbanization of the parcel subject of SP-88-369. The chart which

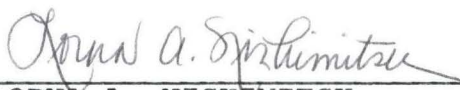
references Kauai Tax Map Key No.: 2-9-01-1, and the recommended changes in zoning, which has been incorporated into Ordinance No. 447, is attached hereto and incorporated herein as Exhibit "D".

Certainly, then, the use proposed by Ainako/Grove Farm is not contrary to the policies for planning recognized and enacted by County.

Conclusion

Based upon the foregoing, it is respectfully requested that this Commission approve Special Use Permit SP-88-369, and allow the development of the golf course and related accessory structures proposed, as recommended by the County in its action on Special Permit SP-88-6, and subject to the conditions thereto.

DATED: Lihue, Kauai, Hawaii, September 15, 1988.



LORNA A. NISHIMITSU
Deputy County Attorney

Attorney for PLANNING
COMMISSION, COUNTY OF KAUAI

SCRep. 442³ Water, Land Use, Development and Hawaiian Affairs and Planning,
Energy and Environmental Protection on H.B. No. 1063

The purpose of this bill is to amend Section 205-4.5, Hawaii Revised Statutes, by allowing the establishment of golf courses and golf driving ranges within the State Agricultural District on lands classified A or B by the Land Study Bureau's Detailed Land Classification System.

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 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.

Your Committees are of the opinion that the purpose of this bill is generally worthy of serious consideration. However, your Committees are also of the opinion that agricultural lands classified A or B should not be used for the purpose of this bill.

Your Committees have, therefore, amended the bill to permit golf courses and golf driving ranges in agricultural districts, provided that they are not located in A and B classified areas. Section 205-2 has been amended accordingly.

Your Committees on Water, Land Use, Development and Hawaiian Affairs and Planning, Energy and Environmental Protection are in accord with the intent and purpose of H.B. No. 1063, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1063, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committees except Representatives Crozier, Hagino, Honda, Pfeil and Tam.

EXHIBIT "A"

- b. Monitoring operations such as preparation of plans and implementation of projects and development in accordance to desired growth rates.
- c. Reporting progress on County projects and how County resources are used.
- d. Advising and informing the various County agencies to encourage cooperation and communication with agencies and between County government and the general public.

SECTION 2.00 GOALS, APPLICATION

Sec. 2.01 Goals.

A. The goals to be attained by this General Plan shall be as follows:

- 1) To maintain the concept of Kauai as "The Garden Isle"; thus, insisting any growth be in consonance with the unique landscape and environmental character of the island.
- 2) To insure that all physical growth is consistent with the overall ecology of the island.
- 3) To manage growth according to established population growth targets.
- 4) To create opportunities for a greater fulfillment of life through the development of a broad spectrum of educational and cultural pursuits...
- 5) To create opportunities for a greater diversity and stability of employment for residents of Kauai.
- 6) To promote and protect the health, safety and welfare of all residents and visitors.
- 7) To provide opportunities for suitable living quarters for all residents in all income levels.
- 8) To provide for a maximum variety of outdoor recreational activities.
- 9) To recognize those aspects of the island and its people which are historically and culturally significant, and to maintain and enhance such aspects as a continuing expression of the island's physical and social structure.
- 10) To promote the improvement and expansion of the island's economy, by recognizing and carefully utilizing land and water resources.
- 11) To guide and control development to take full advantage of the island's form, beauty and climate and preserve the opportunity for an improved quality of life.
- 12) To guide physical growth so that island and visitor communities will develop in social and economic concert with each other.
- 13) To manage implementation of the General Plan through the development of social and physical infrastructure based on growth targets, priorities and efficient utilization of facilities and services.
- 14) To provide workable planning tools to meet the changing needs of the community.

- 15) To create, develop and sustain an economy and a population composition that will encourage the youth of Kauai to live in the County and contribute to society.
- 16) To encourage and support efforts aimed at attaining self-sufficiency in food production and energy for the County.

Sec. 2.02 Application.

- A. The expectations or the application of specific goals need to be tempered in recognition of the following:
- 1) Each goal is an expression of what the citizens of the County of Kauai, through its planning process, determine to be desirable directions or pursuits for the County.
 - 2) It is intended that these directions or pursuits lead towards a sound physical, social and economic environment for the County.
 - 3) Full attainment of some of the goals cannot be realized because either:
 - a. the goals represent never-ending pursuits, progress toward which can only be measured relative to prior efforts; or
 - b. specific goals may need to be balanced, in certain situations, when conflicts or trade-offs between degrees of pursuing specific goals become necessary; or.
 - c. the degree to which these goals can be attained is dependent on or is influenced by forces or circumstances beyond the control of the County.
 - 4) The network of the County's resource management system as described in Section 1.04 and the Policies and their Implementation as provided under Section 3.00, together with programs that result from the implementation of the General Plan, shall serve as the means to effectuate the goals.
 - 5) The goals are intended to provide the County and the public it serves with a sense of direction and purpose in the development, use and allocation of land and water resources.

SECTION 3.00 POLICIES AND THEIR IMPLEMENTATION

Sec. 3.01 Basis for Managing Population Growth.

- A. Article IX, Section 6, of the State Constitution provides that the counties "shall plan and manage the growth of the population to protect and preserve the public health and welfare...." and thereby enables county legislation directed toward that end.
- B. Section 1 of County Ordinance No. B-0148-81 establishes the General Plan as the logical method of planning and managing population growth. Section 2 of the same ordinance mandates the management of population growth as a priority of the General Plan. Section 1 also requires the determination of an optimum population level and an optimum population growth rate.
- C. Population growth impacts public health and welfare through the development of housing and other physical facilities which result from such growth. In turn, the development of physical facilities affects the public service systems necessary to protect the health, safety and welfare of the public. These services include wastewater disposal, transportation, domestic water resources, fire, police and emergency services and social programs and services.

KOLOA-POIPO-KALANEO DEVELOPMENT PLAN
GOALS AND OBJECTIVES

The following goals and objectives were developed for the Koloa Planning Area by the County Planning Department, their consultants, and the Koloa-Poipo-Kalanee Development Plan Citizens Advisory Committee (CAC):

Natural Features

- o Develop more specific than present County, State and Federal regulations if necessary for the use and/or control of steeply sloping lands, shoreline, flood plain areas, and other constraint areas.

Environmental Determinants

- o Encourage development in existing communities, least environmentally sensitive areas, non-agricultural areas, and areas outside constraint districts.

History and Archaeology

- o Increase the body of knowledge about and the public's understanding of the area's history and archaeology.
- o Develop a program for its use and preservation.

Subarea Distinctions, Settlement Patterns, Population

- o Encourage continued identification and integrity of each area community's unique identity, including physical, social and architectural.
- o Limit and/or accommodate growth in population (resident and de-facto) in accordance with overall growth objectives.

Flooding, Tsunami, Coastal Waters, Beaches

- o Improve drainage to alleviate flood hazards.
- o Encourage uses and a development pattern and/or controls which enhance and protect coastal waters and beaches, and encourage construction of structures which do not promote flood and tsunami dangers.

Employment and Industry

- o Develop programs for orienting and educating area residents about available industry opportunities and skill requirements.
- o Develop skill education programs related to available industry opportunities.
- o Develop programs to help visitors about area laws, customs, amenities, communities, and sources of further information and/or help.
- o Encourage development of visitor facilities which best benefit residents and visitors.
- o Increase job opportunities.

- o Encourage new industries, consistent with other community goals.
- o Direct infrastructure for overall best benefit.

Housing

- o Develop housing guidelines which are aimed at achieving a balance of housing types, architectural style, size, and price mix to meet housing needs.
- o Encourage subsidized housing for low-income families through incentives to private developers and/or rental supplements to needy tenants, and/or government-sponsored housing projects.
- o Use State lands for housing.

Recreation

- o Determine what daytime and nighttime activities are desired by residents and visitors and encourage their development.
- o Develop specific programs for the proper maintenance and use of each park and recreation area.
- o Develop a plan for public access to coastal and mauka areas where private properties block such access.
- o Acquire coastal areas for public use.
- o Use the Parks and Recreation Master Plan to identify areas for park expansion and new parks.

Visual Resources

- o Determine visual resource priorities and plan for their preservation and/or development.

Social Resources and Activities

General:

Find out how people feel about various pertinent issues.

Specific:

Education - Encourage educational programs and facilities that will meet changing needs of all age groups and engender realistic and tolerant attitudes and values.

Health - Encourage health services and facilities which promote better health maintenance along with necessary treatment services.

Safety - Develop a crime-prevention and-protection-program-that-will improve the security of residents and visitors.

- o Encourage more effective community-wide inspection and compliance with fire prevention and safety regulations in order to reduce risks of losses from fires.
- o Provide a program for all aspects of emergency services.

Community Well-Being -- Strengthen social services and provide facilities to assist families in dealing with marital disorders, improving parent-child relationships, protection of children, and arranging early referral of delinquency-prone juveniles.

Culture and the Arts -- Foster more community-based support and participation in culture and the arts.

Transportation and Circulation

- o Improve roadway patterns and linkages at points of congestion and areas of future growth.
- o Encourage alternate transport systems which lessen congestion and conserve resources.

Land Use

- o Consolidate urban growth in existing communities, where possible.
- o Reinforce existing land use patterns. Where necessary, reserve new areas for future growth.
- o Evaluate community desires and accommodate them as reasonable.

General Plan and Zoning

- o Revise the General Plan and County Zoning as necessary to match projected needs in accordance with community desires.

Public Facilities

- o Encourage development of roads, sewerage, water facilities, drainage improvements and other public facilities necessitated by existing uses and proposed growth.
- o Encourage development of parks and cultural facilities.

PO-4

EXHIBIT D-1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, unfiled copies of the foregoing MEMORANDUM IN SUPPORT OF ISSUANCE OF SPECIAL PERMIT, EXHIBITS "A" - "D", were served upon the following persons, at the addresses so designated for said persons, by depositing said copies with the United States Postal Service, postage prepaid, as follows:

DENNIS M. LOMBARDI, Esq.
DAVID ALLAN FELLER, Esq.
Case & Lynch
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813

BRUCE L. LAMON, Esq.
Goodsill, Anderson, Quinn & Stiffel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813

Attorneys for AINAKO RESORTS ASSOCIATES
and GROVE FARM PROPERTIES, INC.

TERRENCE YAMAMOTO, Esq.
Deputy Attorney General
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

BENJAMIN M. MATSUBARA, Esq.
EDSEL M. YAMADA, Esq.
Matsubara, Lee & Kotake
Charles R. Kendall Building
888 Mililani Street, 8th Floor
Honolulu, Hawaii 96813

Attorneys for STATE LAND USE COMMISSION

STEPHEN LEVINE, Esq.
4365 Kukui Grove Street, Suite 103
Lihue, Hawaii 96766

TERESA S. TICO, Esq.
2959 Umi Street, 2nd Floor
Lihue, Hawaii 96766

Attorneys for MALAMA MAHA'ULEPU and
OHANA O' MAHA'ULEPU

DATED: Lihue, Kauai, Hawaii, September 16, 1988.



LORNA A. NISHIMITSU
Deputy County Attorney

Attorney for PLANNING
COMMISSION, COUNTY OF KAUAI

Teresa Tico
A T T O R N E Y

LETTER OF TRANSMITTAL

TO: Land Use Commission
Old Federal Building
335 Merchant Street
Room 104
Honolulu, HI 96813

DATE: 9/16/88

RE: Ainako Resorts &
Grove Farm Properties
LUC S.P. 88-369
Permit SP-88-6

The following: (X) Enclosed () Delivered

Copies	Date	Description
Orig. + 15	9/14/88	Intervenors Memorandum in Opposition to the Proposed Golf Course in the Agricultural District on "B" Rated Land; Certificate of Service

(XX) Transmitted herewith:	(XX) For Necessary Action
() For Your Information	() Per Your Request
() For Signature & Return	() Per Our Conversation
() For Signature & Forwarding	() Approved
AS NOTED BELOW:	() Approved as Noted
() For Review & Comment	() Disapproved
() For Correction	() For Your Files
() For Recordation	() See Remarks Below

REMARKS:

SEP 19 12 02 PM '88
LAND USE COMMISSION
STATE OF HAWAII

BY: *C. B. Shuman*
Or: TERESA S. TICO

A L A W C O R P O R A T I O N

ORIGINAL

TERESA TICO 1952
3016 Umi Street
Suite 211B
Lihue, HI 96766
Telephone No: (808)245-9696

STEPHEN LEVINE 2160
4365 Kukui Grove Street
Suite 103
Lihue, Hawaii 96766
Telephone No: (808)245-1855

Attorneys for the Intervenor
MALAMA MAHA'ULEPU and
OHANA MAHA'ULEPU

LAND USE COMMISSION
STATE OF HAWAII
SEP 19 12 02 PM '88

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION	)	
OF	)	INTERVENORS MEMORANDUM
AINAKO RESORTS ASSOCIATES and	)	IN OPPOSITION TO THE
GROVE FARM PROPERTIES	)	PROPOSED GOLF COURSE
INCORPORATED	)	IN THE AGRICULTURAL
	)	DISTRICT ON "B" RATED
LUC Special Permit 88-369	)	LAND; CERTIFICATE OF
Permit SP-88-6	)	SERVICE
	)	

INTERVENORS MEMORANDUM IN OPPOSITION TO THE PROPOSED GOLF
COURSE IN THE AGRICULTURAL DISTRICT ON "B" RATED LAND

Introduction

The LAND USE COMMISSION, State of Hawaii, (hereinafter "LUC"), has before it the transcript of the contested case proceeding on the Special Permit SP-88-6 (LUC Special Permit 88-369), being sought by AINAKO RESORTS ASSOCIATION, and GROVE FARM PROPERTIES, INC. Review by the LUC is consistent with Hawaii Revised Statutes (hereinafter "HRS") 205-6 and State Land Commission Rules 15-15-95 and -96, (hereinafter "LUC rules"). The Land Use Commission takes action based

upon the decision and transcript of the proceeding before the Planning Commission.

Malama Maha'ulepu and Ohana Maha'ulepu (hereinafter "intervenors") were granted intervenor status and the Planning Commission held a contested case proceeding on the requested special permit, under the Hawaii Administrative Procedures Act, HRS 91 (hereinafter "HAPA") and the Planning Commission Rules of Practice of Practice and Procedure, County of Kauai (hereinafter "Planning rules").

The Intervenors oppose the application pending before the LUC on two grounds:

- 1) HRS 205-2, as amended by Act 298 (H.B. 1063, H.D.1) prohibits the construction of a golf course on the proposed site, which is in the Agricultural District and has soil classified by the Land Study Bureau's Detailed Land Classification as having an overall (master) productivity rating of Class "B". A Special Permit cannot therefore be granted; and

- 2) The contested case hearing held did not comply with the Hawaii Administrative Procedures Act (HRS 91) nor the Planning Departments own rules of practice and procedure, denying the Intervenors due process and a full and fair hearing, and thereby violating LUC Rule 15-15-95(d).

3) The Applicant should be required to do an Environmental Impact for the proposed project.

HRS 205-2 PROHIBITS THE CONSTRUCTION OF A GOLF COURSE ON
THE SUBJECT PROPERTY

The LUC rules require that uses sought under a Special Permit "shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS. LUC Rules, 15-15-95(b)(1). The specific and clear objective of HRS 205-2 is to prohibit the use of "B" rated land in the Agricultural district for golf course use. Based upon the statutory language prohibiting the activity sought by the Applicants here, and the ruling of the Supreme Court in Neighborhood Board No. 24 v. State Land Use Commission, --Hawaii--, 639 P.2d 1097 (1982), the LUC must deny the application this special permit. The appropriate method for building golf course on the parcel before the LUC in this application is a district boundary amendment.

As stated by the Supreme Court in Neighborhood Board

No. 24 v. State Land Use Commission, supra.:

"....a special permit allows the owner to put his land to a use expressly permitted by ordinance or statute on proof that certain facts and conditions exist, without altering the underlying zoning classification." (page 1102, emphasis added)

HRS 205-4.5 expressly does not permit use of "A" or "B"

rated land in the Ag District to be used for golf courses:

"Within the agricultural district all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses;

(6) Public and private open area types of recreational uses....but *not including....golf*

courses, golf driving ranges,..... HRS 205-4.5(a)(6), emphasis added.

HRS 205-2 also lists the permitted activities within Ag district land. This section also specifically and expressly does not permit the construction of a golf course on the site of this application. HRS 205-2, as amended by Act 298 (1985), provides that:

"Agricultural districts shall include activities and uses.....including golf courses and golf driving ranges *provided 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)

It is clear from all the evidence presented that the site of the proposed golf course is almost all land rated "B" by the Land Study Bureau, and it is also in the Ag District. (Applicants' Environmental Assessment, pages 13-16 and Figure 7, Testimony of Michael Laureta, Transcript, June 24, 1988, Volume II, pages 28-9, Testimony of Joseph Vierra, June 23, 1988, Volume II, page 451).

The Intervenors presented testimony indicating the construction of the proposed golf course in the Agricultural District on the "B" rated soil is prohibit by law, and a Special Permit cannot be granted. (Transcript, June 24, 1988, Volume II, page 44-51). Based upon the clear and unambiguous words of both the statute itself, and the Standing Committee Reports of both the House (SCREP 442, House Journal, 1985 Regular Session, Page 1195, and specifically presented to the Planning Commission, June 24,

1988, Volume II, pages 44-51), and Senate (SCREP 983, Senate Journal, 1985 Regular Session, page 1331), the Ag district would henceforth be opened to permit golf courses provided they are not constructed on lands rated "A" or "B".
(Transcript, Ibid)

The bill that became Act 298 originated in the State House of Representatives as H.B. 1063. As originally drafted, it would have amended HRS 405-4.5(a)(6), making golf courses on "A" and "B" land in the Ag District a permissible use. This concept was totally rejected. In committee, the bill was amended into the form ultimately adopted by both houses of the legislature and signed into law by the Governor. SCREP 442 states:

"The purpose of this bill is to amend Section 205-4.5, Hawaii Revised Statutes, by allowing the establishment of golf courses and golf driving ranges within the State Agricultural District on lands classified A or B by the Land Study Bureau's Detailed Land Classification System....

Your Committees are of the opinion that the purpose of this bill is generally worthy of serious consideration. However, your Committees are also of the opinion that agricultural lands classified A and B should NOT be used for the purpose of this bill.

Your Committees have, therefore, amended the bill to permit golf courses and golf driving ranges in agricultural districts, provided that they are NOT located in A and B classified areas. Section 205-2 has been amended accordingly. (Ibid, page 1195; see also Transcript, June 24, 1988, Volume II, Stephen Levine, Pages 47-48, emphasis added.)

Act 298 was passed as amended by SCRep 442, amending HRS 205-2 to the extent that golf course use in the Ag District

is permitted on "C", "D", "E" and other classes of land, but specifically prohibited on "A" and "B" rated land.

Since the proposed golf course is specifically not a permitted use on the proposed site, a special permit cannot be issued. While golf course construction in the Ag district is permitted on certain lands, it is specifically barred on "B" rated soil, which comprises practically all of the site in this Special Permit application. It is therefore not "expressly permitted" by statute, and a Special Permit is not the appropriate procedure under HRS 205 for such a project. HRS 205-6 is general in nature, and is inapplicable in this situation in the face of a more specific statutory section, HRS 205-2, prohibiting the land use proposed. Hawaii Government Employees Association, AFSCME v. Armbruster, --Haw. App.--, 681 P.2d 587 (1984).

PROCEDURAL FLAWS DENIED INTERVENORS DUE PROCESS RIGHTS
TO A FULL AND FAIR CONTESTED CASE HEARING

County Planning Commission Must Comply
with the Hawaii Administrative Procedures Act and its own
Rules of Practice and Procedure

The Intervenor was permitted to intervene in the administrative application for the permits listed above, thereby establishing a contested case proceeding under the HAPA and the Planning Rules. HRS 91-9(a) provides that in contested cases "all parties shall be afforded an opportunity for hearing after reasonable notice." Under HRS

91-9(c) the opportunity "shall be afforded all parties to present evidence and argument on all issues involved." The Supreme Court stated that a "full hearing" under due process and HRS 91-9 "...requires that parties be given a meaningful opportunity to be heard. This implies the right to submit evidence and argument on the issues." Application of Hawaii Electric Company, Inc., 67 Hawaii 425, 690 P.2d 274 (1984). A full and fair hearing is "[o]ne in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken...." In Re Kauai Electric, 60 Hawaii 166, 590 P.2d 524, 536 (1978)

The record that has been sent to the LUC is prejudicially flawed. The denial of due process and a full and fair hearing, due to the Planning Commissions' failure to comply with their own rules of practice of procedure and the HAPA, is specifically in issue here. Although permitted to intervene, the contested case proceeding held by the Planning Department violated both the HAPA (HRS 91) and the Planning Commission's own rules of practice and procedure.

The LUC Rules specifically require that a petitioner comply with County rules of practice and procedure (15-15-95(d)) before any Special Permit can be considered by the LUC.

Planning Commission improperly denied
the Intervenor's an opportunity to file
exceptions to the consolidated findings of fact

On June 24, 1988, following the contested case proceeding in this matter, the Appellee Planning Commission scheduled closing arguments for August 10, 1988.

(Transcript, June 24, 1988, Vol. III, page 58-61). Under the Planning Rules proposed Findings of Facts, Conclusions of Law, Decision and Order (hereinafter "findings") may be submitted by each party 14 days after the service of the transcript of the proceedings. Planning Rules, 1-6-18(c). This procedure was stated in the record of this matter. (Transcript, Ibid, pages 58-61). In this matter, the transcripts were served on July 14, 1988, hence the deadline for the filing of such proposed findings by each of the parties was July 28, 1988.

All parties to the proceedings complied, filing their own proposed findings. The Applicants filed a 68 page document, the Planning Department filed a 24 page document, comprising each of their separate proposed findings. Under Planning Rule 1-6-18(d), each of the parties then had until August 4, 1988 to file exceptions to the other parties proposed findings.

On the afternoon of August 3, 1988, six days after the filing deadline and a day before the deadline for filing exceptions, the Applicants and the Planning Department served upon the Intervenor's a 43 page single-spaced

document. The two parties labeled the document a "stipulation" and the legal basis for submitting the document at such a late date was 1-6-10, Planning Rules.

This late submission is not a stipulation
under the planning rules

The Developers and the Planning Departments' attempted to justify the submission of the consolidated findings by calling them "stipulations", under 1-6-10 of the Planning Rules. See the cover sheet of document submitted.

The Planning Rules specifically defines the word "parties" as "[t]he Planning Department, admitted intervenors and the petitioner in every case.....". Planning Rules 1-6-2. Therefore in this matter the parties included the Intervenors, the Planning Department, and the Applicants, Defendants Ainako Resorts Inc., and Grove Farm Properties, Inc.

The Planning Rules permit the "parties" to enter into stipulations as to findings, and 1-6-10(2) specifically and unequivocally provides that proposed stipulations must be signed by "all parties". The purported "stipulation" submitted by the Applicants and Planning Department was not signed by all the parties as required by the rules. It was submitted without the review or agreement of the Intervenors,

Faced with a 43-page single spaced document, indicating a change in position by the other parties in this matter, and 24-hours to submit exceptions under the rules, the Intervenor submitted a motion pursuant to the Planning Rules 1-6-16, requesting that the deadline for the submittal of exceptions be extended to accommodate the late consolidated findings submitted on August 3, 1988, with a concomitant delay in the scheduled final arguments. The Appellee Planning Commission denied the Intervenor's Motion (Transcript ("TR"), August 10, 1988, Pages 33-38), allowed counsel for the Intervenor only two and a half hours to review the purported "stipulation", (TR, *ibid*, page 41-3), then adopted the improper "stipulation" totally, with two minor additions. (TR, *ibid*, page 128).

This cavalier trampling of the Planning Rules and HAPA constitutes a violation of their due process rights and denied the Intervenor a full and fair hearing on this matter. The actions of the Planning Commission are in direct contravention of the due process rights provided in HRS 91. See In Re Hawaii Electric Light Co., *supra*.; and In Re Kauai Electric, *supra*.

THE PLANNING COMMISSION IMPROPERLY DENIED THE INTERVENORS
REQUEST FOR RELEVANT DOCUMENTS

Admissibility of Evidence under the Planning Rules

The rules of practice and procedure used by the Planning Commission are of a recent vintage. This appears to be the first time decisions concerning permissible discovery have arisen for this commission under these rules. As quasi-judicial in nature, Town v. Land Use Commission, 55 Hawaii 538, 545, 424 P.2d 84, 89 (1974), it is important that the indices of fairness, equal protection, due process, and justice be applicable in a contested case proceeding.

HRS 91-9(c) provides that each party to a contested case proceeding shall be permitted to present evidence and argument on all the issues involved in the contested case. HRS 91-10(3) states that "[e]very party shall had the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence."

1-6-17 of the Planning Commission Rules provides:
"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 a matter *with a view towards insuring that justice is served.*" (emphasis added)

Rules of Evidence Under the Hawaii
Administrative Procedures Act

HRS 91-10(1) reads as follows:

"Rules of evidence; official notice. In contested cases:

(1) Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence...."

In interpreting the intent of this section of the Administrative Procedures Act, the Supreme Court stated that the legislative intent "...indicates that the direction chosen [by the legislature] was towards the admission of any and all evidence limited only by consideration of relevancy, materiality and repetition." Dependants of Cazimero v. Kohala Sugar Company, 54 Hawaii 479, 510 P.2d 89 (1973); see also Chock v. Bitterman, 5 Haw. App. 59, 678 P.2d 576 (1984).

The wording of the HRS 91-10 is exactly the same as the language in the Federal version of the act. The intent of HRS 91-10(a) is to "free administrative agencies from the bounds of any technical rules of evidence.....That is not to say, however that administrative agencies were given the latitude to exclude evidence that would previously have been admissible. Just the opposite was intended.....". Dependants of Cazimero v. Kohala Sugar Co., 510 P.2d, at page 92, emphasis added.

When an agency is faced with evidence of doubtful admissibility, it should err on the side of permitting

broader evidentiary presentations rather than restricting its introduction. This permits a reviewing court to review and dispose of a case completely and not have to order a new trial or hearing because admissible evidence was excluded. Dependants of Cazimero v. Kohala Sugar Co., supra., 510 P.2d, at page 93.

The Applicants Statement and Documents Make the Hyatt Regency Hotel a Relevant and Material Issue

On May 25, 1988, as the first order of business the Intervenors were granted intervenor status in this matter, The Planning Department then presented evidence in this matter followed by Mr. Melvin Ventura. Mr. Ventura presented evidence on behalf of the Applicants permit requests. (Transcript, May 25, 1988, Volume I, pages 39-59). Mr. Ventura's testimony was presented consistent with the provisions of 1-6-11(b), Planning Commission Rules, and is evidence in this proceeding.

Under the Land Use Commission Rules 15-15-95, an applicant for a Special Permit must show, as one criteria for approval "[u]nusual conditions, trends, and needs have arisen since the district boundaries and regulations were established" in order to build a golf course.

In an effort to substantiate the "need" requirement, the Applicants have submitted a demand study ("Golf Course Demand Study, Grove Farm Site, Lihue, Hawaii", by Robert E.

Yoxall, Inc.). It quantifies and bases the need for the proposed golf course on the 48,000 rounds to be generated by the Hyatt Regency Hotel, adjacent to the site. The formula used to derive demand is based on a 600 room hotel. Ibid. page 14. The consultant anticipates that 75% of the golf rounds played on the course will be generated by the Hyatt Regency Hotel. Ibid, page 16. Need is based solely on the Hyatt Regency Hotel.

In addition Mr. Ventura provided the following testimony that the Hyatt Regency Hotel, to be built by Ainako Resorts Association, is dependent on the proposed golf course:

Planning Commission Hearing for Special Permit SP-88-6, Special Management Area Use Permit SMA (U)88-10, Use permit U-88-31, and Class IV Zoning Permit Z-IV-88-39, May 25, 1988, Transcript, Volume I:

"I would like to start by describing the project for you. The Hyatt Regency Kauai Golf Course is a championship 18 hole, par 72 course, 6,800 yards long." at page 40.

"As the developer of the Hyatt Hotel, I can tell you that from our prospective and from the perspective of Hyatt Hotels, this course is a cornerstooen [sic] of the proposed Hyatt operation.....The course is *needed in order to allow the Hyatt Regency Kauai to compete* successfully in the resort marketplace for which it is designed. An offsite course will not do it." Page 41, emphasis added.

"*The Demand Study clearly demonstrates that the new Hyatt Regency creates demand for this new course.* The Hyatt alone will utilize approximately 70% of the course's start times." Page 42, emphasis added.

"We believe that a properly designed on-site championship golf course is essential to the economic success of the Hyatt Hotel." Page 42, emphasis added.

Ms. Matsumura: "Mel, is your hotel dependent upon this golf course?"

Mr. Ventura: "The success--*Hyatt is taking the position that* for this hotel to really compete effectively for the market for which it has been designed, *the golf course is mandatory.*" Page 49, emphasis added.

Ms. Matsumura: "...If the golf course does not fly, will you still continue building your hotel."

Mr. Ventura: "That is a tough question. I would like to say that--I would like to, but I don't have the final say on that. He who is putting up the money and the operator will have that say." Page 51, emphasis added.

The Applicants bring the issue of "need" for the golf course directly to the doorstep of the Hyatt Regency Hotel. The Applicants likewise have raised the terms and conditions of the financing agreement for the Hyatt Regency in this matter.

In addition, Mr. Ventura had appeared before Planning Commission on behalf of Ainako Resort Associates in a prior hearing for the hotel itself. At the Special Area Management Use permit hearing on October 14, 1987, Mr. Ventura never mentioned the necessity of a golf course. (Transcript, Pre-Hearing Motions, June 16, 1988, page 8, line 20, through page 12, pages 24-25). He specified the amenities to be offered by the Hyatt Regency Hotel, and a

golf course was not mentioned. He assured the commission at that hearing that the hotel as presented could succeed, based upon the feasibility and other studies done for the hotel project. No golf course was ever mentioned. Credibility of the witness is therefore also an important issue that proper discovery will allow to be fully considered.

Clearly the Intervenor should have the opportunity to cross-examine, rebutt and argue the evidence presented. (HAPA, HRS 91-9). This is only possible through the production of the relevant documents sought by the Intervenor.

The Intervenor filed a Motion for Declaratory Order, seeking to have the Planning Commission Rules for subpoenas duces tecums applied to the list of documents attached to the motion. Several items delineated in the list pertained specifically to the hotel (items number 1,2,6,7,9,11, 15,17,18,21,23,25). The Planning Commission acted to deny each and every item that had anything to do with the Hyatt Hotel, although Mr. Ventura's testimony and the demand study submitted by the Applicants clearly indicate the hotel is dependent on the proposed golf course.

The initial motions of denial by the Commission was made with no explanation of the refusal. (Transcript, June 16, 1988, page 149-161). In addition they denied production of the financing agreement, despite the fact that Mr.

Ventura stated that it is up to the financial backer on whether or not the hotel will be built if the golf course is denied. (Testimony of Mel Ventura, Transcript, May 25, Volume I, page 51).

The bases for denying discovery of these documents were that they were irrelevant and immaterial. Transcript, June 23, 1988, page 50; See also Transcript, June 16, 1988, pages 149-161.

Testifying on June 23, 1988, Mr. Ventura offered direct testimony concerning negotiations and proposals for use of the Kiahuna golf course, and made specific reference to a documents file (Transcript, June 23, 1988, page 112). At page 115 he further stated that "the course is needed to allow the Hyatt Regency Kauai to compete successfully in the resort marketplace for which it is designed. An off-site course will not do it. We need an on-site course to compete with Kaanapali, Kapalua, Wailea, Waikoloa, and other competitive resorts worldwide." At page 116, Mr. Ventura makes specific reference to occupancy and rate projections done for the Hyatt Hotel:

"In our discussions with Hyatt, they made it quite clear the type of course that they want there. They're looking for a course that is a leisure golf course, that has approximately 140 rounds per day.

They are very strong in marketing to incentive groups...And if you don't have any golf, they are going to go to a hotel that has golf. They're a very important part of meeting our occupancy and rate projections.

There's about a --the numbers that we have looked at, had discussions on so far, indicate--and it's is some what subjective--but it looks like we're talking about 10 percent difference in occupancy with an on-site golf course.

The Appellant specifically requested documents specifically raised and testified to by the Appellee Applicant. (Transcript, Ibid, page 119-123). This request was specifically denied based upon previous Planning Commission action, that anything to do with the Hyatt Hotel is totally irrelevant and immaterial to the golf course.

Planning Commission denial of discovery denied the Intervenors a full and fair hearing

The Hawaii APA, HRS 91-10 provides only three bases for the rejection of evidence. The basis of need for the golf course is the Hyatt Hotel, and testimony was allowed concerning need based upon the hotel. When the Intervenors sought discovery based on the actual testimony concerning the hotel, the Planning Commission took the incongruous position that information concerning the hotel was irrelevant.

Clearly the documents sought are relevant to the threshold for a Special permit. This permit is within the authority of the Planning Commission under HRS 205-6. They are not immaterial, the issues being raised by the evidence submitted by the Applicant, nor are they repetitious. The denial of the Subpoenas Duces Tecums sought by the

Intervenors was prejudicial to their ability to receive a full and fair hearing in the contested case pending before the Planning Commission, and to protect their rights.

Conclusions

As a matter of law, the Special Permit should be denied, since it violates HRS 205-2, as amended by Act 298 (1985).

Based upon the procedural defects, violating HRS 91 and the Planning Rules, the entire matter should be returned to the County Planning Commission for a full and fair hearing.

DATED, Lihue, Kauai, Hawaii, 9/15, 1988.


TERESA TICO
STEPHEN LEVINE

Attorneys for the Intervenors

CERTIFICATE OF SERVICE

I hereby certify that a copy of the INTERVENORS MEMORANDUM IN OPPOSITION TO THE PROPOSED GOLF COURSE IN THE AGRICULTURAL DISTRICT ON "B" RATED LAND; were duly served upon the following parties by first class mail, with adequate postage prepaid:

DENNIS M. LOMBARDI
Case & Lynch
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, HI 96813

BRUCE L. LAMON, ESQ.
Goodsill, Anderson, Quinn & Stiffel
1600 Bancorp Tower
130 Merchant 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

BENJAMIN MATSUBARA
Kendal Bldg.
888 Mililani Street
8th Floor
Honolulu, HI 96813
Attorney for State Land Use Commission

DATED: Lihue, Hawaii Sept. 15, 1988.


TERESA S. TICO
STEPHEN LEVINE



LAND USE COMMISSION

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

COMMISSION MEMBERS:

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

September 9, 1988

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

Dear Ms. Tico:

Subject: LUC Special Permit 88-369/Ainako Resort
Associates and Grove Farm Properties, Inc.

Please be advised that the Land Use Commission intends to schedule the subject special permit for action at its September 29, 1988 meeting which is tentatively scheduled for 10:30 a.m. at the Kohala 3 Conference Room of the Hyatt Regency Waikoloa Hotel in Kona, Hawaii. A copy of the Commission's agenda for this meeting will be forwarded to you at a later date.

Please be advised that the parties may submit legal memorandum prior to the action meeting date summarizing any legal issues and positions of the parties relating to this permit as reflected in the existing record on this proceeding. These legal memoranda should be submitted to the Commission by no later than September 19, 1988. Memoranda in excess of twenty pages should contain a subject index and table of authorities. Where factual matters are referenced, appropriate references to the record, for example, exhibits or testimony, should be made.

In addition, the Commission will permit the parties to give oral arguments, based on the record of the proceedings before the Planning Commission, at the time of the action meeting. Oral argument will be limited to 15 minutes for each side of

P-561 708 520

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369 Ainako Resort & Grove Farm Props.

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to Teresa Tico	
Street and No. 3016 Umi Street, Suite	
P.O., State and ZIP Code Lihue, HI 96766 211B	
Postage	\$.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 2.00
Postmark or Date SEP 9 1988 HONOLULU HI DOWN TOWN STA. USPO	

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369 Ainako Resort & Grove Farm Props.

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
↑(Extra charge)↑
2. ☐ Restricted Delivery
↑(Extra charge)↑

3. Article Addressed to:

Teresa Tico, Esq.

3016 Umi Street, Suite 211B

Lihue, HI 96766

4. Article Number

P-561 708 520

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii

LAND USE COMMISSION

Rm. 104, Old Federal Bldg.

335 Merchant Street

Honolulu, Hawaii 96813

Teresa Tico, Esq.
September 9, 1988
Page 2

the proceeding. Based on our understanding of the parties' positions, this means that any intervenors opposing the special permit will be afforded 15 minutes which should be divided among themselves, and proponents including the County and Petitioner should divide the time among themselves.

If you have any questions regarding any of these proceedings, please feel free to contact me or my staff at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to

P-561 708 516

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to	
Dennis Lombardi, Esq.	
Street and No. Suites 2500	
737 Bishop St., Suite 2600	
P.O., State and ZIP Code	
Honolulu, HI 96813	
Postage	\$.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage / Fees	\$ 2.00

Postmark or Date



Farm Properties

SP88-369 Ainako Resort Associates & Grove

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

Sp88-369 Ainako Resort Assocs. & Grove Farm Props.

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. ☐ Restricted Delivery

3. Article Addressed to:

[illegible]

4. Article Number

P-561 708 516

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature – Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS



SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813

Dennis M. Lombardi, Esq.
September 9, 1988
Page 2

the proceeding. Based on our understanding of the parties' positions, this means that any intervenors opposing the special permit will be afforded 15 minutes which should be divided among themselves, and proponents including the County and Petitioner should divide the time among themselves.

If you have any questions regarding any of these proceedings, please feel free to contact me or my staff at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to

cc: Bruce L. Lamon, Esq.

DEPARTMENT OF BUSINESS
AND ECONOMIC DEVELOPMENTRENTON L.K. NIP
ChairmanLAWRENCE F. CHUN
Vice Chairman

LAND USE COMMISSION

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

COMMISSION MEMBERS:

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

September 9, 1988

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

Dear Ms. Nishimitsu:

* Subject: LUC Special Permit 88-369/Ainako Resort
Associates and Grove Farm Properties, Inc.

Please be advised that the Land Use Commission intends to schedule the subject special permit for action at its September 29, 1988 meeting which is tentatively scheduled for 10:30 a.m. at the Kohala 3 Conference Room of the Hyatt Regency Waikoloa Hotel in Kona, Hawaii. A copy of the Commission's agenda for this meeting will be forwarded to you at a later date.

Please be advised that the parties may submit legal memorandum prior to the action meeting date summarizing any legal issues and positions of the parties relating to this permit as reflected in the existing record on this proceeding. These legal memoranda should be submitted to the Commission by no later than September 19, 1988. Memoranda in excess of twenty pages should contain a subject index and table of authorities. Where factual matters are referenced, appropriate references to the record, for example, exhibits or testimony, should be made.

In addition, the Commission will permit the parties to give oral arguments, based on the record of the proceedings before the Planning Commission, at the time of the action meeting. Oral argument will be limited to 15 minutes for each side of

P-561 708 517

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369 Ainako Resort & Grove Farm Props.

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to Lorna Nishimitsu, Esq.	
Street and No. 4396 Rice Street	
P.O., State and ZIP Code Lihue, HI 96766	
Postage	\$.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 2.00
Postmark or Date SEP 1988 HONOLULU USPO	

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
↑(Extra charge)↑

3. Article Addressed to:

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

4. Article Number

P-561 708 517

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and **DATE DELIVERED**.

5. Signature – Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813



PENALTY FOR PRIVATE
USE, \$300

Ms. Lorna Nishimitsu, Esq.
September 9, 1988
Page 2

the proceeding. Based on our understanding of the parties' positions, this means that any intervenors opposing the special permit will be afforded 15 minutes which should be divided among themselves, and proponents including the County and Petitioner should divide the time among themselves.

If you have any questions regarding any of these proceedings, please feel free to contact me or my staff at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to

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 Tacblan
Allen Kajioke
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

September 9, 1988

Stephen Levine, Esq.
Attorney at Law
4365 Kukui Grove Street, Suite 103
Lihue, HI 96766

Dear Mr. Levine:

Subject: LUC Special Permit 88-369/Ainako Resort
Associates and Grove Farm Properties, Inc.

Please be advised that the Land Use Commission intends to schedule the subject special permit for action at its September 29, 1988 meeting which is tentatively scheduled for 10:30 a.m. at the Kohala 3 Conference Room of the Hyatt Regency Waikoloa Hotel in Kona, Hawaii. A copy of the Commission's agenda for this meeting will be forwarded to you at a later date.

Please be advised that the parties may submit legal memorandum prior to the action meeting date summarizing any legal issues and positions of the parties relating to this permit as reflected in the existing record on this proceeding. These legal memoranda should be submitted to the Commission by no later than September 19, 1988. Memoranda in excess of twenty pages should contain a subject index and table of authorities. Where factual matters are referenced, appropriate references to the record, for example, exhibits or testimony, should be made.

In addition, the Commission will permit the parties to give oral arguments, based on the record of the proceedings before the Planning Commission, at the time of the action meeting. Oral argument will be limited to 15 minutes for each side of

P-561 708 519

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-506

PS Form 3800, June 1985

SP88-369 Ainako Resort & Grove Farm Props.

Sent to Stephen Levine, Esq.	
Street and No. 4365 Kukui Grove St.	
P.O., State and ZIP Code Lihue, HI 96766	
Postage	\$.25
Certified Fee	.35
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 2.00
Postmark or Date SEP 9 1988 HONOLULU STA. USPO	

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369 Ainako Resort and Grove Farm Properties

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
↑(Extra charge)↑
2. ☐ Restricted Delivery
↑(Extra charge)↑

3. Article Addressed to:

Stephen Levine, Esq.
Attorney at Law
4365 Kukui Grove Street
Suite 103
Lihue, HI 96766

4. Article Number

P-561 708 519

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature of Agent

X

7. ~~Date of Delivery~~

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii

LAND USE COMMISSION
Rm. 104, Old Federal Bldg.

335 Merchant Street
Honolulu, Hawaii 96813

Stephen Levine, Esq.
September 9, 1988
Page 2

the proceeding. Based on our understanding of the parties' positions, this means that any intervenors opposing the special permit will be afforded 15 minutes which should be divided among themselves, and proponents including the County and Petitioner should divide the time among themselves.

If you have any questions regarding any of these proceedings, please feel free to contact me or my staff at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to



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

September 9, 1988

Mr. Tom Shigemoto, Planning Director
Planning Department, County of Kauai
4280 Rice Street
Lihue, HI 96766

Dear Mr. Shigemoto:

Subject: LUC Special Permit 88-369/Ainako Resort
Associates and Grove Farm Properties, Inc.

Please be advised that the Land Use Commission intends to schedule the subject special permit for action at its September 29, 1988 meeting which is tentatively scheduled for 10:30 a.m. at the Kohala 3 Conference Room of the Hyatt Regency Waikoloa Hotel in Kona, Hawaii. A copy of the Commission's agenda for this meeting will be forwarded to you at a later date.

Please be advised that the parties may submit legal memorandum prior to the action meeting date summarizing any legal issues and positions of the parties relating to this permit as reflected in the existing record on this proceeding. These legal memoranda should be submitted to the Commission by no later than September 19, 1988. Memoranda in excess of twenty pages should contain a subject index and table of authorities. Where factual matters are referenced, appropriate references to the record, for example, exhibits or testimony, should be made.

In addition, the Commission will permit the parties to give oral arguments, based on the record of the proceedings before the Planning Commission, at the time of the action meeting. Oral argument will be limited to 15 minutes for each side of

P-561 708 518

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

SP88-369 Ainako Resort & Grove Farm Props.

U.S.G.P.O. 153-506

PS Form 3800, June 1985

Sent to Tom Shigemoto	
Street and No. 4280 Rice Street	
P.O., State and ZIP Code Lihue, HI 96766	
Postage	\$.25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 2.00
Postmark or Date HONOLULU, HI SEP 9 1988 USPO	

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

SP88-369 Ainako Resort & Grove Farm Props.

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
↑(Extra charge)↑

3. Article Addressed to:

Tom Shigemoto, Planning Director
Planning Dept., County of Kauai
4280 Rice Street
Lihue, HI 96766

4. Article Number

P-561 708 518

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

State of Hawaii
LAND USE COMMISSION
Rm. 104, Old Federal Bldg.
335 Merchant Street
Honolulu, Hawaii 96813



PENALTY FOR PRIVATE
USE, \$300

Mr. Tom Shigemoto, Planning Dept.
September 9, 1988
Page 2

the proceeding. Based on our understanding of the parties' positions, this means that any intervenors opposing the special permit will be afforded 15 minutes which should be divided among themselves, and proponents including the County and Petitioner should divide the time among themselves.

If you have any questions regarding any of these proceedings, please feel free to contact me or my staff at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to



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

September 6, 1988

MEMORANDUM

TO: Land Use Commission

FROM: Staff *Esther Ueda*

SUBJECT: Transmittal of Record for LUC Special Permit Docket
Number 88-369/Ainako Resort Associates and Grove Farm
Properties, Inc.

Attached for your information is the record for the subject special permit which is tentatively scheduled for action at our September 29, 1988 meeting. Transcripts of the proceedings are available in the LUC office and will be forwarded to you upon request.

The following is a list of the material transmitted:

File 1 of 2

- 1) Letter from Applicant to Tom Shigemoto dated February 12, 1988 (Not part of the record)
- 2) Letter from David Pratt to Tom Shigemoto dated February 22, 1988 (Not part of record)
- 3) Letter from Applicant to Tom Shigemoto dated April 18, 1988
- 4) Application Form Receipt Stamp dated April 19, 1988 by County of Kauai Planning Department
- 5) Application Fee Receipt dated April 19, 1988
- 6) Notice for Kauai Planning Commission Field Trip
- 7) Notice of Public Hearings
- 8) Letter from Tom Shigemoto to Hawaii Newspaper Agency dated April 25, 1988 and attached Notices and List of Persons Who Have Requested In Writing to Be Notified of Special Management Area Use Permit Hearings
- 9) Receipt of SMA Use Permit Application dated April 28, 1988 and attachments as indicated in 8) above.
- 10) Memorandum from David Pratt to Mike Laureta dated May 10, 1988 and attached McBryde Sugar Company, Limited Cane Withdrawals

- 11) Transmittal Memorandum from Greg Kamm to Mike Laureta dated May 6, 1988 and attached Affidavit of Mailing, Exhibit A and Exhibit B
- 12) Letter from M.C. Ventura to Mike Laureta dated March 30, 1988 and attached Cane Withdrawal schedule, Location Map and newspaper article titled "Sugar Becoming Less Important"
- 13) Planning Department Staff Report and attached agency comments
- 14) Petition to Intervene by Ohana O Maha'ulepu
- 15) Petition to Intervene by Malama Maha'Lepu and transmittal letter
- 16) Petition to Intervene by Kauai Windsurfing Association
- 17) Applicant's Memorandum Re: Exclusion of Irrelevant Evidence Introduction
- 18) Interim Report: Summary of Findings, and General Significance Assessments and Recommended General Treatments
- 19) Facsimile Memorandum from Robert Trent Jones II International dated May 14, 1988
- 20) Letter from Michael Kido to Sunshyne Costa dated May 24, 1988
- 21) Memorandum from Suzanne Peterson to Tom Shigemoto dated May 23, 1988
- 22) Letter from Michael Kido to Sunshyne Costa dated June 1, 1988
- 23) Letter from David Pratt to Planning Commission dated May 27, 1988
- 24) Intervenors' Memorandum in Support of the Review of the Grove Farm Master Development Plan as Required by Statute and Affidavit of Andrew F. Bushnell and transmittal letter
- 25) Letter from Dennis Lombardi to Carl Stepath dated June 3, 1988 and attached news article entitled "Golf Course Factions Make Their Stands"
- 26) Memorandum to File from Mad Mike dated June 6, 1988
- 27) Letter from Tom Shigemoto to Mel Ventura dated June 7, 1988
- 28) Agenda for Planning Commission Meeting of June 16, 1988 and Certificates of Service both dated June 9, 1988
- 29) Intervenors' Motion For Declaratory Order, Memorandum in Support of Declaratory Order, Exhibits A & B, Certificate of Service and transmittal letter
- 30) Applicant's List of Witnesses with Objections to Intervenors' said Motion in 29) above
- 31) Outline of Applicant's Opposition to Intervenors' Discovery Requests
- 32) Intervenors' Request For Subpoenas
- 33) Copies of Subpoenas issued by Sunshyne Costa

- 34) Transmittal Letter from Dennis Lombardi to Rick Tsuchiya dated June 22, 1988
- 35) Intervenor's Request For Issuance of Subpoena and Subpoena Duces Tecum
- 36) Intervenor's Motion to Continue Testimony of Subpoenaed Witnesses
- 37) Return and Acknowledgement of Service forms (2) receipt dated June 22, 1988 and June 23, 1988
- 38) Intervenor's Motion For Order Allowing Witnesses to Testify Out of Order
- 39) Letter from Dennis Lombardi to Intervenor's dated June 22, 1988
- 40) Order Re: Issuance of Subpoenas by Sunshyne Costa
- 41) Subpoena to Trinette Kauai by Sunshyne Costa
- 42) Marked version of Motion of Declaratory Order and attachments
- 43) Order Granting Motion For Declaratory Order And Granting In Part And Denying In Part Requests For Production of Documents
- 44) Certificate of Service by Tom Shigemoto dated July 11, 1988 and Transmittal Letter dated July 12, 1988
- 45) Planning Department List of Witnesses
- 46) Letter from Jan TenBruggencate to Kauai Planning Commission dated July 13, 1988 and attached news article entitled "If West Hawaii's Water Goes Bad . . ."
- 47) Agenda of Planning Commission Special Meeting for August 10, 1988 and attached letter indicated above as 46)

File 2 of 2

- 48) Motion to Correct Transcript, Memorandum In Support of Motion To Correct Transcript, Exhibit A, Certificate of Service marked as B-1a
- 49) Applicant's Proposed Findings of Fact, Conclusions of Law, Decision and Order and Certificate of Service marked as B-1b
- 50) Planning Department's Proposed Findings of Fact, Conclusions of Law, Decision and Order marked as B-1c
- 51) Intervenor's Proposed Findings of Fact, Conclusions of Law, Decision and Order and Certificate of Service marked as B-1d
- 52) Applicant's Objections to Intervenor's Proposed Findings of Fact, Conclusions of Law, Decision and Order, Certificate of Service marked as B-1e
- 53) Certificate of Service for August 2 letter regarding change of meeting date and place with signatures
- 54) Stipulation marked B-1f and attached joint Findings of Fact, Conclusions of Law, Decision and Order, Certificate of Service

- 55) Certificate of Service for corrected version of page 1 to the joint Findings of Fact, Conclusions of Law, Decision and Order dated August 3, 1988
- 56) Intervenor's Motion to Defer Final Arguments to Permit Exceptions to Late Filed Proposed Findings of Fact marked as B-1g
- 57) Order Ruling On Findings of Fact Proposed by Intervenor marked as B-1h (unsigned)
- 58) Certification as to Transcripts of the Proceedings marked as B-1i
- 59) Applicant's Memorandum in Opposition to Motion to Defer Final Argument marked as B-1j
- 60) Memorandum from Secretary to Planning Commission dated August 10, 1988
- 61) Revised Memorandum from Secretary to Planning Commission dated August 10, 1988
- 62) Order Denying Motion to Defer Final Argument to Permit Late Filed Proposed Findings of Fact
- 63) Order Granting Motion to Correct Transcript
- 64) Findings of Fact, Conclusions of Law, Decision and Order; Exhibit A; Certificate of Service
- 65) Certificate of Service with initials of recipients for Findings of Fact, Conclusions of Law and Decision and Order
- 66) Letter from Tom Shigemoto to Applicant dated August 11, 1988
- 67) Letter from Lorna Nishimitsu to Marvin Miura dated August 15, 1988
- 68) Letter from Michael Laureta to Esther Ueda dated August 22, 1988
- 69) Letter from Esther Ueda to Tom Shigemoto dated August 26, 1988
- 70) Letter from Michael Laureta to Ray Young dated August 26, 1988 and zoning map

Exhibits File

Applicant's Exhibits File

- 1) List of Exhibits (hand written)
- 2) List of Witnesses (hand written)
- 3) Letter of Transmittal dated June 9, 1988 and attached List of Witnesses and List of Exhibits
- 4) Letter of Transmittal dated June 13, 1988 and attached First Amended List of Witnesses and List of Exhibits
- 5) Exhibit 1 Schematic Route Plan
- 6) Letter of transmittal dated June 21, 1988 from Dennis Lombardi to Steve Levine
- 7) Exhibit 2 Letter from Steven Dollar to Joe Vierra dated June 18, 1988 and transmittal letter from Dennis Lombardi

- 8) Exhibit 3 - Resume of Steven Dollar
- 9) Exhibit 4 - Resume of Winona Char
- 10) Exhibit 5 - Resume of Paul Rosendahl
- 11) Exhibit 6 - Revised Interim Report: Summary of Findings, and General Significance Assessments and Recommended General Treatment date June 8, 1988
- 12) Exhibit 7 - Memorandum from Paul Rosendahl to Applicant dated June 20, 1988
- 13) Exhibit 8 - Resume of Phillip Bruner
- 14) Exhibit 9 - Letter from Phillip Bruner to Glenn Koyama dated April 27, 1988
- 15) Exhibit 10 - Survey of the Avifauna and Feral Mammals at Grove Farm Properties, Poipu, Kauai dated January 20, 1988
- 16) Environmental Assessment dated April 1988
- 17) Transmittal letter from M.C. Ventura to Tom Shigemoto dated March 7, 1988 and Golf Course Demand Study dated March 2, 1988

Intervenors' Exhibits File

- 1) List of Exhibits (Revised handwritten)
- 2) List of Witnesses (Revised handwritten)
- 3) List of Exhibits marked B-1
- 4) List of Witnesses and Certificate of Service
- 5) Exhibit A - Paa-Mahaulepu Beaches; 8 1/2" x 11" version (No motion to move into evidence)
- 6) Exhibit B - Letter from Charlie Ortega to Planning Commission dated April 13, 1988
- 7) Exhibit C - Figure No. 7 of Environmental Assessment titled "Land Study Bureau Land Classification"
- 8) Exhibit D - Cultural Sensitivity Map, K-10 Koloa, Hawaii (portion only)
- 9) Exhibit E - Paa-Mahaulepu Beaches; 11" x 17" version, pages 1 through 25
- 10) Exhibit F - Labor Area News, May 1988 (page 1 only)
- 11) Steve Levine "Opening Statement"

Public Testimony File

Testimony Received at Public Hearing

- 1) List of Person Who Testified at the Hearing
- 2) List of Signatures For or Against proposed project
- 3) 39 Written Testimonies

Letters Against Project

- 1) List of Signatures against proposed project
- 2) 92 Written Testimonies

Letters For Project

- 1) List of Signatures for proposed project
- 2) 51 Written Testimonies

The Staff Report for the subject permit is being prepared and will be transmitted to you shortly.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

1109 Bethel Street Honolulu, Hawaii 96813
(808) 538-1505

Herbert S.K. Kaopua Sr.
President

Howard Tasaka
Vice President

Edison Keomaka
Secretary-Treasurer

Paul Anae
Sergeant-At-Arms

TRUSTEES: Benjamin Saguibo/Lawrence Sakamoto/Leonard Sebresos

August 23, 1988

Mr. Renton Nip
Chairman
Land Use Commission
335 Merchant Street, Room 104
Honolulu, HI 96813

Dear Mr. Nip:

RE: HYATT REGENCY KAUAI HOTEL & GOLF COURSE
Poipu, Kauai

I am writing as President of the Hawaii Building and Construction Trades Council, AFL-CIO, which is made up of 18 trade unions representing more than 21,000 members statewide. About 300+ of these members live and work on Kauai.

As you may know, the Building Trades have been active on Kauai first in helping create job opportunities for our existing members, and second, in helping develop job training and retraining programs to improve employment opportunities and the health, safety and welfare of unemployed and underemployed workers throughout the Island of Kauai.

We take special pride in representing the working man and woman, and in helping assure that new job opportunities, such as the proposed Hyatt Regency Kauai Hotel & Golf Course, truly benefit our island residents first.

We wish to express our support of this proposed development. We have met with the developers on several occasions and have carefully reviewed their plans. We are excited about what the project offers and confident that the benefits will be substantial, not just for Poipu but for all of Kauai and our state.

- 1) The developers of the Hyatt Regency Kauai Hotel & Golf Course have already demonstrated their commitment to creating a place that the people of Kauai will be proud of. They are already working closely with the residents of Kauai so that there is mutual benefit, trust and respect. It is a very healthy beginning.
- 2) Hyatt Regency Kauai Hotel & Golf Course is a significant development whose first phase alone will contribute more than \$150 million to the Kauai economy. The job opportunities created by this investment will be particularly important to our members who live on Kauai.

Aug 25 12 45 PM '88
LAND USE COMMISSION
STATE OF HAWAII

9/6/88
LUC, EIR
Poc...
Skilled Craftsmanship Makes the Difference.

Mr. Renton Nip
Page 2
August 23, 1988

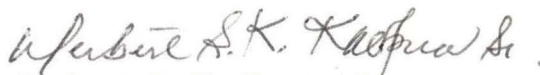
- 3) The immediate nature of the development over the next 23 months means that there will be a continuity of employment for our members and justification for opening an apprentice program to help the community train for the good jobs offered by the skilled trades.
- 4) It is also important to acknowledge that the Hyatt Regency Kauai Hotel & Golf Course will offer substantial post-construction permanent employment and that these, too, are good jobs, estimated at 1,000.
- 5) Hyatt Regency Kauai Hotel & Golf Course promises to enhance the entire island and state. It will help Hawaii achieve a new level of national and international stature in the visitor industry, while enhancing the island's and state's unique cultural traditions.
- 6) The developer is a Hawaii company which has a track record of high quality projects. This is the kind of firm which deserves the state's support.
- 7) The golf course will do more to preserve the open space in this coastal area than any other use. It will be self-supporting, pay real property and other taxes, and generate construction and operational jobs, all while preserving over 200 acres of coastal land.
- 8) The golf course will provide legal public access where none exists today. Forty parking spaces will be provided in 3 locations. In addition to the 40 public parking spaces, a one (1) acre park is being dedicated on the hotel property, all of which will be maintained by the developer.
- 9) The developer has conducted thorough archaeological studies and has agreed to preserve significant portions of our Hawaiian heritage.
- 10) The developer has conducted comprehensive environmental studies of the project which clearly demonstrate that there are no adverse environmental impacts from this project.

In closing, I would like to make one final point: Labor unions are sometimes viewed as a special interest group.

I would prefer to think of ourselves as a vested interest group. The fact is, we are the voice of the working class. And we want to work side-by-side with the people of Kauai to build a healthier, stronger economy. We want to help build a community that honors individual rights and lifestyles, respects its past, and builds a future of promise for its youth.

We believe this project provides an opportunity to do this in this area.

Aloha,


Herbert S. K. Kaopua Sr.
President



**HAWAII BUILDING & CONSTRUCTION
TRADES COUNCIL, AFL-CIO**

1109 Bethel St.
Honolulu, Hawaii 96813



Mr. Renton Nip
Chairman
Land Use Commission
335 Merchant Street, Room 104
Honolulu, HI 96813

