

FINDINGS OF FACT

1. On November 3, 1988 a pre-hearing conference was held on the Petition.

2. The Commission conducted a hearing on the Petition on November 17, 1988, pursuant to notice published in the Maui News and the Honolulu Advertiser on October 7, 1988.

3. The Commission did not receive any requests for intervention or public witnesses.

DESCRIPTION OF THE PROPERTY

4. The Property is located mauka of Piilani Highway and Keonekai Road, at Kihei, Maui and consists of approximately 147.561 acres.

5. Land uses adjacent to the Property comprise of the Maui Meadows residential subdivision to the south, Haleakala Ranch Company to the east and north, and Kihei Village Subdivision to the west. Wailea Resort is located across Piilani Highway to the southwest of the Property.

A major expansion of Wailea Resort is also being planned by another developer for the lands mauka of the Wailea Resort and the planned extension of Piilani Highway. Known as Maui Wailea 670, this 670-acre residential/resort community is comprised of between 2,150 and 2,650 residential and resort units.

6. Petitioner owns the Property in fee simple.

7. The Property consists of fallow grazing lands and scattered Kiawe trees. Lands north and east of the Property

are owned by Haleakala Ranch Company and presently used for grazing purposes.

8. Elevations on the Property range from about 200 feet above mean sea level at the western boundary to about 525 feet at the eastern border. Slopes generally range from 3 to 25 percent.

9. The United States Department of Agriculture (U.S.D.A.) Soil Conservation Service, Soil Survey Report classifies the soils within the Property into two major types: 1) Keawakapu extremely stony silty clay loam (KNXD) - located in the mauka half of the Property, and 2) Makena loam, stony complex (MXC) - located in the makai portion of the Property.

10. Keawakapu extremely stony silty clay loam soils consist of a well-drained extremely stony silty clay loam with moderate permeability, slow to medium runoff and slight to moderate erosion hazard. The substratum is fragmental Aa lava with some soil material located in the voids.

11. Makena loam, stony complex soils are primarily well-drained silty loam. Permeability is moderately rapid, runoff slow to medium, and erosion hazard slight. The top 4 inches is a very dark brown loam. The subsoils are about 19 inches thick and are comprised of a very dark grayish-brown and dark yellowish-brown silt loam. This soil is commonly used for pasture and wildlife habitat.

12. The State Department of Agriculture Agricultural Lands of Importance to the State of Hawaii (ALISH)

classification system indicates that the Property is not classified as "Prime ", "Unique", or "Other Important" agricultural land and is therefore not classified.

13. The Land Study Bureau system of land classification identifies the entire Property as Overall Productivity Rating "E", based on a scale ranging from "A" to "E" where "A" is the highest productivity rating. The "E" rating indicates little or no suitability for agricultural production.

14. The Flood Insurance Study for the County of Maui conducted by the Federal Insurance Administration indicates that the Property is within Zone C - "areas of minimal flooding". The Property is also located outside of the potential tsunami inundation limits as established by the Maui County Drainage Master Plan, 1971.

15. The Department of Health Office of Environmental Quality Control Indicates the Property is surrounded by an area of dry grasses which is subject to rangeland fires.

The possibility exists that homes developed on the Property could be subject to risks of fire hazard from adjacent pasture lands.

16. The climate of the Kihei-Makena region is characterized by average annual rainfall ranging from 10 to 30 inches and average temperatures ranging from low 60 degrees Fahrenheit to 80 degrees Fahrenheit.

PETITIONER'S PROPOSED USE OF THE PROPERTY

17. Petitioner proposes to develop a residential project comprising of 360 single-family units, 50 zero lot-line residential units, 420 low-rise townhouse units, and 50 elderly housing units to be known as the Maui Palisades (also referred to as the "Project"). Approximately 49 percent of the total units will be priced for sale or rented at market rates. Park, roads, open space areas, and a water tank site are also proposed for the Property.

18. Petitioner proposes to donate to the County of Maui a 5.5-acre parcel of land outside the Property sufficient for an additional 33 low income residential townhouse units which may be constructed by the County of Maui (County). The County of Maui is currently evaluating the feasibility of developing the entire 33 units. Topographic conditions of this 5.5 acre parcel may limit the County's ability to provide the 33 units at affordable prices.

If the 33 affordable off-site units are not physically feasible, the Petitioner will not provide additional land, but will provide additional on-site affordable units to compensate for the difference. The percentage of total affordable units will remain as represented in the petition and recommended in Office of State Planning's (OSP) housing condition.

19. Of the total 913 dwelling units created, which includes the 33 off-site units, 460 units are proposed for single family zero lot line or elderly residences, with the

remaining 453 units planned as townhouse or apartment residences. The elderly units will be designed with special features intended to accommodate their special needs.

All of the proposed dwelling units will be sold except the elderly rental units which will be subsidized by various housing programs.

20. Construction of infrastructure is planned to begin in January, 1991 and total buildout, with the Petitioner as builder, is scheduled for completion in 1997. The proposed acreages for each specific land use category are as follows:

<u>Land Use</u>	<u>Acres</u>	<u>Units</u>	<u>Affordable</u>
Single Family Residential	80	360	0
Zero Lot Line	5	50	50
Multi-Family	35	420	329
Elderly Rentals	5	50	50
Park	5		
Open Spaces	5		
Roadways/Water Tank Site	<u>12</u>		
Subtotal	147	<u>880</u>	<u>429</u>
Parcel Dedicated to County (Outside of Property)	5.5	33	33
Totals	<u>152.5</u>	<u>913</u>	<u>462</u>

SOURCE: Petitioner's Exhibit 7 - Market Study

21. Petitioner's definition of "affordable" and "market" housing units used to determine proposed sales prices and rents for the Project units and the number of units proposed for each category are as follows:

- A. "Lower Income Housing: Approximately 173 housing units will be for lower income families. This is effectively 18.95 percent of the project. It is made up of 10 units in zero lot line homes, 50 units in elderly housing, and 80 units in townhouse/apartment rentals. In addition, 33

townhouse residential units can be built on 5.5 acres of land being offered free and clear to the County by Petitioner. Based on Maui's estimated 1988 median family income these housing units would sell, in 1988, for under \$90,000. Prices for the zero lot line housing would be \$85,000 to 89,500. The elderly housing will most likely be a County, State of Federal housing assistance program. The prices for townhouse/apartment rentals would be \$75,000 to \$89,000. Monthly rentals would start at 1 percent of the proposed purchase price.

- B. "Low Moderate Income Housing: Approximately 120 housing units will be for low moderate income families. This is 13.14 percent of the Project. It is made up of 40 zero lot line homes and 80 townhouse/apartment. Based on Maui's estimated 1988 median family income these housing units would sell, in 1988, for \$90,000 to \$140,000.
- C. "Moderate Income Housing: Approximately 169 housing units will be for moderate income families or "gap group Housing". This is 18.51 percent of the Project. It is made up of 169 townhouse/apartments. Based on Maui's estimated 1988 median family income these housing units would sell, in 1988, for \$140,000 to \$165,000.
- D. "Market Housing: The balance of the project (49.40%) will be made up of 360 single family housing units and 91 townhouse/apartment units for a total of 451 housing units."

SOURCE: Attachment to Petition - "Maui Palisades: Maui County Project District #7: Summary"

22. Petitioner's proposed mix of affordable and market priced units relative to the area's median family income is as follows:

Affordable Housing: 50.60 Percent of the Project.

- a. 173 units (18.95%) for families whose family income is lower than 80 percent of median family income.
- b. 120 units (13.14%) for families whose family income is 80 to 120 percent of median family income.

c. 169 units (18.51%) for families whose family income is 120 to 140 percent of median family income.

At Market Housing: 49.40 Percent of the Project.

d. 451 units (49.40%) for at market families.

SOURCE: Attachment to Petition - "Maui Palisades: Maui County Project District #7: Summary"

23. In their comments of September 6, 1988, the State Housing Finance and Development Corporation (HFDC) recommends that the following percentages of affordable units and their respective sales and rental prices be provided for the targeted income group:

<u>Percent of Total Units</u>	<u>Number of Units</u>	<u>Target Group Percent of Median Income</u>	<u>Affordable* Sales Price</u>	<u>Affordable Rent</u>
10%	91	Less than 80%	Less than \$83,000	\$680/mo.
29%	183	80-120%	\$83,000-\$130,000	
<u>30%</u>	<u>274</u>	120-140%	\$130,800-\$154,700	
60%	548	TOTALS		

*Sales price calculations are based on (1) a 1988 median income for a family of four of \$34,000; (2) a 30-year loan; (3) an interest rate of 10%; (4) a 10% down payment; (5) \$100 reserved for taxes, insurance and maintenance. Affordable rent, which includes utilities, is calculated as 30% of monthly income.

24. Petitioner has agreed to price the affordable units in Maui Palisades in accordance with HFDC's recommendation in its September 6, 1988 letter. In addition, Petitioner indicates that all affordable units to be rented will be leased in accordance with the HFDC's formula to establish affordable rental rates and that rents will no longer be computed as one percent of the unit sales price.

Petitioner also indicates it will give priority to the sale of the units to County of Maui or State of Hawaii residents.

25. Petitioner estimates cost of infrastructure development (exclusive of land acquisition and unit construction cost) for the entire Project to be approximately \$15,795,430.00. These costs are based on the present design standards and do not include provisions for underground electrical and telephone systems.

26. In addition to the estimated \$15,795,430.00 for infrastructure development, Petitioner has budgeted an additional \$1,200,000 for wastewater treatment plant expansion improvements and \$1,000,000.00 for an alternate off-site sewer system.

27. The cost breakdown for the Project is as follows:

<u>Improvement</u>	<u>Cost</u>
Roadway and General Grading	\$3,084,000.00
Sewer System	\$2,168,000.00
Drainage System	\$1,800,730.00
Water System	
On-site	\$3,761,250.00
Off-site	\$1,345,150.00
Electrical and Telephone Overhead System	\$500,000.00
Engineering and Service Fees	\$750,000.00
Water Source Development Fee	\$2,376,000.00
Subdivision Application Fee	\$1,300.00
<u>Easement from Haleakala Ranch Co.</u>	<u>Undetermined</u>
Subtotal	\$15,795,430.00
Alternate Offsite Sewer System	\$1,000,000.00
Additional Improvements to Existing Sewer System (Wastewater Treatment Plant Expansion)	<u>\$1,200,000.00</u>
Grand Total	\$17,995,430.00

28. Petitioner estimates the total cost of the entire Project at full build-out to be over \$100,000,000.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

29. Petitioner's balance sheet lists total assets of \$8,256,000.00 as of May 31, 1988. The two stockholders of United Realty, Ivan and Gwen Pivaroff, and Joseph P. Nicolai, list total assets of \$4,718,930 and \$13,875,000 respectively.

30. Petitioner intends to finance the proposed development through borrowed funds. Initial sales revenues will be used to finance subsequent development phases for continued expansion in the future. Petitioner intends to retain control of the Project throughout the course of development.

NEED FOR THE PROPOSED DEVELOPMENT

31. According to Petitioner's market consultant, Cowell & Co., Inc., the Kihei area of Maui has experienced dynamic population growth during the preceding 20-year period.

32. For the 1970 census period, the Kihei Census Tract area listed a total population of 1,636 persons. By 1980, this figure had increased approximately 268 percent to 6,020 persons.

33. Petitioner projects that this trend of population expansion should continue at an annual compound rate of 5.9 percent resulting in a concomitant housing demand increase projected at an annual compound rate of 4.6 percent.

34. Petitioner indicates that the Kihei area will continue to grow during the next decade with the addition of four new hotels and two condominium projects.

35. Makena Resort, located south of Wailea and Kihei, will also experience growth in the near future and contribute to further demand for new residential development.

36. In addition, the Property is located proximate to the proposed Kihei Research and Technology Park which could provide up to 1,500 jobs during the next 5 years and between 5,000 and 7,000 jobs upon completion.

37. Petitioner's consultant estimates a total housing demand in the year 2000 for 10,300 single- and multi-family units.

38. OSP believes other cumulative impacts affecting housing demand should be expected to result from developments at Maalaea Bay, expansion of the Seibu Resort at Makena, numerous condominium projects planned for Kihei, and continued development of various commercial projects in Kihei.

39. Based upon current conditions, Petitioner's market consultant concludes that very high demand exists on Maui and more specifically in Kihei, for all housing types proposed by the Petitioner.

40. Petitioner's market consultant indicates that demand is particularly strong among families in the affordable housing categories who are unable to purchase single-family houses at prevailing market rates. Similar demand for

affordable multi-family units was also identified in the market study.

STATE AND COUNTY PLANS AND PROGRAMS

41. The Property is designated within the State Land Use Agricultural District, as reflected on Land Use District Boundary Map M-8 - Puu O Kali, and M-9 - Makena.

42. The proposed Project is currently designated by the County of Maui in the Kihei-Makena Community Plan as PD-7. The Kihei-Makena Community Plan states the following:

"This category provides for a flexible and creative planning approach rather than specific land use designations for quality developments. The Planning approach would establish a continuity in land uses and designs while providing for a comprehensive network of infrastructural facilities and systems (emphasis added). A variety of uses as well as open space, parks and other project uses are intended in accord with each individual project district objective."

The County of Maui also indicates that the subject project district is further defined as a residential project district intended to provide housing oriented towards long term residential need of the region.

43. Petitioner indicates that the Project is consistent with the Maui County General Plan for urban use and that long-term residential housing needs of the region will be partially mitigated by the variety of housing types proposed for development within the Property.

44. Although the Property is designated PD-7, Petitioner must still apply for appropriate subdivision and zoning approvals from the County.

45. The Property is not located within the Shoreline Management Area (SMA) as defined by the County of Maui.

IMPACT ON RESOURCES

Agricultural Resources

46. None of the generally accepted indices (ALISH, LSB, USDA-Soil Conservation Service Soil Survey) which would evaluate agricultural suitability have indicated significant agricultural potential for the Property.

47. According to their comments of August 30, 1988, the State Department of Agriculture (DOA) states that, "From the evidence provided in the petition and additional research, it appears that the approval of the applicant's request will not adversely affect the plans, programs and activities of the department, nor the agricultural resources of the area."

48. OSP believes that prospective residential occupants should be informed of potential agricultural impacts (i.e. dust, odors) associated with adjacent grazing activities on Haleakala Ranch Company lands 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.

Water Resources

49. Petitioner's consulting engineer projects a maximum daily water consumption for the Project to be approximately 776,550 gallons per day and that a storage capacity of 1,000,000 gallons would be required.

50. Petitioner does not address the availability of potable water for the Project, except to indicate that groundwater is currently transported from the Waihee-Waiehu area in Wailuku to the Kihei region via the 42", 36" and 30" water lines of the Central Maui Water Transmission System (CMWTS).

51. Current average water use of the Waikapu-Waihee area is approximately 13 million gallons per day (mgd). Estimates of maximum projected water demand necessary to serve lands currently designated range from 20 to 35 mgd.

52. According to comments received on September 12, 1988, from the Office of Environmental Quality Control (OEQC), the Waikapu/Waihee area of the Wailuku groundwater area has an estimated sustainable yield of 20 mgd.

53. In their comments of September 7, 1988, the County of Maui Department of Water Supply states, "Due to the magnitude of the proposed project, the Developer will be required to develop water source or participate with the County in developing new water sources for the project." This information contradicts the Petitioner's statement that "Water will be available from existing County water systems that are serving the surrounding areas." The Petitioner's assumption that water source development is feasible does not consider the cumulative water demand for the Kihei-Wailea region.

54. OSP believes that the Petitioner should:
(1) clearly address whether the proposed project will require

an urban irrigation system and the quantities of water required; (2) identify possible potable and/or non-potable water source alternatives which could also be considered by the Petitioner; and (3) commit to source development in cooperation with the County of Maui as necessary.

55. In its letter dated October 31, 1988 to the County Director of Water Supply, Petitioner has offered a \$2,000,000.00 water source development contribution to the County of Maui for water source development.

Archaeological/Historical Resources

56. Petitioner's archaeological reconnaissance survey of the Property identified 20 sites and 48 features for a total of 68 component features.

57. The majority of sites and features in the Property were interpreted as the remains of probable or possible military-related structures constructed during World War II. The structures appear to be the remains of bivouac shelters or observation/defense positions.

58. Out of the 68 component features, 33 historic sites were originally assessed by the Petitioner's archaeological consultant to be significant for their information content.

However, 20 of the 33 original significant sites are now considered "no longer significant" as a result of adequate information being gathered during the field survey.

59. Petitioner's consulting archaeologist recommends that the remaining 13 sites which are still considered significant for their information content be studied for data recovery purposes.

60. In their comments of September 15, 1988, the Department of Land and Natural Resources Historic Sites Section (DLNR) concurs with the consultant's recommendations and suggests the following be attached if the Petition is approved:

- a. "For the 20 sites that are no longer significant, maps and/or photographs should be submitted to DLNR's Historic Sites Section for archiving.
- b. "Data recovery shall be undertaken in the 13 significant sites. A data recovery plan shall be prepared and submitted to Historic Sites Section for review and approval prior to its implementation.
- c. "Verification of the completion of the data recovery shall be undertaken by Historic Sites Section prior to construction. This shall be done in two steps: (1) field check by HSS staff prior to completion of fieldwork and (2) review and acceptance of the final report."

61. Petitioner will provide a data recovery plan in accordance with DLNR requirements and will not object to any on-site field inspections by DLNR to verify the findings of the archaeological data survey.

Noise

62. Petitioner anticipates short-term noise impacts from construction equipment to last no longer than the construction phase. Petitioner states that long-term noise

impacts generated within the proposed Project will be similar to those associated with the nearby residential areas.

63. Petitioner indicates that noise from construction equipment will be kept within the limits permitted by State, County and the federal Office of Safety and Health Agency (OSHA) regulations and construction activities will be generally restricted to daylight hours between 7:00 a.m. to 3:30 p.m.

64. Based on the information contained within the Petition, it is difficult to determine probable levels of noise impacts associated with the proposed Project.

65. OSP indicates that the impact of traffic noise resulting from Project development is more difficult to determine. If other regional resort and residential developments surrounding the Project area come on-line as scheduled, significant cumulative noise impacts could result.

66. Petitioner's Exhibit 2, Traffic Impact Assessment Report, forecast an annual growth rate of 5 percent in vehicular traffic, or 50 percent growth from 1987 to 1997, along Piilani Highway. Traffic increases can also increase noise impacts.

67. OSP indicates that specific day-night noise levels (Ldn) will also depend on locational and physical characteristics of existing and proposed roadways. The higher density, multi-story residential housing proposed for sites adjacent to Piilani Highway could be significantly impacted.

68. OSP concludes that without the appropriate noise studies, it may not be possible to determine the kinds of noise mitigation (i.e. landscape buffer or setback) measures which may become necessary along Piilani Highway.

69. OSP also states that due to the low density character of the Project, significant traffic related noise within the Project boundaries is not anticipated.

Air Quality

70. Petitioner anticipates a decline in air quality will result after the Property is converted from vacant land to residential use. Petitioner states that the resulting air quality should be comparable to the quality existing in the surrounding residential areas.

71. Petitioner also indicates the site is susceptible to wind erosion if the surface vegetation is removed, exposing the underlying soil.

72. Petitioner proposes to water all exposed areas and immediately grass or landscape these areas upon completion of finished grading to mitigate potential fugitive dust emissions.

73. Petitioner will also comply with Chapter 20.08 of the Maui County Code during construction phases to minimize soil erosion problems.

74. In their comments of September 15, 1988, the Department of Land and Natural Resources recommends that

"immediate" restabilization of denuded and disturbed soils be made mandatory rather than discretionary.

Flora

75. Petitioner's environmental consultant states that "No significant impact on plant life is anticipated as a result of this proposed project. There are no rare or endangered species of plants on the site, nor are there favorable conditions for such species. Several years ago, fire destroyed all plant life on the site."

Fauna

76. Petitioner's environmental consultant states that "No significant impact on animal and bird life is anticipated as a result of this proposed project. There are no rare or endangered species."

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadways and Highways

77. The only access to the Property from the existing transportation network is via Piilani Highway which abuts the Property's western boundary.

78. Petitioner proposes two primary access points into the Project from Piilani Highway labeled as "Road A" and "Road B" as identified in Petitioner's Exhibit 2, Traffic Impact Assessment Report.

79. Kihei Road serves the Project area, but from indirect connections with Piilani Highway. The nearest

indirect connection is located at the intersection of proposed Road B and Piilani Highway where Keonekai Road connects with Kihei Road.

80. Petitioner's updated traffic study, Exhibit 16, forecasts traffic growth at 13 percent per year, more than doubling the original estimate. This growth factor was used to re-calculate traffic volumes and Level-of-Service (LOS).

81. The updated traffic study recommends signalization at the Piilani/Keoneki intersection to improve projected LOS from "F" to "B" where "A" represents the highest level of service and "F" indicating intolerable delays.

82. Petitioner's Exhibit 16 indicates a LOS of "F" at the eastbound and westbound left turn movements of Keonekai Road after Project build-out. Through traffic on Keonekai Road is projected at LOS "D".

83. The westbound left turn at the intersection of Road "A" with Piilani Highway is projected at LOS "E".

84. Petitioner's traffic consultant recommends left turn pocket lanes and traffic signals on Piilani Highway for traffic traveling towards the Project. Signals would bring LOS to "B".

The consultant further recommends that at "Road A", left turns leading out of the Project should not be permitted. Traffic for the left turn movements should be directed toward the Keonekai intersection.

85. The consultant also projects that LOS for Piilani Highway will be reduced from the current LOS "A" to LOS "B" after Project build-out and after signalization.

86. The State Department of Transportation (DOT) states that, "The proposed intermediate access (Road A) does not comply with the recommended intersection spacing of one-half mile for rural arterials."

87. Petitioner's Exhibit 17, a letter dated November 16, 1988 from DOT Maui District Office, indicates that "Road A" is acceptable on the following basis: 1) Full left turn pocket improvements will be able to fit between the existing intersection of Piilani Highway at Keonekai Road and at Mapu Place, and 2) All other comments generated by our Division office, relative to the Traffic Impact Assessment Report must be addressed.

Petitioner believes that both intersections are satisfactory so long as signalization and left-turn lanes are provided when warranted.

88. Petitioner's existing site plan for the Project can accommodate a widening of Piilani Highway to four lanes if necessary in the future.

Drainage System

89. The Property's natural drainage features are characterized by three well-defined drainageways which receive surface waters sheet flowing toward Piilani Highway. Flows are

then directed under Piilani Highway and eventually drain into the Pacific Ocean.

90. The two largest drainageways, Kamaole Gulch and Liilioholo Gulch, currently drain approximately 80 percent of the Property. The remaining 20 percent sheet flows into the Piilani Highway drainage swale and on toward the Liilioholo Gulch culverts.

91. Total existing runoff based on a 10-year storm intensity is estimated by the Petitioner's engineering consultant at 113.7 cubic feet per second (cfs).

92. After development, Petitioner anticipates that infiltration, topographic relief, vegetative cover, and type of development will all contribute to an increase of storm water runoff above existing levels.

93. Petitioner's consultant forecasts an increase of surface runoff from 113.7 cfs to 213.7 cfs, almost doubling the current flows by 100 cfs.

94. To mitigate the possible soil erosion potential, Petitioner's consultant has recommended that exposed areas be watered daily, construction of drainage swales and structures completed as early as possible, construction of temporary diversion ditches, and pavement or grass established on all exposed areas immediately upon completion of construction work.

However, permanent retention basins will not be constructed by Petitioner.

95. In their comments of September 15, 1988, DLNR indicates that the Property lies above a stretch of important recreational shoreline which "seems particularly vulnerable to smothering by sediment". DLNR states:

"This shore includes Kamaole 2 and 3 County Beach Parks, and Keawakapu Beach. It supports substantial levels of shorecasting, thrownetting, skin and SCUBA diving, gillnetting, and also sailing and swimming. At the foot of Kilohana Drive, directly downhill from the project site, is a fishing ground known for akule. Within 400 yards of shore a lush reef of luxuriant coral extends on either side, over half a mile long and out to the 40' depth contour. These aquatic resource values should be protected, to meet the rising recreational demands of Kihei's rapidly growing population of residents and visitors."

DLNR is especially concerned that drainage from the Property during construction and subsequent residential occupation would be collected and conveyed to the existing drainage system at Piilani Highway and into natural drainageways of Kamaole Gulch and Lillioholo Gulch.

96. DLNR recommends that the potential for such environmental injury and loss of recreational value would be reduced significantly, and perhaps averted:

- a. If sitework (particularly grading and soil restabilization) is required to be scheduled for seasons of minimal rainfall;
- b. If "immediate" restabilization of denuded and disturbed soils is made mandatory, rather than discretionary; and
- c. If temporary and permanent retaining basins are required (to hold runoff water for dissipation by percolating into the ground and to allow suspended sediments to settle out) on the subject property.

97. Petitioner indicates that DLNR's recommended soil erosion control mitigation measures will be complied with.

98. OEQC is concerned about the impacts of storm water downstream of the Project site and the potential impact along the shoreline.

99. The County of Maui Department of Public Works states, "That a final detailed drainage and erosion control plan including, but not limited to, hydrologic and hydraulic calculations, scheme for controlling erosion and disposal of runoff water, and an analysis of the soil loss using the Hawaii Environmental Simulation Laboratory (HESL) erosion formula, be submitted for our review and approval. The plan shall provide verification that the grading and runoff water generated by the Project will not have an adverse effect on the adjacent and downstream properties, including the Lilioholo and Kamaole gulch crossings on South Kihei Road."

Water Service

100. Petitioner states that water service to the Project site will be provided by the County of Maui.

101. Petitioner indicates that improvements required for the Project include an 8" water main connection to the existing County waterlines at Keonekai Road, pumps, and storage facilities.

102. Petitioner's proposed internal improvements consist of 8" and 12" transmission and distribution lines, three storage tanks and two pumping assemblies. Water will be

pumped to the higher elevation storage tanks (475' and 650') from the County's waterline at Keonekai Road.

103. Fire hydrants will be spaced at not more than 250 feet apart for multi-family and 350 feet apart for residential lots and to conform to the Department of Water Supply's rules and regulations. The Petitioner's projected maximum daily water consumption for the proposed Project is estimated at approximately 776,550 gallons per day.

Wastewater Treatment and Disposal

104. Peak wastewater flows are projected by Petitioner to reach approximately 555 gallons per minute or 799,200 gallons per day upon Project completion.

105. Petitioner's proposed disposal method requires connection to an existing 8" P.V.C. pipeline located along Keonekai Road which proceeds downgradient to the existing 18" collector line at Kihei Road. From this connection, sewage is directly transported to the Kihei Treatment Plant located along Piilani Highway within the Haleakala Ranch project.

106. The Keonekai Road 8" pipeline has an existing capacity of 1,086 gallons per minute (gpm) and current peak flow from existing developments of 300 gpm.

107. The combined flow from existing developments (300 gpm) and the proposed Maui Palisades Project (555 gpm) total 855 gpm, falls well below current capacity for this portion of the Kihei area sewage collection system.

108. Other proposed Kihei area developments which would more accurately reflect the cumulative capacity requirements of the pipeline are not considered in the Petitioner's calculation.

109. Connection to the Keonekai Road collector line will also require a bigger pump at the Kamaole and Kalama Park lift station.

110. Petitioner proposes as an alternative, a lift/pump station at the makai-north corner of the proposed Project to pump the sewage directly to the Kihei Treatment plant.

111. Other on-site improvements will include 10" and 8" collector lines within the roadways and easements, respectively.

112. Petitioner proposes to design and construct sewage system in accordance with the latest requirements and standards of the Department of Public Works, County of Maui.

113. Petitioner indicates that expansion of the Kihei Plant may become necessary to handle the Project's additional flows.

114. The County's Department of Public Works has indicated that the existing Kihei Wastewater Treatment Plant is at capacity but will be expanded from 4.0 mgd to 6.0 mgd sometime after 1990. The Petitioner intends to utilize a portion of this expanded capacity.

115. In their comments of August 2, 1988, to the County of Maui Mayor's Office, the State Department of Health (DOH) expressed grave concerns regarding the wastewater management problem currently facing the County of Maui, especially in regard to the existing Kihei wastewater treatment plant and the pending developments in the Kihei-Wailea area.

116. DOH believes that regional or sub-regional wastewater systems operated by the County of Maui are the best wastewater management alternative for the Kihei-Wailea area.

DOH states:

"In view of the gravity of this situation, the Department of Health will not approve of any development in the Kihei-Wailea area, unless connection to the County sewers is possible, until an acceptable wastewater management strategy is submitted."

117. OSP recommends that construction of the proposed Project should not be allowed to commence until satisfactory provisions for wastewater collection, treatment, and disposal are agreed to by the appropriate State and County agencies, and Petitioner.

Schools

118. Public schools serving the Project area are Kihei Elementary and Intermediate School and Baldwin High School. Kihei Elementary and Intermediate School is located about two and one-half miles north of the Property, while Baldwin High School is in the Wailuku district.

119. The Department of Education (DOE) and OEQC indicates that the current and projected enrollment characteristics resulting from the proposed Project are as follows:

<u>School</u>	<u>Design Capacity</u>	<u>Actual Current Enrollment</u>	<u>Projected Enrollment Increase</u>
Baldwin High	1600	1632	80 - 100
Lokelani Intermediate	225	374	-- -- *
Kihei Elementary	1200	898	250 - 350*

*Kihei Elementary and Intermediate School may be subdivided into Kihei Elementary and Lokelani Intermediate. The projected 250 - 350 student increase shown for Kihei Elementary includes student growth at Lokelani Intermediate.

120. The DOE states, "All schools in this service area are operating at capacity. It will be necessary to request funds for additional classrooms to meet the enrollment demands. The Department of Education cannot assure the availability of classrooms to accommodate the development."

121. Petitioner has offered to provide a pro rata share of the cost of school expansion as may be imposed by the County impact fee ordinances.

Parks and Recreation

122. Petitioner cites numerous existing public recreational facilities within the Kihei-Wailea area such as Kalama Park, Kamaole Beach Parks, Wailea tennis courts and golf courses.

123. Petitioner anticipates no significant impacts on existing recreational lands and/or facilities. The proposed

development includes a 5-acre park to be dedicated to the County for public use.

Police and Fire Protection

124. The nearest police station is located at the Kihei Community Center, approximately four and three fourths miles from the Property.

125. The nearest County fire station is located on Kihei Road next to Kalama Park approximately one and three fourths miles north of the Property. Response time is estimated at five to seven minutes.

126. Petitioner has not addressed the potential impact on the Project due to a possible rangeland fire on adjacent land.

No mention was made of fire breaks or other protective measures in the Petition.

127. Petitioner will provide its pro rata share of the cost for expansion of police and fire facilities as imposed by the County impact fees ordinances.

Solid Waste Disposal

128. Petitioner indicates that the area is served by the County. Refuse is collected by the County and disposed of at a county operated sanitary landfill.

Electric and Telephone Services

129. Electrical, telephone, and cable TV overhead lines currently exist along Piilani Highway. The Property is

located in an area presently served by Maui Electric Company and Hawaiian Telephone.

130. The on-site utility lines will not be buried underground, but will be provided by the Petitioner in accordance with applicable requirements of the respective utility companies. Only utility lines leading from the streets to the houses will be underground. All utility lines within the apartment areas will be underground.

SOCIO-ECONOMIC IMPACT

131. The development of Maui Palisades will have a significant socio-economic impact in the Kihei region by satisfying a portion of the demand for affordable housing.

132. The location of the Project adjacent to Piilani Highway near the entrance to the Wailea and Makena resort areas, will also establish Maui Palisades as a gateway into a resort region rapidly becoming one of Maui's largest.

133. OSP indicates that cumulative impacts will result from this Project and others, requiring appropriate mitigative measures.

CONTIGUITY OF THE PROPOSED RECLASSIFICATION

134. The Property is located mauka and adjacent to Piilani Highway in southern Kihei at Kamaole, Makawao, Maui. Also adjacent to Piilani Highway but makai of the Project are Kihei Village Subdivision, Kauhale Kai Subdivision, and Hale Kilohana Subdivision. To the north and east, the Property is

bounded by grazing lands owned by Haleakala Ranch Company. South of the Property are the 674-lot Maui Meadows Subdivision (within the Rural Land Use District), vacant land, and the Wailea Resort.

CONFORMANCE WITH THE HAWAII STATE PLAN

135. Petitioner's Project meets the objectives and policies of the Hawaii State Plan, Chapter 226, HRS, as follows:

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."

The Agriculture Functional Plan Implementing Action B(5)(c) states in part that agricultural lands should remain in agricultural production "except where, by the preponderance of the evidence presented, injustice or inequity will result or overriding public interest exists to provide such lands for other objectives of the Hawaii State Plan."

The OSP believes that the need for affordable housing overrides any need to maintain the subject non-productive grazing lands within the Agricultural District.

226-104(b) (9) "Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized."

226-104(b) (13) "Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations."

The Property is not located within an area of critical environmental concern. Petitioner will comply with DLNR's soil erosion mitigation measures to control sedimentation and its impact on nearshore waters.

CONFORMANCE WITH STATE LAND USE COMMISSION RULES

136. The proposed development conforms with Subchapter 2, Section 15-15-18 "Standards for Determining "U" Urban District Boundaries" of the Land Use Commission rules as follows:

"(1) It shall include lands characterized by 'city-like' concentrations of people, structures, streets, urban level of services and other related land uses."

"(2)(C) It shall take into consideration the following specific factors: Proximity to basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection."

"(2)(D) Sufficient reserve areas for urban growth in appropriate location based on a ten year projection."

Although the Property is not currently characterized as "city-like", the Kihei/Wailea/Makena area is evolving into a significant urban area. If the proposed Project is developed, much of the above stated concentrations of people, structures, streets, and urban services, will exist. This will be in addition to the already approved large lot subdivisions adjacent to the subject reclassification area.

"(3) It shall include lands with satisfactory topography and drainage and reasonably free from the danger of floods, tsunamis, unstable soil conditions, and other adverse environmental effects."

The Property is not within flood or tsunami zones, however, topographical and drainage considerations may influence development in some areas of the Property. Soil conditions are generally suitable for the uses proposed.

"(4)... in amending the boundary, land contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on state or county general plans."

"(5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans."

The County's Kihei/Makena Community Plan currently designates the Property as "Project District". This designation would permit the proposed Project as currently envisioned, although the appropriate County zoning has not been determined.

137. The Project does not conflict with Subchapter 2, Section 15-15-19 of the Land Use Commission rules for determining "A" Agricultural District boundaries.

As previously indicated, the proposed Project will not negatively impact agriculture, is reasonably necessary for urban growth, employment opportunities will be created and affordable housing for low, low-moderate and gap groups will become more available.

CONFORMANCE WITH COASTAL ZONE POLICIES AND OBJECTIVES

138. The proposed reclassification of the Property for the development of the Project conforms to the policies and

objectives of the Coastal Zone Management Program Chapter 205A, Hawaii Revised Statutes, as amended.

RULING ON STIPULATED PROPOSED
FINDINGS OF FACT

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

CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended, and the Commission Rules, the Commission finds upon a preponderance of evidence that the reclassification of the Property, consisting of approximately 147.561 acres of land, situate at Kihei, Island and County of Maui, State of Hawaii, identified as Maui Tax Map Key Number: 2-2-02: parcel 2, from the Agricultural District to the Urban District for residential use, subject to the conditions in the Order, is reasonable, nonviolative of Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 147.561 acres, being the subject of Docket Number A88-626 by United Realty, Inc., situated at Kihei, Island and County of Maui, Hawaii, identified as Maui Tax Map Key Number

2-2-02: 2, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved subject to the following conditions:

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

A. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale or rent approximately 18.95 percent of the units at prices which families with an income range below 80 percent of Maui County's median income can afford; and 13.14 percent of the units which families with an income range of 80 to 120 percent of Maui County's median income can afford; and 18.51 percent of the units which families with an income range of 120 to 140 percent of Maui County's median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency. This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the rental of said 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 Maui and the State Housing Finance and Development

Corporation. Said requirements shall take into consideration affordable on-site or off-site housing units, cash payments, transfer of land title, or other in lieu contributions that satisfy the then current housing needs, or other necessary or desirable community facilities as determined above.

2. A joint planning effort shall be conducted by the Petitioner with the County of Maui as applicable, to ensure that urban design, as well as infrastructural and service systems, are compatible and developed in a timely fashion in accordance with County of Maui requirements. All infrastructure determined as necessary as a result of the project development shall be funded by the Petitioner.

3. Petitioner shall participate in or otherwise provide all additional planning studies as required by the State Department of Transportation. Petitioner shall also participate in the funding and construction of on-site and off-site transportation improvements associated with the proposed development and in designs and schedules required, accepted and coordinated with the State Department of Transportation. Petitioner shall also provide a setback from Piilani Highway and a traffic management system as required by the Department of Transportation.

4. Petitioner shall fund, as required by the County of Maui, the necessary measures required to obtain adequate supplies of water for the proposed development.

5. Petitioner shall fund and develop, as required by the County of Maui, the necessary measures required to expand existing wastewater collection, treatment, and disposal infrastructure facilities for the proposed development.

6. Petitioner shall provide its pro rata share for expansion of existing police and fire facilities as necessary, to the satisfaction of the County of Maui, via the County's impact fee ordinances. Petitioner shall also provide its fair and equitable share for expansion of educational facilities as may be needed to the satisfaction of the State Department of Education.

7. Petitioner shall provide an archaeological survey acceptable to the State Historic Preservation Office of the Department of Land and Natural Resources. Petitioner shall also provide professional archaeological monitoring and execute a historic preservation mitigation plan for the treatment of all significant historic sites before and during all grading digging, or other earthworking phases of project development in accordance with the Department of Land and Natural Resources requirements. 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, Petitioner shall immediately stop work and contact the State Historic Preservation Office.

8. Petitioner shall inform all prospective occupants of possible odor, noise, and dust pollution resulting from

surrounding Agricultural District lands, and that the Hawaii Right-To-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

9. Noise barriers along Piilani Highway shall be provided by Petitioner as necessary.

10. A fire break or other sufficient buffer shall be established off-site by Petitioner in cooperation with the adjacent property owners to protect residential areas from possible brush fires as required by the County of Maui Fire Department.

11. Petitioner shall implement appropriate mitigation measures, as recommended by the County and the Department of Land Natural Resources, to limit air and water soil erosion during construction phases which could potentially impact coastal areas.

12. 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 the development of the Property.

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

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

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

DOCKET NO. A88-626 - UNITED REALTY, INC.

Done at Honolulu, Hawaii, this 28th day of February 1989,
per motions on January 26, 1989 and February 24, 1989.

LAND USE COMMISSION
STATE OF HAWAII

By *Renton L. K. Nip*
RENTON L. K. NIP
Chairman and Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Vice Chairman and Commissioner

By *Allen K. Hoe*
ALLEN K. HOE
Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

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

Filed and effective on
February 28, 1989

Certified by:

Lothar Lunde
Executive Officer

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

DOCKET NO. A88-626 - UNITED REALTY, INC.

A copy of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by regular mail on March 2, 1989.

MR. IVAN PIVAROFF
c/o United Realty, Inc.
P. O. Box 569
Kihei, Hawaii 96753