

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-649
LANAI RESORT PARTNERS	)	FINDINGS OF FACT,
To Amend the Rural Land Use	)	CONCLUSIONS OF LAW, AND
District Boundary into the Urban	)	DECISION AND ORDER
Land Use District for Approximately	)	
110.243 acres and the Agricultural	)	
Land Use District Boundary into the	)	
Urban Land Use District for	)	
Approximately 28.334 acres at	)	
Manele, Lanai, Hawaii, Tax Map Key	)	
No. 4-9-02: portion 49	)	

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LAND USE COMMISSION  
STATE OF HAWAII  
JUL 1 11 03 AM '95

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

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-649
LANAI RESORT PARTNERS	)	
To Amend the Rural Land Use	)	FINDINGS OF FACT,
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110.243 acres and the Agricultural	)	
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FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

On February 4, 1994, Intervenor Lanaians For Sensible Growth ("Intervenor"), a Hawaii nonprofit corporation, filed a Motion For Order To Show Cause to determine (i) why Petitioner Lanai Resort Partners ("Petitioner") should not be held in violation of, or substantial noncompliance with, Condition Nos. 2, 5, 5(a), 5(e), 5(f), 5(g), 8, 8(b), and 18 of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated April 16, 1991 ("Decision and Order"); and (ii) why sanctions should not be imposed, including but not limited to, the reclassification of the subject property.

Upon memoranda submitted and arguments presented by the parties on Intervenor's motion before the Land Use Commission ("Commission") on June 16, 1994, the Commission issued its Order Granting Intervenor's Motion For Order To Show Cause dated

June 28, 1994. On August 3, 1994, the Commission under the authority of section 205-4, Hawaii Revised Statutes (HRS), and section 15-15-93, Hawaii Administrative Rules (HAR), issued an Order To Show Cause that was served upon and commanding Petitioner to appear before the Commission to show cause why that certain parcel of land consisting of approximately 138.577 acres situate at Manele, Island of Lanai, State of Hawaii, Tax Map Key No. 4-9-02: portion of 49 (formerly Tax Map Key No. 4-9-02: portion of 1), in the Urban Land Use District (being the same land described in this Docket and referred to herein as the "Property") should not revert to its former land use classification or be changed to a more appropriate classification upon the Commission having reason to believe that Petitioner has failed to substantially comply with Condition Nos. 2, 5, 5(a), 5(e), 5(f), 5(g), 8, 8(b) and 18 of the Commission's Decision and Order dated April 16, 1991.

The Commission having heard and examined all testimonies, evidence, and arguments presented by Petitioner, the Office of State Planning ("OSP"), the County of Maui Planning Department ("County") and the Intervenor, and the respective proposed findings of fact, and conclusions of law, and decision and order filed by the parties, the exceptions to Petitioner's proposed findings of fact, conclusions of law, and decision and order submitted by the County and the entire record herein, hereby make the following findings of fact, conclusions of law, and decision and order.

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On September 13, 1994, a Prehearing Conference was conducted at Conference Room 238 of the Old Federal Building in Honolulu. At the Prehearing Conference, the list of exhibits and list of witnesses of the parties were exchanged between and among the parties.

2. The Commission conducted hearings on this order to show cause on October 6 and 7, 1994, pursuant to a Notice of Consolidated Hearing published on August 12, 1994 in the Maui News, and Honolulu Advertiser. The Commission held continued hearings on December 15 and 16, 1994, and March 8 and 9, 1995.

3. Scotty Johnson and Kalia N. Solangran appeared and testified as public witnesses at the hearing on December 15, 1994.

### CONDITION NO. 2

4. Condition No. 2 of the Decision and Order reads as follows:

2. Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lanai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui.

5. The agricultural park lease between the Petitioner and the State had been negotiated and substantially agreed to by the parties on December 3, 1993.

6. By Indenture Of Lease, dated July 15, 1994, filed as Land Court Document No. 2165943, Dole Food Company, Inc., as lessor, leased to the State of Hawaii, as lessee, approximately 100 acres of land on Lanai for purposes of an agricultural park for the term of fifty-five (55) years at an annual nominal rent of \$100.00.

7. Section 19 of the lease for the agricultural park provided, among other things, that the lessee shall have the right to purchase from the public utility and to use up to, but not more than, 0.20 MGD on the average annual basis. Section 19 of the lease has been amended by an Amendment Of Lease, dated August 19, 1994, filed as Land Court Document No. 2199103, pursuant to the agreement of the parties to provide that additional water in excess of 0.20 MGD will be allocated to the agricultural park in the future when the lessee justifies the need for such additional water and any costs incurred for the additional water will be borne by the lessee. The State Department of Agriculture, through the OSP, has represented that Condition No. 2 has been satisfied.

**CONDITION NOS. 5, 5(a), 5(e), 5(f) and 5(g)**

8. Condition Nos. 5, 5(a), 5(e), 5(f) and 5(g) of the Decision and Order reads as follows:

5. In developing and operating the golf course and any future residential development in the Manele project district, petitioner shall protect public access along the accessible cliff coastline.

a. Petitioner shall dedicate a public easement along the accessible cliff coastline from Hulopoe Bay to the intersection of the

coastline with the westernmost boundary of the project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such use, subject to reasonable rules and regulations for public safety, provided that access shall be maintained.

\* \* \*

e. Petitioner shall work with Lanaians for Sensible Growth to incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible cliff coastline area.

f. Petitioner shall adopt golf course rules and provide mutually agreeable and appropriate signage which will protect the access along the public access areas and pathways.

g. Petitioner shall provide Lanaians for Sensible Growth with plans for the golf course layout, location of holes, access pathways, and signage in advance of any final approval of such plans by the appropriate governmental agencies.  
(PET 8)

9. The construction of the Manele golf course on the Property was commenced on January 15, 1993 and completed and opened for play on December 22, 1993.

10. On June 8, 1992, prior to the construction of the golf course, Petitioner and Intervenor met for an informational briefing by Petitioner on several matters of concern including proposed erosion control measures during construction of the Manele golf course, planning for signage to be used for public shoreline access, and the scheduling of the submittal of construction drawings of the golf course to Intervenor for its review.

11. The preliminary set of plans of the Manele golf course was completed in September 1992, a copy of which was

delivered by Petitioner to Intervenor at a meeting on October 12, 1992.

12. A set of plans of the Manele golf course was submitted to the County of Maui for its review and approval in November 1992. Amendments dated December 9, 1992 were made to the plans and transmitted to the County by addendum. Upon review, the County of Maui approved the plans in January 1993.

13. A set of plans of the Manele golf course as amended and subsequently approved by the County of Maui was hand-delivered by Petitioner to Intervenor on February 2, 1993.

14. The Petitioner did not provide the Intervenor with the information on the field change that was made in the numbering of certain holes which renumbering did not affect the physical layout of the golf course as set forth in the set of plans transmitted to the Intervenor.

15. The State and Petitioner entered into a Consent Judgment, filed on February 16, 1994, in the Circuit Court of the Second Circuit, State of Hawaii, to resolve a dispute concerning public use of the beach and coastal trail. The Consent Judgment found that the public could not determine the availability of transit paths across Petitioner's Property and the areas which could be used by the public, without fear of harassment by the Petitioner. A clear statement concerning the public's right to access was needed.

16. On June 14, 1994, the State requested that the Court enforce the Consent Judgment to place signs identifying the location of the mauka-makai trails, supplement the maps with

detailed descriptions satisfactory to the parties and the Court, identify these trails, and send copies of these documents to the Maui County Department of Parks and Recreation and the State Department of Land and Natural Resources.

17. On June 24, 1994, a site visit and trail walk covering the mauka-makai trails and fisherman's trail on Lanai were conducted by Michael Baker of the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), Bob Hera of Na Ala Hele Community Group on Lanai, Ron McOmber of Lanaians For Sensible Growth, and Richard Albrecht and Ed Sowers of Lanai Company, Inc. to clarify and resolve outstanding issues, including definition of trails, signage and trail clearing measures, in a manner consistent with the Consent Judgment.

18. A transcript covering the consensus of the parties to the site visit and trail walk with respect to items to be addressed relating to signage, coastal trail (Fisherman's Trail), mauka-makai access pathways, and related follow-up items was prepared by parties to the site visit and trail walk. Agreement of the items covered in the transcript was reached among the parties to the site visit and trail walk.

19. Petitioner has substantially completed the items contained in the transcript. Certain of the items will require continuing attention as an on-going process.

20. Signs for coastal access agreed to by the parties to the site visit and trail walk pursuant to the transcript were installed as follows:



a. The Fisherman's Trail sign at the head closest to Hulopoe Beach Park was relocated to the top of the first set of rocks on August 10, 1994.

b. The sign containing the coastal access map which identifies the Fisherman's Trail, the mauka/makai access and has the "YOU ARE HERE" identification was installed on August 4, 1994 in the four agreed upon locations at (i) the parking area immediately downhill of the golf maintenance facility, (ii) the easterly entrance to the Fisherman's Trail adjacent to the existing Hulopoe Marine Conservation District sign; (iii) the mauka/makai trail parking area in the vicinity of the gravel plant on the new Manele Road; (iv) the point where the trail intersects the carpath in the vicinity of the 13th green at the Manele golf course.

c. The left arrow sign was installed on August 16, 1994 at the edge of the gulch adjacent to the preserve area between the clubhouse and Manele Bay Hotel.

d. The "CAUTION STAY BACK FROM CLIFF" sign was placed on August 16, 1994 in a location below the Manele Bay Hotel near the edge of the cliff overlooking the small blow hole.

21. By Memorandum Agreement between Petitioner and Na Ala Hele Trails and Access System within DLNR/DOFAW, dated October 19, 1994, filed as Land Court Document No. 2200658, the parties have provided, among other things, for the delineation of the Fisherman's Trail and for the grant and recordation by the Petitioner of a perpetual, non-exclusive easement in favor of the State of Hawaii for public use of the Fisherman's Trail to be

maintained and operated under the Na Ala Hele Trails and Access System.

CONDITION NOS. 8 and 8(b)

22. Condition Nos. 8 and 8(b) of the Decision and Order reads as follows:

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

\* \* \*

b. The petitioner shall retain an environmental monitor, as may be mutually agreed between it and Lanaians for Sensible Growth for the purpose of monitoring the water quality standards referred to in paragraph 3. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii.

Erosion Control

23. The drainage scheme for the Manele golf course was designed to mitigate the potential for erosion during the course of construction as well as to handle drainage flows after the golf course was completed and in operation for play.

24. The golf course includes a design element which reverses the pitch of the natural slope of the terrain to retard or detain the drainage flow and particles of sediments.

25. Before commencing construction of the golf course, silting or sediment basins and drainage swales were constructed to direct potential rainfall runoff from any graded areas into the sediment basins. Approximately 75 small sediment basins and 10 large sediment basins have been installed by Petitioner to contain and control sediment.

26. Other erosion control devices and mitigation measures undertaken by the Petitioner preceding or during construction included the installation of approximately three and a half miles of silt or filter fence, diversion ditches, hydrosprigging, hydromulching, jute matting, sod and hay bales. Erosion control devices required under the National Pollution Discharge Elimination System ("NPDES") permit were also undertaken.

Imported Soil; Exposure of Top Soil

27. Imported soil was used for the development of the Manele golf course.

28. Pursuant to a condition imposed by the County of Maui, physical samples with test results of any imported soil proposed for the golf course project site were submitted to the Department of Agriculture (DOA) and the Department of Health (DOH). Samples with test results of all of the soils imported to the golf course project site had been reviewed and approved by DOA and DOH.

29. The erosion control ordinance of the County of Maui provides a limit of 15 acres of ground area that may be exposed for construction at any time. The County of Maui may allow an area in excess of 15 acres under certain conditions.

30. Upon the recommendation of United States Soil Conservation Service with the concurrence of the Soil and Water Conservation District, the County of Maui initially sought to impose a 30-acre limit for the area allowed to be exposed for construction. Subsequently, the County of Maui lifted the 30-acre limit, with the recommendation and concurrence of the United States Soil Conservation Service and the Soil and Water Conservation District, on the basis that the maximum acreage of exposed topsoil area would be approximately 15 to 20 acres at a time under the method of development employed by Petitioner. The method employed by the Petitioner was to grade rocky material to a point of rough shaping, sealing said area with hydromulch, until topsoil was imported to the area.

31. Although 80 or 90 acres may have been in process of development of the golf course, only 15 to 20 acres would be actively topsoiled at any time as the rest of the acres were in a state of either rock or sealed with hydromulch.

Coastal Water Quality; Environmental Monitor

32. The State Department of Health ("DOH") has oversight of the development of the Manele golf course by virtue of its authority to issue the National Pollution Discharge Elimination System (NPDES) permit for construction related to the golf course

development which permit included requirement for erosion control devices.

33. The Maui County Department of Public Works (DPW) has oversight of the development of the Manele golf course by virtue of its authority to issue approval of the Petitioner's erosion sediment control plan and the grading permit.

34. Petitioner timely gave notice of intent to apply to the DOH for a NPDES general discharge permit 90 days before commencement of construction of the golf course. DOH issued the general discharge permit which allowed Petitioner to construct on the Property provided that storm water crossing the Property must be no worse than the water that normally passes through the Property and abutting intermittent streams.

35. Conduct of Best Management Practices (BMP) was required under the NPDES permit. Requirements under BMP included cutting diversion ditches before construction, erecting filter fences before construction, reinspections by Petitioner's project engineer and the consulting engineer, and maintaining a daily monitoring report, which included every rainfall greater than one-tenth of an inch.

36. The DOH monitored the implementation of the BMP. Upon completion of construction of the golf course and Petitioner's filing of the final daily monitoring report, Petitioner was verbally apprised that Petitioner had satisfied the NPDES construction general discharge permit.

37. Certain revegetation and renaturalization efforts made during construction to certain exposed areas pursuant to the

BMP have been successful and certain other areas have not been as successful. Petitioner is continuing to work toward a final solution on the revegetation and renaturalization efforts which is an on-going remedial process in the maintenance and operation of the golf course.

38. In the exercise of the oversight responsibility of DOH, Watson Okubo, environmental specialist of the Clear Water Branch of the DOH, conducted a monitoring program covering Manele and Hulopoe Bay on Lanai on a quarterly basis which included collecting water samples for total suspended solids, nutrients, chlorophyll A, turbidity, salinity, temperature and bacteria.

39. Watson Okubo visited the project site about six times in the course of the development of the Manele golf course. On an inspection tour of the golf course on February 23, 1994, following a significant rain event, Watson Okubo observed remnants of storm runoff from the gulches at the Garden of the Gods, Kanepuu and Honopu along the southwest shoreline of Lanai but did not see any plume of sediment runoff in the coastal water in front of the golf course project. He further noticed that there were no major washouts and that the erosion control measures in the golf course appeared effective in controlling the flow of silt down the gulches.

40. During the construction of the golf course, there were four occurrences of rain on Lanai on October 25, 1993 commencing at 2:35 a.m. and ending around 8:25 p.m. with total accumulation of 1.48 inches and two of the four occurrences resulting in runoff.

41. Aerial photographs taken of various coastal areas on Lanai on October 26, 1993 show distinct plumes of concentrated sediment runoff in the coastal waters of Lanai fronting (i) areas between Three Stones and Kaumalapau Harbor, (ii) Keomoku Beach, (iii) Shipwreck Beach, (iv) Kaholo Pali, and (v) Halepalaoa Landing where development is not shown as occurring and the sites appear in their natural state.

42. Aerial photographs taken of the coastal areas along the Manele golf course and the Manele Bay Hotel on October 26, 1993 show faint or lighter traces of plumes of sediment runoff in the coastal waters (i) fronting the Manele Bay Hotel/Hulopoe Beach Park and (ii) fronting the golf course along Hole 9, Hole 17, and Hole 12 where developments have taken place and erosion control measures have been installed.

43. Three irrigation line breaks occurred on the project site on August 6, 1993, October 12, 1993 and October 16, 1993 which caused silt to be displaced, washed into the coastal water, and create a plume of sediment in the coastal water. On each occasion, Petitioner promptly notified the DOH, the County of Maui Department of Public Works, and the County of Maui Planning Department of the irrigation line break and the remedial action taken including prompt repair of silt fence overrun by silt and water from the irrigation line break.

44. DOH represented that discharges into the coastal water caused by the irrigation line breaks were not willfully done or willfully negligent, and therefore a citation was not warranted or issued.

45. As a regulatory body, DOH was (i) a signatory for the grading permit issued by the County Department of Public Works, (ii) issuer of the NPDES general discharge permit, and (iii) approving authority to permit the use of effluent for dust control and irrigation. No citation against the Petitioner for violation of any of the permits has ever been issued.

46. Field inspector Freddie Cabos of the Land Use and Codes Administration Division of the Department of Public Works of the County of Maui made weekly visits to monitor the construction of erosion control measures. Ken Sabin, the on-island supervisor for the department, visited the project site from time to time. Other government officials, involved with coastal water quality, that visited the site included the director and deputy director of the County of Maui Department of Public Works, and representatives of the County of Maui Planning Department.

47. Other agencies that inspected the project site were the representatives from the Molokai-Lanai Soil and Water Conservation District and the Soil Conservation Services of the United States Department of Agriculture. The Soil Conservation Service (SCS), although not an official approving authority, was consulted by the Petitioner, as required under a condition imposed by the County of Maui, for its recommendations. The SCS, after an inspection tour of the project site, commented favorably on the erosion control measures undertaken by Petitioner.

48. Richard Brock, Ph.D., is the sole proprietor of Environmental Assessment Company, an environmental consulting



firm, who was retained by Petitioner to develop baseline information regarding water quality and marine life conditions on the area fronting Hulopoe Bay with the objective to monitor the condition and status of those resources to insure that no degradation occurs with the development and operation of the Manele golf course.

49. Dr. Brock, doing business as Environmental Assessment Company (EAC), was selected by Petitioner as the person to monitor the water quality for Hulopoe Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course as provided in and pursuant to the 1990 Memorandum of Agreement between the Petitioner and the Intervenor. Dr. Brock has continued as such monitor before, during and after the construction of the golf course.

50. Section I(B)(6)(c) of the 1990 Memorandum of Agreement reads as follows:

(c) In order to comply with Subsection (a) above, promptly retain Environmental Assessment Company or such other third-party entity (the "Monitor") as may be mutually agreed between Company and LSG for the purpose of monitoring the Water Quality for Hulopoe Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course. The monitoring program shall make its results available to the State Department of Health. The program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be

conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the Monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii.

51. Petitioner, or its parent company or subsidiaries have not sought the agreement of Intervenor prior to Dr. Richard Brock, doing business as Environmental Assessment Company, being hired as the environmental monitor.

52. EAC commenced gathering information for the baseline study in December 1989 until construction commenced in January 1993 after which he has been conducting sampling and monitoring work on a quarterly basis pursuant to standard procedures and protocols of the Environmental Protection Agency and the DOH. Water quality samples are routinely collected from 21 different locations between Huawai Bay near the western edge of the golf course to a point as far east as Awehi gulch which is approximately 10 kilometers east of Hulopoe Bay.

53. The coastal water area monitored by EAC, is classified as Class AA water by the DOH. The state water quality standards for Class AA waters in the monitored area has been exceeded in a number of instances for a number of parameters such as nitrate, nitrogen, ammonia nitrogen, total nitrogen, total phosphorus, turbidity and chlorophyll A measurements.

54. Exceeding the limits of the state quality standards is not unusual and occurs not only in coastal water areas in Hulopoe Bay and areas fronting the golf course but also in control coastal water sites which front land areas where no

development is occurring. Some of the highest levels of measured parameters exceeding state water quality standards occur in the Makole and Awehi gulch areas where there is no development.

55. Changes in the parameters were studied by Dr. Brock for the waters fronting the development areas (Hulopoe Bay) and waters fronting control sites in undeveloped areas (Makole and Awehi gulches) both before and after construction of the development areas. After construction started in the development areas, no statistically significant change occurred in the waters fronting the development areas and the undeveloped areas in any of the parameters except chlorophyll A, total phosphorous, and ammonia nitrogen, which were all statistically higher at the control sites fronting undeveloped areas but not in the waters fronting the development areas.

56. The changes in the coastal water quality, as indicated by statistically significant changes in some of the parameters, are not related to golf course construction or the operation of the golf course. The changes are at very low levels related to rainfall event which has a very strong correlation with the water quality parameters falling out of compliance.

57. The DOH has been regularly conducting a quarterly coastal water monitoring program for the island of Lanai for approximately three or four years. Based on this monitoring program over the last three of four years, the DOH has not determined any consistent degradation or violation of water quality standards.

CONDITION NO. 18

58. Condition No. 18 of the Decision and Order reads as follows:

18. Nonpotable water sources shall be used towards all nonconsumptive uses during construction of the project.

59. Petitioner contracted with the Goodfellow Brothers Construction Company (Contractor) for it to perform the construction of the Manele golf course.

60. At a preconstruction meeting, the Contractor was apprised of the requirement that potable water was not to be used for the irrigation and dust control in the construction of the golf course. The requirement was also included in writing and made part of the golf course construction plans.

61. The Contractor's water trucks gathered water from the effluent line at the existing sewer pump station near the Manele golf course for dust control and irrigation of the golf course throughout the construction period. That potable water was not to be used for dust control and irrigation was communicated by the Contractor to its employees at their regular Tuesday safety meeting every couple of weeks.

62. On April 26, 1993, Richard Duggan, project manager of the Manele golf course, received a telephone call from Ron McOmber who apprised Richard Duggan that Ron McOmber interrupted a driver filling a tank truck with water from a hydrant in Lanai City and that the driver had advised Ron McOmber that the driver was headed toward Manele with it for golf course irrigation. Upon receipt of the telephone call from Ron McOmber, Richard

Duggan immediately contacted the Contractor who by radio stopped the driver from any possible delivery to Manele, and the driver utilized the water from the hydrant for dust control at Iwiolo Hale in Lanai City where the driver had been the day before for that purpose.

#### RULING ON PROPOSED FINDINGS OF FACT

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

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

#### CONCLUSIONS OF LAW

Pursuant to section 205-4, HRS, and section 15-15-93, HAR, the Commission finds upon a preponderance of the evidence that the Property consisting of approximately 138.577 acres of land situate at Manele, Island of Lanai, State of Hawaii, Tax Map Key: 4-9-02: portion of 49 (formerly Tax Map Key: 4-9-02: portion of 1), currently within the State Land Use Urban District, has been developed in substantial non-compliance with condition no. 8(b) of the Decision and Order of the Commission dated April 16, 1991.

ORDER

Accordingly, IT IS HEREBY ORDERED that Petitioner shall comply with condition no. 8(b) and seek mutual agreement of Intervenor in retention of an environmental monitor.


IT IS HEREBY FURTHER ORDERED that condition no. 8(a) and 8(b) shall be amended to read as follows:

8(a). The petitioner shall fully mitigate any condition caused by its development activities which results in deterioration of the standards referred to in paragraph 8.

8(b). The petitioner shall retain an environmental monitor, as mutually agreed between it and Intervenor for the purpose of monitoring the water quality standards referred to in paragraph 8. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii.

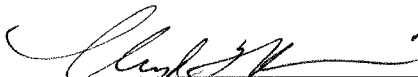
Done at Honolulu, Hawaii, this 1st day of June 1995,  
per motion on May 25, 1995.

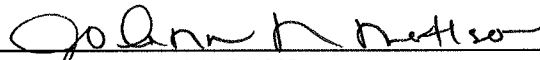
LAND USE COMMISSION  
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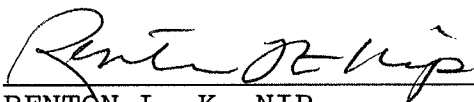
By   
ALLEN K. HOE  
Chairperson and Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Vice Chairperson and Commissioner

By (absent)  
M. CASEY JARMAN  
Commissioner

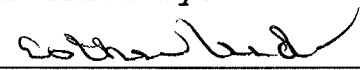
By   
LLOYD F. KAWAKAMI  
Commissioner

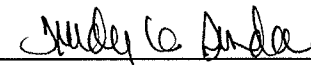
By   
JOANN N. MATTSON  
Commissioner

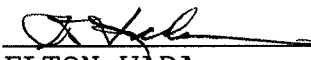
By   
RENTON L. K. NIP  
Commissioner

Filed and effective on  
June 1, 1995

Certified by:

  
Executive Officer

By   
TRUDY K. SENDA  
Commissioner

By   
ELTON WADA  
Commissioner

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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:

DEL.           GREGORY G.Y. PAI, PH.D., Director  
                Office of State Planning  
                P. O. Box 3540  
                Honolulu, Hawaii 96811-3540

CERT.          BRIAN MISKAE, Planning Director  
                Planning Department, County of Maui  
                250 South High Street  
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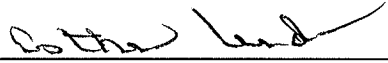
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DATED: Honolulu, Hawaii, this 1st day of June 1995.

  
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ESTHER UEDA  
Executive Officer