

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
HEMMETER/VMS KAUAI COMPANY III ) SP86-360 - HEMMETER/  
 ) VMS KAUAI  
 ) COMPANY III  
 )  
For a Special Use Permit to Allow the )  
Redesign of the Existing Golf Course )  
and the Establishment of a Driving )  
Range and Related Golf Course )  
Accessory Uses, Boat Docks, Lake )  
and Waterways, Parking Areas, Boat )  
Maintenance Facility, Irrigation )  
Lagoon, Access Roads, and Other )  
Miscellaneous Accessory Uses on )  
Approximately 310 Acres of Land )  
Situated within the Agricultural )  
District at Nawiliwili, Lihue, )  
Kauai, Tax Map Key Nos.: 3-5-01:83 )  
and Portions of 1, 6, 27 and 82 )  
\_\_\_\_\_ )

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

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

Hemmeter/VMS Kauai Company III (hereinafter the "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Part IX of the Land Use Commission's Rules of Practice and Procedure. The Land Use Commission (hereinafter the "Commission") having considered the entire record on this matter, hereby makes the following findings of facts and conclusions of law:

## FINDINGS OF FACT

### GENERAL DESCRIPTION

1. The Commission received the Special Use Permit request and record of the County of Kauai Planning Department on August 18, 1986.

2. Under the Special Use Permit, Petitioner proposes to redesign the existing 18-hole golf course, establish a new driving range, a new golf clubhouse and starter's shed, golf and grounds maintenance areas, boat docks for 100 charter boats and three ferries, approximately 30 acres of waterways and lake, parking for approximately 600 or more cars, boat maintenance facility, an irrigation lagoon of approximately nine acres, driveways for airport, service and public access, and miscellaneous accessory uses including, but not limited to, horse stables, carriage storage and carriage paths (hereinafter the "Project") on approximately 310 acres of land situated within the State Land Use Agricultural District in Nawiliwili, Island of Kauai.

3. The Project site is identified as Kauai Tax Map Key Numbers: 3-5-01:83 and portions of 1, 6, 27 and 82 and is approximately identified on Exhibit A attached hereto and incorporated by reference herein (hereinafter the "Property").

4. Petitioner's proposed Project is part of a revised overall development concept to expand the Westin Kauai Resort to a large scale, self-contained resort area with multiple attractions to include a new hotel and commercial areas set within golf, open space, and water related recreational amenities. The proposed

Westin Resort project, as presented to the Commission to date, will encompass approximately 454 acres of land.

5. The major elements of the proposed Westin Kauai Resort project are as follows:

I. FUTURE RESORT HOTEL:

A. 750 units

II. COMMERCIAL AREAS:

- A. The Cliffs Commercial Area, 25,000 sq. ft. leasable
- B. The Island Commercial Area, 25,000 sq. ft. leasable
- C. The Lagoons Commercial Area, 60,000 sq. ft. leasable

III. MAIN LAGOON:

- \*A. 36 acres of lagoon
- \*B. 10 boat docks for 100 charter boats and 3 ferries

IV. GOLF COURSES:

- \*A. Kiele Lake (redesigned existing 18-hole golf course and driving range, 286+ acres)
- \*B. 26,000 sq. ft. golf clubhouse
- \*C. Irrigation lagoon (9+ acres)
- \*D. Golf and grounds maintenance area
- \*E. Starter's shed
- \*F. Parking for 600+ cars (also used for other activities)

V. OTHER ITEMS:

- A. Access road for restaurant/inn
- B. 15,000 sq. ft. restaurant (makai area)
- \*C. Horse stables, carriage storage
- \*D. 20,000 linear feet internal carriage path network
- \*E. Entry drive, airport access, and other service roadways
- \*F. Public access road and shoreline access easement

\*Elements that are part of this Special Permit request Docket No. SP86-360 to be built on the Property in the Agricultural District.

6. The predominant uses of the Property are an existing golf course and sugar cane cultivation. Lands to the north and east of the Property are used for sugar cane cultivation and

airport facilities. Lands to the south are in the State Land Use Conservation District. Adjacent lands to the west and southwest contain the Lihue Industrial Park, the Lihue Sewage Treatment Plant (STP), Nawiliwili Harbor, and the 550-room Kauai Surf Hotel and golf course now undergoing major upgrading to become the Westin Kauai Resort Hotel.

7. Access to the Westin Kauai is currently provided from Rice Street which connects to Kapule Highway.

8. Ownership of the Property, according to the state tax map dated August 28, 1986, is as follows:

TMK 3-5-01:	1	William H. Rice, Ltd.
	6	Lihue Plantation Co., Ltd.
	27	Hemmeter/VMS Kauai Company I
	82	Hemmeter/VMS Kauai Company I
	83	Hemmeter/VMS Kauai Company I

9. The Lihue Plantation Co., Ltd., by letter dated June 17, 1986, has authorized Petitioner to request this Special Use Permit as well as the application for rezoning, special management area, development, and other permits as necessary for its lands.

10. Petitioner is an affiliate of Hemmeter/VMS Kauai Company I, which is a lessee of William H. Rice, Ltd. for parcel 1.

Past Land Use Commission Actions for the Area

11. On May 8, 1970, the Commission approved the special use permit request of Amfac Properties in Docket No. SP70-77 for the addition of nine-hole golf course on approximately 80 acres located east of the existing Kauai Surf Hotel. The first nine-hole golf course was a permitted use under Commission rules in effect prior to 1969. The approval was subject to a condition

that the 80 acres be replaced with land capable of producing the equivalent production of sugar.

12. On December 6, 1973, the Commission approved the special use permit request of Inter-Island Resorts in Docket No. SP73-163 for a tennis complex on approximately 8.5 acres adjacent to the existing hotel.

13. On April 20, 1979, the Commission approved the special use permit request of the State Department of Transportation in Docket No. SP78-316 for a new runway and related improvements on approximately 554 acres northeast of the Kauai Surf Hotel and golf course. This approval was granted prior to the decision of the Hawaii Supreme Court in Neighborhood Board No. 24 V. State Land Use Commission, 64 Haw. 265 (1982). The approval included a condition that the petitioner seek a land use district boundary amendment within one year after the approval of the special permit.

The boundary amendment petition by the Department of Planning and Economic Development in Docket No. A80-474 was filed and subsequently approved by the Commission on April 24, 1981.

14. On June 2, 1976, the Commission approved the boundary amendment request of Amfac Communities Hawaii in Docket No. A75-402 to reclassify approximately 34 acres from Agricultural to Urban for an industrial subdivision located at the eastern corner of the Kapule Highway - Rice Street intersection, without imposing conditions for approval of this amendment.

15. On August 22, 1983 the Commission partially approved the boundary amendment petition of Amfac Development Company in Docket No. A82-530 and reclassified approximately 56 acres from Agricultural to Urban on August 22, 1983 for resort condominiums on areas north and east of the existing Kauai Surf Hotel and including a portion makai of the second nine-hole golf course approved under Docket No. SP70-77. Eight conditions were imposed by the Commission for this boundary amendment.

Summary of Environmental Concerns

16. The Property contains a combination of Lihue Silty clay, Lihue gravelly silty clay, Halii gravelly silty clay, Mokuleia fine sandy loam, badland and rough broken land.

17. Major portions of the Property are also rated "B" according to the Land Study Bureau.

18. The State Department of Agriculture rates the majority of the Property as Prime Agricultural Land in its Agricultural Lands of Importance to the State of Hawaii classification system.

19. No endangered plants or animals were observed on the Property except for a pair of Gallinule birds inhabiting a drainage reservoir in the Kauai Surf Golf Course.

20. Petitioner's consultant, Belt, Collins & Associates concluded that due to the area's history of cane cultivation and golf course use, no historical or archaeological remains are expected to exist on the site.

Petitioner states that if remains are uncovered, work will discontinue until appropriate governmental authorities have an opportunity to survey the find and determine when work may resume.

21. Steven J. Dollar prepared an environmental assessment in August 1980 of near shore marine life and concluded that there is no reason to expect significant adverse impacts to water quality or relevant biological communities from the proposed development.

22. The County sewage treatment plant is surrounded by the Property and is located northwest of the existing Kauai Surf Hotel. The use of open air sludge bed to treat sewage effluent and noxious gas by-products originating from this facility will impact some golf course holes during normal wind conditions.

23. The State Department of Health (DOH) stated it had concerns that the removal of additional sugar cane fields will reduce the size of the mill wastewater disposal in the lower Lihue fields and may affect the condition imposed by the Commission that neither the lower fields, nor any other areas subject to the mill wastewater disposal shall have a saturation factor in excess of 1.0.

The DOH also commented that potential for mosquito problems will exist as long as wastewater is discharged into the lower fields and that Petitioner must abate these problems before inhabitation of the proposed Project.

Furthermore, the DOH was concerned on whether the use of treated effluent from the County sewage treatment plant for golf



course irrigation would comply with public health standards and statutory requirements.

The County Department of Public Works also had similar concerns which were presented to the County Planning Commission.

24. In response to the concerns submitted by the County Department of Public Works and the State Department of Health, the County Planning Commission, in its meeting of August 13, 1986, approved Petitioner's requests for zoning, special management area use, project development use, and class IV zoning permits with the following conditions:

Zoning Amendment ZA-86-7 from Agriculture District (A) to Resort Residential District (RR-20) for approximately 56 acres (A82-530/Amfac Properties Development Corp.)

- "2. Prior to building permit approval for any improvements within Phase II, the applicant shall submit the necessary documentation and/or legal agreements reflecting the resolution of the following:
  - a. The disposal or use of the Lihue Sewage Treatment effluent for golf course irrigation and use within the lagoons.
  - b. Disposal of the Lihue mill wastewater and the L-20 reservoir.
  - c. Conditions upon which sewer service will be provided by the County since the proposed development is outside of the service area of the present 1.5 mgd STP capacity.
- "3. Applicant shall establish a landscaped buffer zone around the Lihue STP. Size of the buffer zone and type of landscaping shall be subject to Planning Department review and approval.

"4. Applicable conditions imposed by the State Land Use Commission at time of district boundary amendment shall be completed by August 22, 1988."

25. Petitioner is working with Amfac Development Company to satisfy conditions imposed by the Commission regarding the mill wastewater and sewage effluent disposal in Docket No. A82-530.

26. Petitioner proposes to design its storm drain system to County standards and no adverse impacts are anticipated. Golf course irrigation ponds containing treated sewage effluent will be isolated from drainageways. Low lying areas of the proposed Project will be well above the 13 feet inundation level as determined by the flood insurance rate map.

27. Petitioner estimates that much of the traffic generated will come from adjacent on-site hotels and that traffic generated by the golf course will be relatively light. Approximately 100 trips per day are expected from public use of the hotel access.

Petitioner proposes to provide an airport access road which links the resort development directly to Lihue Airport which will allow visitors to circulate to various destination areas in the proposed Project without using government roads.

28. The State Department of Transportation (hereinafter the "DOT") commented that the Petitioner should work with the DOT so that the existing Lihue Airport and the proposed Project are compatible.

The DOT is currently conducting a study to update day-night noise contours. The study will consider plans for the existing runway and any future development for the Lihue Airport.

29. Darby & Associates prepared a noise study in 1985 and determined that small portions of the eastern and northern part of the Property lie within the 60 day-night noise contour (Ldn). The affected areas are proposed for golf courses, horse stables and maintenance areas which are deemed acceptable uses for the 60 Ldn noise levels.

Public Services and Facilities

30. Kauai Electric Company will provide electrical services to the Property.

31. The County Department of Water Supply indicated that its water source and distribution system are adequate to accommodate the potable water demand of the proposed Project.

For non-potable requirements of the water features and golf irrigation, Petitioner proposes to develop two deep wells to supplement treated wastewater effluent from the County sewage treatment plant for irrigation of the golf areas. Water for the lagoons will come from the deep wells.

32. Petitioner anticipates the County sewage treatment plant, located within the Property will accommodate the sewage generated by the proposed Project.

Currently, sewage effluent from this facility is being disposed within the Lihue plantation sugar fields and the

existing golf course. Effluent for irrigation will be mixed with well water in the irrigation lagoon. Petitioner proposes to design one of the deep wells for both withdrawal and injection of excess effluent.

33. Petitioner proposes to dispose solid waste by private contract to County disposal areas.

34. Telephone service, police protection, and fire protection are adequate or will be provided to accommodate the proposed Project.

Conformance to Special Permit Guidelines

35. The proposed Project will use either vacant and uncultivated land or land in existing golf course use. Those portions of the Property to be removed from sugarcane cultivation by the Lihue Plantation Company will not adversely affect continued economic survival of its operations, and will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

36. The proposed Project will not generate adverse noise, odors or emissions which could adversely impact surrounding properties. The activities proposed are low intensity in nature.

37. The requested uses will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, or police and fire protection. All public service functions are available, and where they are not or they are substandard, appropriate upgrades and improvements will be made by the applicant, as required by the applicable

government agencies and/or the Planning Commission as conditions of approval.

38. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The requested uses are an extension of the primary hotel/resort function of the overall property, and functionally more a part of that than an agricultural activity.

39. Although the property is suited for the purposes permitted within the Agricultural District, the project would be more compatible with the adjoining uses of the Westin Kauai resort operations.

40. On August 13, 1986, the County Planning Commission recommended that the subject special use permit be approved subject to the following condition:

"Within one (1) year from Planning Commission approval, the applicant shall submit a Land Use Boundary Amendment application (from Agriculture to Urban) to the Land Use Commission for all lands within the Agriculture District subject to all phases of development."

#### CONCLUSIONS OF LAW

The proposed use is an "unusual and reasonable" use as defined by Chapter 205-6, Hawaii Revised Statutes and the proposed use is not contrary to the objectives to be accomplished by the State Land Use Law and Regulation in that it could further the purpose of the Land Use Law to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that Special Permit Docket No. 86-360 for the redesign of the existing 18-hole golf course, the establishment of a new driving range, a new golf clubhouse and starter's shed, golf and grounds maintenance areas, boat docks for 100 charter boats and three ferries, approximately 30 acres of waterways and lake, parking for approximately 600 or more cars, boat maintenance facility, an irrigation lagoon of approximately nine acres, driveways for airport, service and public access, and miscellaneous accessory uses including, but not limited to, horse stables, carriage storage and carriage paths, on approximately 310 acres of land situated within the State Land Use Agricultural District at Nawiliwili, Island of Kauai, Tax Map Key Numbers: 3-5-01:83 and portions of 1, 6, 27 and 82 and approximately identified on Exhibit A attached hereto and incorporated by reference herein be approved subject to the condition imposed by the Kauai County Planning Commission and the following additional condition.

2. Petitioner shall begin construction of the proposed Project within one year after the date of this Order and complete construction within three years thereafter.

DOCKET NO. SP86-360 - HEMMETER/VMS KAUAI COMPANY III

Done at Honolulu, Hawaii, this 27th day of October  
1986, per motions on September 23, 1986 and October 21, 1986.

LAND USE COMMISSION  
STATE OF HAWAII

By *J.P. Tacbian*  
TEOFILO PHIL TACBIAN  
Chairman and Commissioner

By *Frederick P. Whittemore*  
FREDERICK P. WHITTEMORE  
Vice Chairman and Commissioner

By *Toru Suzuki*  
TORU SUZUKI  
Commissioner

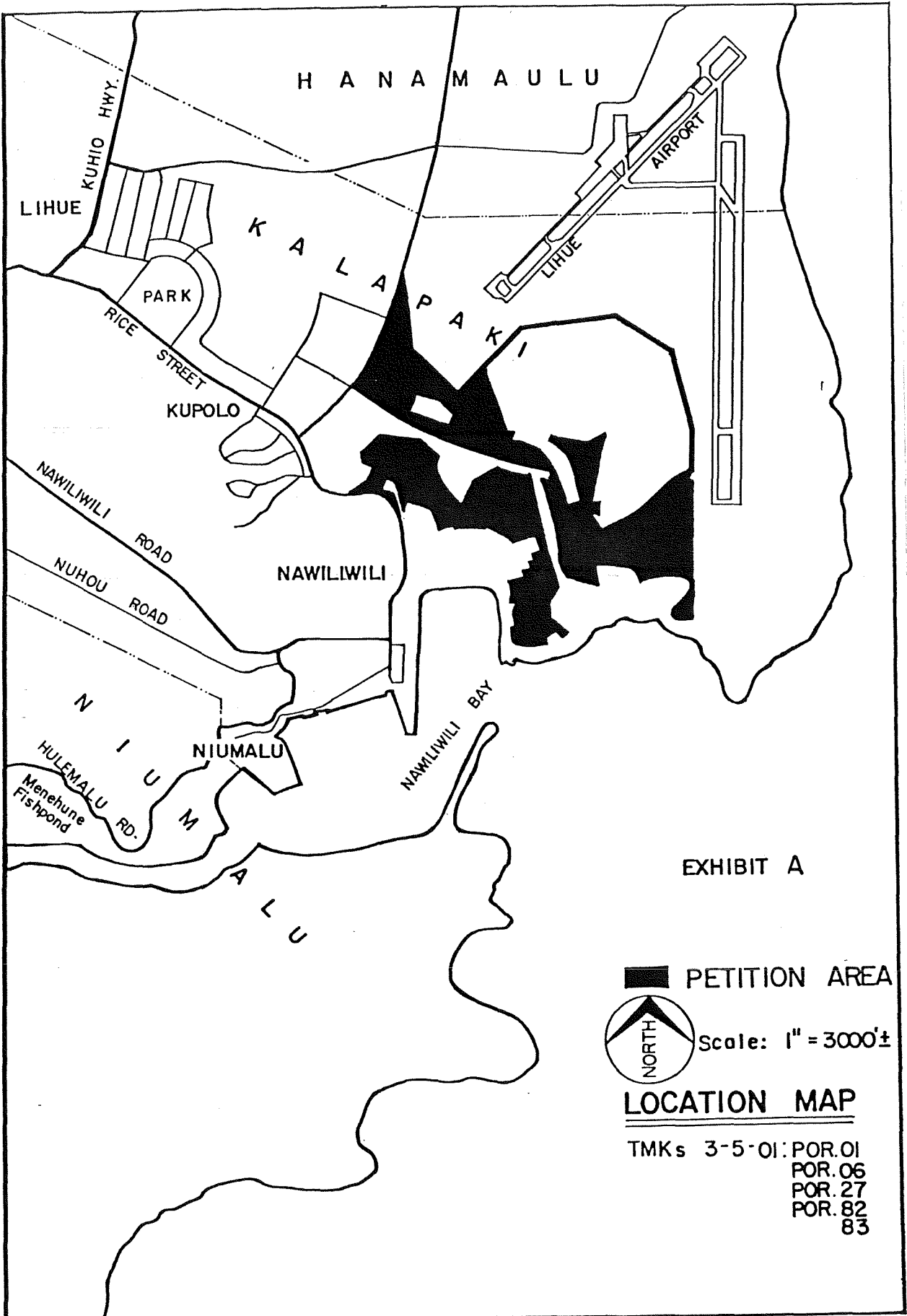
By *Everett Cuskaden*  
EVERETT L. CUSKADEN  
Commissioner

By *Winona E. Rubin*  
WINONA E. RUBIN  
Commissioner

By *William W. L. Yuen*  
WILLIAM W. L. YUEN  
Commissioner

By *Richard B. F. Choy*  
RICHARD B. F. CHOY  
Commissioner

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



H A N A M A U L U

LIHUE

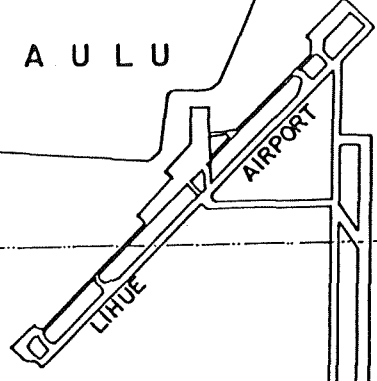
KUHIO HWY.

PARK

RICE STREET

KUPOLO

K A L A P A K I



LIHUE

NAWILIWILI ROAD

NUHOU ROAD

NAWILIWILI

N I U M A L U

HULEMALU RD.  
Menehune Fishpond

NAWILIWILI BAY

A L U

EXHIBIT A

 PETITION AREA



Scale: 1" = 3000'±

LOCATION MAP

TMKs 3-5-01:POR.01  
 POR.06  
 POR.27  
 POR.82  
 83



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and Portions of 1, 6, 27 and 82 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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:

AVERY YOUN, Planning Director  
Kauai County Planning Department  
4280 Rice Street  
Lihue, Kauai 96766

HENRY SHIGEKANE, Esq., Attorney for Petitioner  
Hemmeter/VMS Kauai Company III  
2424 Kalakaua Avenue  
Honolulu, Hawaii 96815

DATED: Honolulu, Hawaii, this 27th day of October 1986.



ESTHER UEDA  
Executive Officer

SP86-360/HEMMETER/VMS KAUAI COMPANY III

A copy of the Land Use Commission's Decision and Order was served by regular mail to the following on October 27, 1986.

REAL PROPERTY DIVISION  
County of Kauai  
4193 Hardy Street  
Lihue, Kauai, Hawaii 96766