

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
HEMMETER-VMS KAUAI COMPANY III )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for approximately )  
299.79 acres at Kalapaki, Lihue, )  
Kauai, Hawaii, Tax Map Key Nos. )  
3-5-01: 1, por. 6, por. 27, 83 )  
por. 115, por. 116, por. 117, por. )  
118, 119, and por. 120; and )  
3-5-02: por. 15 )

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DOCKET NO. A87-614  
HEMMETER-VMS KAUAI  
COMPANY III

LAND USE COMMISSION  
STATE OF HAWAII  
FEB 17 11 23 AM '88

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

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Hemmeter-VMS Kauai Company III, a Hawaii general partnership, whose partners are Hemmeter Kauai Company, a Hawaii limited partnership, and VMS Kauai Hotel Recreational Associates, a Hawaii limited partnership, (hereinafter "Petitioner"), filed this petition on August 7, 1987, as amended by amendment filed on September 11, 1987, pursuant to Chapter 205, Hawaii Revised Statutes, and the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, to amend the land use district boundary for approximately 299.79 acres of land, Kauai Tax Map Key Numbers: 3-5-01:1, por. 6, por. 27, 83, por 115, por. 116. por. 117, por. 118, 119, and por. 120; and 3-5-02: por. 15, situate at Kalapaki, Lihue, Island of Kauai, State of Hawaii, (hereinafter the

"Property") from the Agricultural District to the Urban District. The Land Use Commission (hereinafter the "Commission") having heard and examined the testimony, evidence and argument of counsel presented during the hearings, the stipulation for the proposed findings of fact and conclusions of law, and the proposed decision and order hereby makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

##### PROCEDURAL MATTERS

1. The Commission conducted hearings on this petition on October 27 and 28, 1987, pursuant to notices published in the Honolulu Advertiser and the Garden Island on September 22, 1987.

2. The Commission did not receive any request for intervention in this petition.

3. No person appeared to testify as a public witness.

4. The Commission allowed written testimony dated October 20, 1987, from Lehua Fernandes Salling and written testimony from Patrick Nagao to be admitted into the record without objection from the parties.

##### DESCRIPTION OF PROPERTY

5. The Property consists of approximately 299.79 acres of land located east and north of Nawiliwili Bay near the site of the former Kauai Surf Hotel. Portions of the Property are adjacent to the Lihue Airport which generally lies

northeast of the Property. The town center of Lihue is about one mile to the northwest, and the Nawiliwili Harbor is about one-half mile to the west, of the Property.

6. Elevation of the Property ranges from about 125 feet near the proposed driving range down to about 40 feet elevation near the shoreline. The Property generally slopes toward Runway 35/17 of the Lihue Airport and toward Nawiliwili Bay.

7. The U.S. Department of Agriculture Soil Conservation Service Soil Survey indicates that soil types within the Property vary widely, but can be generally classified into two distinct groups. Soils comprised of Badland (BL), Beach sand (Bs), Mokuleia fine sandy loam (MR), and Rough broken land (rRR), can be found on approximately 5 to 10 percent of the Property. These soils are generally very sandy or rocky, and not suitable for agricultural purposes. Uses for these soils are generally watershed, pasture, and woodland. The remaining 90 to 95 percent of the Property is primarily comprised of Lihue silty clays and a much smaller area of Halii gravely silty clay (NfB).

The Lihue silty clays are generally very productive agricultural lands and closely coincide with the area classified as Prime agricultural land by the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

8. The Property is classified as having an overall master productivity rating of "B" by the Land Study Bureau which indicates a high suitability for productive agriculture.

9. The climate at the Property is relatively mild. The monthly annual average temperature is 75.2 degrees Fahrenheit. The normal rainfall is about 44 inches per year.

10. The Property is designated within Zone C by the Flood Insurance Rate Map of the U.S. Corps of Engineers which means an area of minimal hazard.

11. The Property's ownership, tax map key and file plan designations and acreage are as follows:

<u>Owner</u>	<u>Tax Map Key (TMK)</u>	<u>File Plan 1905 Lot No.</u>	<u>Acreage</u>
Wm. Hyde Rice Limited	3-5-01:1	--	37.997
Lihue Plantation Company, Limited	3-5-01: por. 6	3 (por.)	.10
	3-5-01: por. 118	9 (por.)	11.21
Hemmeter-VMS Kauai Company I	3-5-02: por. 15	1 (por.)	2.34
	3-5-01: por. 27	2 (por.)	177.29
	3-5-01: 83	5	14.18
	3-5-01: por. 115	6 (por.)	1.98
	3-5-01: por. 116	7 (por.)	4.75
	3-5-01: por. 117	8 (por.)	26.60
	3-5-01: 119	10	9.55
	3-5-01: por. 120	11 (por.)	13.80
			<u>299.797</u>

12. Petitioner is the holder of subleasehold interest in the parcels comprising the Property except for the parcels identified above as TMK 3-5-01: 1, por. 6, por. 188 and 3-5-02:

por. 15. Hemmeter-VMS Kauai Company II, a Hawaii limited Partnership, is the holder of a subleasehold interest in TMK 3-5-01: 1 and a holder of a leasehold interest in TMK 3-5-02: por. 15; and Hemmeter-VMS Kauai Company I, a Hawaii limited partnership, is the holder of a leasehold interest in TMK 3-5-01: por. 6 and por. 118. Wm. Hyde Rice, Limited, Lihue Plantation Company, Limited, Hemmeter-VMS Kauai Company I, and Hemmeter-VMS Kauai Company II, are the fee simple owners or lessees of the parcels comprising the Property, in their respective capacities, and have authorized Petitioner to submit the petition.

#### PROPOSAL FOR DEVELOPMENT

13. Petitioner proposes to develop the Property as a portion of a self-contained resort totaling 640 acres. This self-contained resort is proposed to include: the renovation of and a 10-story wing expansion of the existing hotel, the Westin Kauai, formerly known as the Kauai Surf; a new 750-room hotel; redesign of the existing 18-hole golf course and a new 18-hole golf course and related uses; a system of horse-drawn carriage ways and extensive waterways to connect various activities in the resort; recreational center, tennis facilities, clubhouse; restaurants and commercial centers; a chapel and other related amenities such as parking, landscaping, horse stable, roadways, maintenance areas, boat docks, an irrigation lake, and service and public accesses.

14. Petitioner proposes the following uses which have been previously permitted pursuant to special permits issued by the Kauai County Planning Commission (Planning Commission) and this Commission. The Petition has been filed in compliance with the conditions of these special permits which require that a State land use district boundary amendment be submitted by the Petitioner for the lands covered under the special permits.

a. Special Permit (Kauai - SP85-5): This special permit was granted by the Planning Commission on August 7, 1985, in conjunction with the development of a new 10-story wing for the Westin Kauai Hotel, for certain uses and structures including a parking lot, two inns, stable and carriage facilities, a new access road, a recreational center, chapel, carriage paths, and landscaping. The total area for these uses consisted of less than 15 acres and did not require Commission review.

b. Special Permit (Kauai - SP86-18) (Land Use Commission - SP86-360/Hemmeter VMS Kauai Company III): This special permit was approved by the Commission on October 27, 1986 to allow Petitioner to redesign the existing 18-hole golf course currently known as the Kiele Lagoons 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 on approximately 310 acres of land subject to two conditions. The small area covering the golf clubhouse adjoining the driving range and the access road abutting the Lihue Airport which were part of this special permit were not included as part of the Property.

The following items covered under this special permit were not included in the subject Petition:

The lands under the special permit did not include a 1.228-acre parcel of land previously identified by Tax Map Key No. 3-5-01: 7 which has since been superseded and consolidated into land currently identified as Tax Map Key No. 3-5-01: 1 which is a part of the Property.

c. Special Permit (Kauai - SP87-15): The Planning Commission granted SP87-15 on September 9, 1987, for uses on the Property associated with the construction of a portion of the new hotel structure (lobby/Office), portion of a restaurant, and a parking lot. The area for these uses is about 6 to 8 acres and did not require Commission approval.

15. The Property also includes a 1.228 acre parcel of land previously identified by Tax Map Key No. 3-5-01:7 which has since been consolidated into Tax Map Key No. 3-5-01:1.

16. Petitioner states the Property, which constitutes only a part of the overall 640-acre Westin Kauai development,

does not involve structures that will be inhabited by persons for dwelling purposes.

17. Petitioner estimates that the projected development cost of the overall Westin Kauai development, inclusive of the Property, will exceed \$500 million. The cost for uses within the Property is estimated at \$53.7 million.

18. Petitioner projects build-out of the overall Westin Kauai development could occur within three years. The Westin Kauai Hotel was opened in September 1987. The Kiele Lagoons Golf Course which constitutes the primary use of the Property is expected to open for play in early 1988. The new second golf course is expected to be available for play later in 1988. The new second hotel is scheduled for opening in 1990 by which time all of the activities and uses for the overall Kauai Westin development should be completed.

19. The County sewage treatment plant which is surrounded by the overall development, is not a part of this petition.

PETITIONER'S FINANCIAL CAPABILITY TO  
UNDERTAKE THE PROPOSED DEVELOPMENT

20. Petitioner's balance sheet as of July 31, 1987 listed total assets of \$87,180,389. The primary asset identified as "Kauai Lagoons" has a total construction cost of \$85,000,000. The appraised value of Kauai Lagoons is listed at \$110,000,000. Current appraised value of the overall Westin Kauai development, including areas adjacent but outside of the Property is valued at \$475,000,000.

21. Petitioner has a commitment letter from Security Pacific National Bank for a loan in the amount of \$56,400,000 for the Kauai Lagoons, which includes two golf courses, the lake, the commercial centers and the horse and carriage program. An interim advance of \$12,000,000 has been drawn down on the loan to finance the construction in progress.

22. Christopher Hemmeter is a general partner of the Hemmeter Kauai Company which in turn is a general partner of the Petitioner. Mr. Hemmeter has had extensive experience in the business of developing hotels and resorts including the development of the Hawaiian Regent Hotel, the Hyatt Regency Waikiki, the Hyatt Regency Maui Hotel, the Hyatt Regency Waikaloa Hotel, and the Westin Maui Hotel. Mr. Hemmeter is personally involved in overseeing the development of the Westin Kauai development.

#### STATE AND COUNTY PLANS AND PROGRAMS

23. The Property is located within the State Land Use Agricultural District as reflected on the Commission's Official Map K-11 Lihue.

24. The Kauai County General Plan designates the Property primarily for resort with some portions for urban mixed use, open and agriculture.

25. The Property is zoned "Open and "Agriculture".

26. The Property is designated primarily for resort uses in the Lihue Development Plan.

27. Portions of the Property are located within the County of Kauai Special Management Area ("SMA"). SMA use permits SMA(U)-86-16 and SMA(U)-87-17 have been issued by the County of Kauai for the proposed development of the Property.

NEED FOR THE PROPOSED DEVELOPMENT

28. The proposed development on the Property will primarily be the redevelopment of the existing 18-hole golf course into the new Kiele Lagoons Golf Course to be one of two golf courses to serve the overall Westin Kauai development.

29. Petitioner states that an important and necessary aspect of a resort destination area is a major golf facility and that the overall Westin Kauai development would not be feasible without the golf course. Major hotel operators will not take on the management of any additional destination resorts unless they have the use and control of a golf course with the resort. Furthermore, many conventions and sales incentive groups will no longer book into a destination resort that doesn't own or control a golf course.

30. Petitioner states that the proposed project will be the number one destination resort in the world upon completion in 1990. Bookings up to the present time have been very successful and Petitioner estimates that occupancies above 80 percent should result during the first year of operation.

31. Petitioner submitted a marketing study prepared by Christopher Hemmeter (Petitioner's Exhibit 17). Mr. Hemmeter's market study indicates that tourism will continue to

grow and that a private survey found a large pent-up demand for travel to Kauai because there is a lack of first-class hotel facilities.

32. Petitioner states that the approval of the proposed project by lending institutions illustrates greater credibility than would an independent market study paid for by the Petitioner.

#### IMPACT UPON RESOURCES OF THE AREA OF STATE CONCERN

##### Agricultural Resources

33. Most of the Property has been in golf course use since at least 1971.

34. A portion of the Property was used for cane cultivation by Lihue Plantation Company. This lost production area represents approximately 3 percent of Lihue Plantation Company's total cultivation area of approximately 15,500 acres.

35. Petitioner does not anticipate a loss in output due to improvements to the Lihue Sugar Mill.

36. The Property is bounded by existing and proposed non-agricultural uses such as the Lihue Airport, the Westin Kauai Hotel, an industrial subdivision and the county sewage treatment plant, and as such, the continued agricultural use of this area is deemed by Petitioner to be less than feasible.

##### Flora and Fauna

37. In 1980, plant life consultant Earthwatch conducted a vegetation baseline survey for the area of the second hotel and its immediate vicinity. Since this area, like

the Property, was under golf course use or sugarcane cultivation for a number of years, Earthwatch's conclusions should apply to the Property as well. Earthwatch had offered the following conclusions:

- a. Overall, the vegetation of the area and its immediate vicinity appeared botanically uninteresting and unremarkable.
- b. There were poor representation of native Hawaiian plant species, except near the coast.
- c. There were no endangered plant species found.

38. In 1980, a study on animal life was conducted by Phillip Brunner for the area of the second hotel and its immediate vicinity. The study noted that a pair of Gallinule, an endangered specie, were spotted near the drainage reservoir of the former Kauai Surf golf course. No other rare or endangered animal life was noted.

39. As a condition of the issuance of Kauai County SMA permit 86-16 associated with the development of the Property, Petitioner consulted with the Fish and Wildlife Service of the U.S. Department of Interior and the State Department of Land and Natural Resources in 1986 with a view to defer grading activity if the Gallinules were found to be nesting and to provide for a replacement habitat. At the time of construction, the birds were no longer in the area and no nests were found.

### Historical/Archaeological Resources

40. An archaeological reconnaissance survey was conducted by Archaeological Research Center Hawaii, Inc. in 1980 for the area of the second hotel and its immediate vicinity which is adjacent to the Property. The report noted that the area had been previously impacted by sugarcane cultivation and cattle grazing and no archaeological or historical sites were found.

41. As the Property was also in sugarcane cultivation and in golf course use, no significant archaeological or historical resources are expected to exist on the Property.

42. Petitioner states that in the event archaeological remains are uncovered during the course of constructing the proposed development on the Property, work will immediately cease and the appropriate governmental agencies will be notified.

### Recreational Resources and Access

43. The development of the overall Westin Kauai development will include the construction of 15 public parking stalls east of the proposed hotel site near the proposed fashion center commercial area. Petitioner will also provide and maintain a public restroom and shower facility in this area.

44. Petitioner has indicated that additional parking stalls will be made available if necessary. No attempt to turn people away will be made due to lack of parking.

45. All access and facilities will be free to the public without restriction. A greeter will direct beach users to the appropriate parking area. Petitioner represented that its policy is to encourage the use of facilities by the local population.

46. Petitioner will also provide public access near the eastern edge of the proposed second hotel and towards the beach area. An unimproved lateral access will also be provided in an east-west direction towards Kukii Point. Another access will be from the airport off Kapule Highway.

#### ENVIRONMENTAL QUALITY

##### Noise

47. The primary source of noise originates from air traffic operations at and near the Lihue Airport located adjacent and near to the Property.

48. Based on a study by Darby and Associates, acoustical consultants, most of the Property falls below the 60 Ldn noise contours. Small portions of the Property adjacent to Runway 03/21 and Runway 35/17 fall between the 60-65 Ldn noise contours.

49. Petitioner's noise consultant received preliminary noise contours from the Airports Division of the Department of Transportation which differed from the noise contour findings of the consultant.

50. Petitioner is willing to comply with the restrictions specified within the 55 and 60 Ldn noise contours

as defined by the Airports Division of the Department of Transportation.

51. As an added mitigative measure, Petitioner will construct a berm landscaped with mature trees along the Property line that parallels the runway and the commercial area.

#### Air Quality

52. Petitioner states that a major short-term air quality impact would result from higher vehicular emissions generated by increased truck traffic as part of the construction activity for a period of about 12 to 18 months.

53. Petitioner states that temporary fugitive dust emissions associated with the clearing, grading, trenching and related on-site construction work will be sources of pollutants. Petitioner proposes to mitigate such fugitive emissions by employing continuous dust-control measures to avoid violations of State and Federal particulate standards.

54. Petitioner will meet all State and Federal air quality regulations insofar as the uses and activities on the Property are concerned.

#### Visual Impacts/Height Restrictions

55. With the exception of few low-rise buildings for inns, carriage house and clubhouse, the Property will have the open space character of the golf course and waterways.

56. The Lihue Airport, which abuts the Property, has an Approach and Clear Zone Plan which establishes a height limit for buildings in areas near the airport. This allows for

a height envelope of about 200 feet within the Property. The maximum building height requirement imposed by the Kauai County is a 4-story/40-foot limit which is well within the height envelope.

57. The original view plane of a sugarcane field and open space will still be retained because of the use as an expanded golf course. Also the view to the ocean will be improved.

#### Near Shore Environment

58. An environmental assessment of nearshore marine life off the area proposed as the second hotel was prepared by Steven J. Dollar, a marine consultant, in 1980 for Commission's Docket Number A83-530, Amfac Property Development Corporation. This assessment was made for a resort-condo use of the property but was utilized to support the proposed use of the Property. The assessment made the following observations and conclusions:

- a. The ocean adjacent to the shoreline is classified as Class A by the State Department of Health;
- b. No anticipated significant adverse changes in water quality or relevant biological communities should occur from the proposed development; and
- c. There should be no significant adverse impacts to the area.

59. Normal drainage discharge into the ocean from the uses within the Property, which abut the area of the second hotel, should not have any adverse impact to the coastal water. Any and all major activities requiring sewage disposal will be hooked up into the County sewer system. All lagoons within the Property will be lined.

#### IMPACT ON PUBLIC REVENUES AND EXPENDITURES

60. Areas of significant public expenditures associated with the proposed development of the Property would be for education, health services, and police protection and fire protection. The proposed development would require public expenditures of \$3,686,030 annually for such services.

61. The proposed development on the Property is expected to generate aggregate accrued public revenues to the State of Hawaii and the County of Kauai in direct net tax benefits at a revenue-cost ratio of 4.5 to 1.0.

#### EMPLOYMENT OPPORTUNITIES AND ECONOMIC DEVELOPMENT

62. The proposed uses on the Property for golf course and driving range, restaurants, carriage house operations, and related activities will provide about 286 jobs.

63. Petitioner estimates that total employment generated by the proposed resort complex will reach approximately 2,500 in the early 1990's.

#### HOUSING OPPORTUNITIES

64. As a condition to the rezoning ordinance covering the second hotel site, the County of Kauai has assessed the

applicant a housing fee in the sum of \$375,000 based on \$5,000 per hotel room for 10 percent of the total number of rooms. The purpose of the housing fee is for the use by the County for its public housing program.

65. The County of Kauai has not assessed a housing fee in connection with permits for the proposed uses on the Property for the reason that the uses proposed on the Property such as the redesign of an existing golf course, carriage stable, lagoons, and restaurants is not expected to generate the population increase that would require additional housing as would the proposed second hotel.

66. Neither the County of Kauai nor the Petitioner have made housing studies to determine how the proposed project will impact housing on Kauai. 67. The Kauai Housing Master Plan Study, volume 2, Table III-17, March, 1985, projects a net island-wide increase in households between 1980 and 1990 at 4,021 households.

The study also estimates that as much as 15 percent of the housing units on Kauai are overcrowded.

68. Volume 1 of the same study further shows in Table III-10 that the decade between 1990 to the year 2000 will experience an even greater demand for housing. An additional potential of 5,500 households is estimated.

69. According to Tables 4 and 5 of the Hawaii State Plan Issue Paper on Affordable Housing dated December 1984, approximately 25 percent of Kauai's 12,020 households in 1980

were in the low income category and approximately 21 percent were in the gap group. Therefore, almost half of the island's households in 1980 were in need of some form of housing assistance.

70. Petitioner represent that it is willing to provide consultant services to the State and/or County in addressing the housing needs.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### Water Resource and Service

71. Water for the overall Westin Kauai development is already available from the County's Lihue-Kapaia water system which has two one-million gallon reservoirs at the 393 foot elevation level. The reservoirs feed into a 12-inch water main along Kapule Highway, and the water would be drawn from that point for the needed domestic and fire flow requirements.

72. Water for the approved uses within the Property is already available and sufficient.

73. Petitioner is currently making all payments that are required by the County for the necessary water services to the Westin Kauai development.

74. Water for the lagoon system will be replenished with brackish water from two wells.

##### Transportation Services and Facilities

75. Two traffic impact studies were prepared to assess the project's traffic impacts on the Lihue area. The basic conclusions of both transportation impact studies clearly

indicate that traffic congestion in the Lihue area is an existing and continuing problem.

76. The matters of traffic service and facilities were reviewed by the County of Kauai in the rezoning of the proposed second hotel site which is primarily in the Urban District.

77. Pursuant to the conditions imposed under the rezoning ordinance covering the second hotel site (Petitioner's Ex. 6: Appendix A), Petitioner is currently working with the County to carry out traffic improvements as follows:

- a. Provide signalization at the intersection of Rice Street and Kapule Highway.
- b. Improve the channelization of the entryway off Rice Street into the first hotel site and into the overall resort area.
- c. Assist the State and County in some realignment of the connection point between Nawiliwili Road and Rice Street.
- d. Connect the resort directly to the airport for access to remove the resort-airport traffic from the public highways.
- e. Restrict opening of the second hotel until the Hanamaulu Bypass is completed. The Hanamaulu Bypass is under construction and is scheduled for completion at about September or October of 1988.

78. As part of the agreement with the County, the developer shall provide an environmental impact assessment fee of about \$750,000 which is intended to be used for the implementation of the aforesaid traffic improvements unless determined for other highway improvements by the County.

79. Petitioner has obtained a private access from the Lihue Airport into the resort area. Visitors will arrive at the airport and board limousines or minibuses and be transferred directly to the resort area without use of public roadways.

80. Petitioner represented that it is willing to work closely with the State and County governments to correct transportation problems within the community to the extent reasonable.

81. The Department of Transportation has recommended that the developer be responsible for the following:

1. Signalization of Kapule Highway and Rice Street.
2. A direct access road between the resort and the Lihue Airport.
3. Realignment of Nawiliwili Road/Rice Street.
4. If access onto Kapule Highway is required, the design of the intersection shall be closely coordinated with and approved by the Department of Transportation Highways Division. The Department of Transportation

further anticipates a need for left-turn storage and acceleration/deceleration lanes that may require additional highway right-of-way to accommodate these improvements.

82. The Department of Transportation also stated that the proposed development will contribute to current congestion at the following locations in Lihue proper:

1. Kaumualii Highway and Nawiliwili Road
2. Kuhio Highway and Rice Street
3. Kuhio Highway and Ahukuni Road
4. Kuhio Highway between Hardy Street and Ahukuni Road.

83. The Department of Transportation recommends that the Petitioner extend improvement proposals and develop and implement employee and guest transportation management strategies to mitigate the traffic impact on the Lihue community.

#### Sewage Treatment and Disposal

84. Solid waste will be hauled away by private contractors to the County disposal areas. Construction waste will be hauled to the Kekaha Sanitary Landfill.

85. For sewage disposal, the Property will be hooked up to the existing Lihue Sewage Treatment Plant located within the boundaries of the Property. The plant has a capacity of 1.5 million gallons per day (MGD) with an expansion capacity of

4.5 MDG. The proposed second hotel will generate about 225,000 gallons of sewage per day.

86. As required by the conditions of the rezoning ordinance covering the second hotel site, Petitioner has submitted to the County the necessary documents 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.

87. The effluent from the Lihue Sewage Treatment Plant will be used for the golf courses.

88. With respect to disposal of the Lihue Mill wastewater, the L-20 reservoir is no longer a storage area for the mill waste which is now pumped mauka of the mill site into reservoirs which are part of the Lihue irrigation system. Mill waste is no longer discharged on the Westin Kauai development site.

89. The sewer service requirement is being met and adequate capacity to serve the proposed second hotel and the Property are projected by Petitioner.

## Drainage

90. Existing and proposed topographical characteristics generally direct the runoff from three drainage basins toward a proposed lagoon area. Other features direct runoff into ocean outfalls through various surface features and a proposed culvert system.

91. Basin I would direct flows into a culvert system in the vicinity of the Westin Kauai site in order to maintain drainage characteristics of this basin. No significant flow increase is anticipated, although surface waters will be discharged into Nawiliwili Bay. Basin II flows would be intercepted and directed under the airport runway project. Since the golf course/open space uses of this basin will not change, the Petitioner anticipates no significant drainage impacts within this basin. Basin III is primarily the lagoon system located in the lower elevations of the project site. Runoff will be diverted along the eastern boundary of the project through a system of inlets and then discharged into the ocean.

92. The on-site drainage system will use County approved drywells within the second hotel site to move water away from the sandy beach immediately makai of the hotel site.

93. Petitioner's Consulting Engineer Joseph Vierra stated that drainage runoff into the ocean will improve due to the implementation of the proposed use of the golf course in lieu of sugar cane cultivation. Sugar cane operations include

periods after harvest which exposes the soil to runoff during heavy rains while the grass ground cover of a golf course will protect the soil from runoff and erosion.

#### Electrical and Telephone Services

94. Electrical and telephone services are already available to the Property.

#### Police and Fire Protection

95. The main police station is located in Lihue, approximately 1/2 mile away. Security guards will be provided by the hotels. Additionally police personnel may be required, resulting from the larger employment and transient population base created by the overall Westin Kauai development.

96. The main fire station is located in Lihue, approximately 1/2 mile away. The overall Westin Kauai development may result in an overall increase in annual responses to this area.

#### CONFORMANCE TO STATE LAND USE DISTRICT STANDARDS

97. The Property is proximate to centers of trade and employment facilities. The town of Lihue is located less than a mile from the Property.

98. The Property is also proximate to basic services such as sewer, water, schools, parks, and other public services.

99. The Property is contiguous to lands in the Urban District on which the Westin Kauai Hotel is located and on which a second hotel is proposed to be constructed. The golf course proposed for the Property is an essential part of the

overall Westin Kauai resort development. The Property is bordered by urban activities of the airport, industrial subdivision, and the resort, and thus should not contribute to a scattered urban pattern.

100. The Property is relatively free of major on-site development constraints. It is not subject to tsunami and/or flood hazards. The topography is relatively level and suitable for the uses intended for the Property.

101. The major portion of the Property is designated resort use under the Kauai County General Plan and designated hotel and golf uses under the Lihue Development Plan. The remaining portion is designated agriculture and open uses.

#### CONFORMANCE WITH THE HAWAII STATE PLAN

102. The proposed reclassification to allow the proposed project conforms to the Hawaii State Plan, including the following goal, objectives and policies:

Goal:

"A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations." Hawaii Revised Statutes Section 226-4(1)

Objectives and Policies:

"Encourage an increase of economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires." Hawaii Revised Statutes Section 226-5(b)(2)

"Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people." Hawaii Revised Statutes Section 226-6(a)(1)

"Improve the quality of existing visitor destination areas." Hawaii Revised Statutes Section 226-8(b)(3)

- a. The overall Westin Kauai development will provide short-term employment in the development of the project and long-term direct resort employment in the carrying out of the uses proposed for the project. Indirect employment should also increase as the project is completed in 1990.
- b. Significant public benefit will accrue to both the State of Hawaii and the County of Kauai in the form of net increased tax annual revenue estimated to be in excess of \$16 million a year from the activities on the Property.

RULING ON STIPULATED PROPOSED FINDINGS OF FACT

Any of the stipulated proposed findings of fact or proposed findings of fact submitted by the parties not adopted by the Commission herein, or rejected by clear contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, the Commission finds upon

the preponderance of evidence that the reclassification of approximately 299.79 acres from the Agricultural District into the Urban District at Kalapaki, Lihue, Island and County of Kauai, State of Hawaii, Tax Map Key Numbers: 3-5-01: 1, por. 6, por. 27, 83, por. 115, por. 116, por. 117, por. 118, 119, and por. 120; and 3-5-02: por. 15, for golf course, restaurants and other resort related uses, subject to the conditions stated in the Order, conforms to the standards established in the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, is reasonable and nonviolative of Section 205-2, Hawaii Revised Statutes, and 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 299.79 acres, being the subject of this Docket No. A87-614 by Hemmeter-VMS Kauai Company III, situate at Kalapaki, Lihue, Island and County of Kauai, State of Hawaii, and identified as Hawaii Tax Map Key Numbers: 3-5-01: 1, por. 6, por. 27, 83, por. 115, por. 116, por. 117, por. 118, 119, and por. 120; and 3-5-02: por. 15 and approximately identified on Exhibit A attached hereto and incorporated by reference herein, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved subject to the following conditions:

1. As represented by Petitioner, no residential, condominium or hotel dwelling units shall be constructed on the Property.

2. An avigation easement in a form prescribed by the State Department of Transportation shall be granted to the State of Hawaii by the property owner for the entire Property.

3. The Petitioner shall execute appropriate documents and/or agreements with the State Department of Transportation that would indemnify and hold harmless the State of Hawaii and all of its agencies and/or employees from any injury, damages, and costs, including but not limited to reasonable attorney fees arising from any action alleging adverse impacts generated by normal airport activities at the Lihue Airport filed by any owners, subtenants, guests or other users of the Property.

4. The Petitioner shall fund the design and construction of highway improvements as the State Department of Transportation and the County of Kauai may reasonably require as conditions to the issuance of state and county permits and authorizations relating to the Property.

5. Insofar as the Property is affected as part of the overall Westin Kauai development, the Petitioner shall provide public access to the shoreline and improvements therefor in the manner required under Kauai County Ordinance Number PM-146-86 and as may be required under such other Kauai County permits covering the overall Westin Kauai development or any portion thereof.

6. 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 development of the Property, the Petitioner shall immediately stop work in affected areas, and contact the State Historic Preservation Office.

7. The Petitioner shall fund the construction and maintenance of sewer and drainage systems as may be required by the County of Kauai and the State Department of Health provided that said sewer and drainage improvements are rationally related to the mitigation of impacts caused by the development of the Property.

8. Should any County and/or State land become available for housing development within Lihue, Kauai, and its surrounding area within five years from the date of this Order, the Petitioner shall make available at no charge its development expertise in the County's and/or State's development of up to 200 units on such land in the manner as more particularly described in Exhibit B. The Petitioner shall submit annual reports to the Commission on the status of Petitioner's compliance with this condition on or before each anniversary date of this Order during the five-year period or until the housing development shall have first occurred within said period.

9. In the event that the Petitioner shall sell the subject Property, notice in advance of the consummation of such sale shall be provided to the Commission.

10. In the event that the Petitioner or any successor seeks modification or relief from the conditions imposed herein, application therefore shall be made to the Land Use Commission.

DOCKET NO. A87-614 - HEMMETER-VMS KAUAI COMPANY III

Done at Honolulu, Hawaii, this 17th day of February 1988,  
per motions on December 17, 1987 and February 16, 1988.

LAND USE COMMISSION  
STATE OF HAWAII

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

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

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

By *Toru Suzuki*  
TORU SUZUKI  
Commissioner

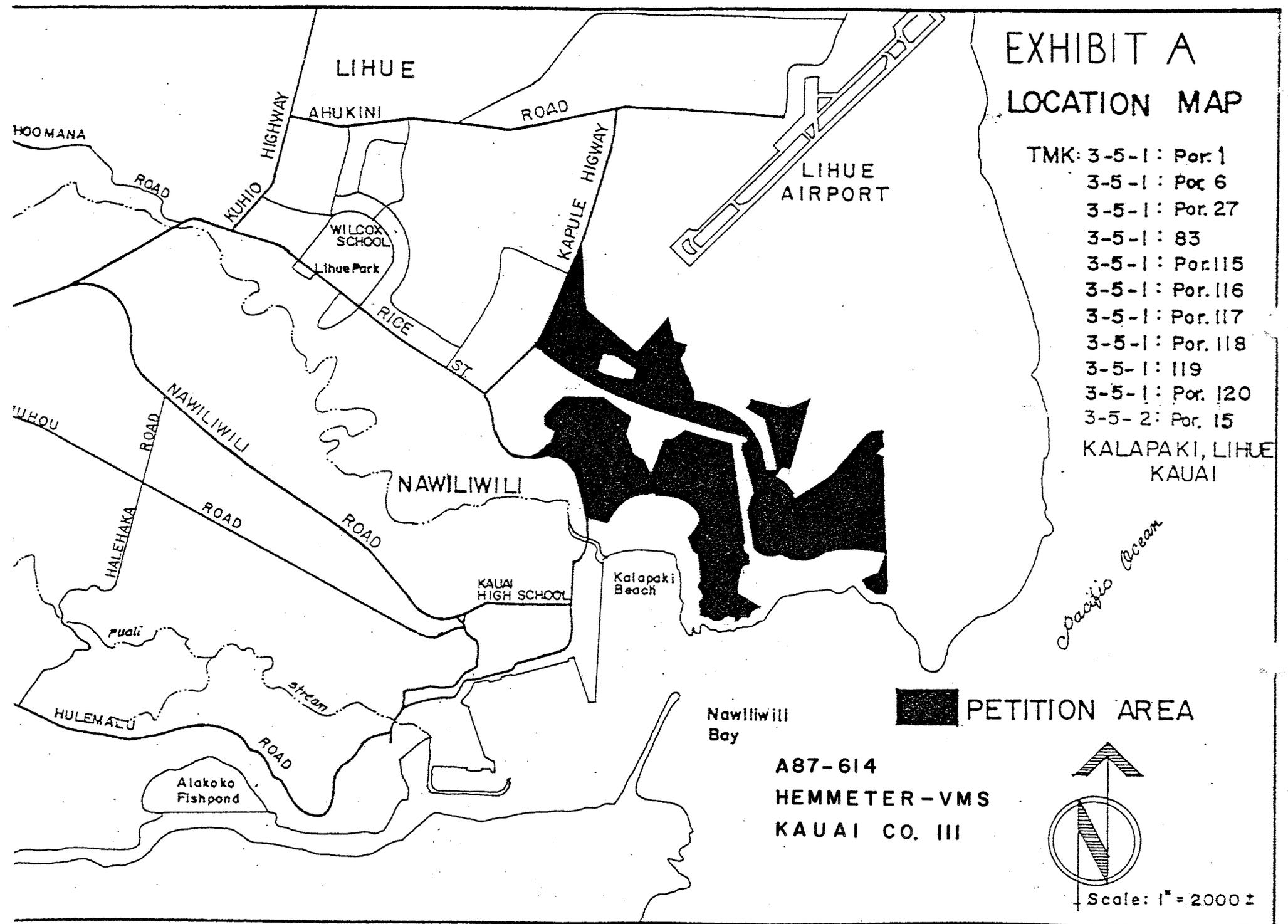
By *Everett L. Cuskaden*  
EVERETT L. CUSKADEN  
Commissioner

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

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

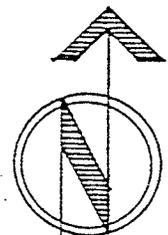
# EXHIBIT A LOCATION MAP

TMK: 3-5-1 : Por. 1  
 3-5-1 : Por. 6  
 3-5-1 : Por. 27  
 3-5-1 : 83  
 3-5-1 : Por. 115  
 3-5-1 : Por. 116  
 3-5-1 : Por. 117  
 3-5-1 : Por. 118  
 3-5-1 : 119  
 3-5-1 : Por. 120  
 3-5-2 : Por. 15  
 KALAPAKI, LIHUE  
 KAUAI



■ PETITION AREA  
 Nawiliwili Bay

A87-614  
 HEMMETER-VMS  
 KAUAI CO. III



Scale: 1" = 2000'

Of Counsel:  
OKUMURA TAKUSHI FUNAKI & WEE  
ATTORNEYS AT LAW  
A LAW CORPORATION

RECEIVED

DEC 17 1987

JAMES T. FUNAKI, ESQ. 200  
Grosvenor Center, Suite 1400  
733 Bishop Street  
Honolulu, Hawaii 96813  
Telephone No. 543-9800

State of Hawaii  
LAND USE COMMISSION

Attorney for Petitioner, HEMMETER-VMS  
KAUAI COMPANY III

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	Docket No. A87-614
	)	
HEMMETER-VMS KAUAI COMPANY III	)	
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District for approximately	)	
299.79 acres at Kalapaki, Lihue,	)	
Kauai, Hawaii, Tax Map Key Nos.	)	
3-5-01: 1, por. 6, por. 27, 83,	)	
por. 115, por. 116, por. 117, por.	)	
118, 119, and por. 120; and	)	
3-5-02: por. 15	)	
_____	)	

ADDENDUM TO PETITIONER'S  
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER

EXHIBIT B

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) Docket No. A87-614  
HEMMETER-VMS KAUAI COMPANY III )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for approximately )  
299.79 acres at Kalapaki, Lihue, )  
Kauai, Hawaii, Tax Map Key Nos. )  
3-5-01: 1, por. 6, por. 27, 83, )  
por. 115, por. 116, por. 117, por. )  
118, 119, and por. 120; and )  
3-5-02: por. 15 )  
\_\_\_\_\_ )

ADDENDUM TO PETITIONER'S  
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER  
\_\_\_\_\_

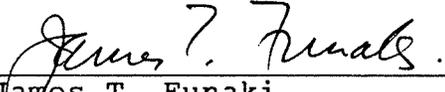
Hemmeter-VMS Kauai Company III, Petitioner herein, represents that the words "development expertise" as used in proposed condition no. 7 of Petitioner's proposed Order submitted to the Commission on December 1, 1987, shall mean and cover the following consultant services by the Petitioner:

1. Advise as needed on development issues that may arise in connection with "packaging" the relevant housing program
2. Advise as needed on technical issues of site identification
3. Review architectural plans
4. Construction management consultation
  - a. Review bid documentation

- b. Review costs and provide value engineering assistance as needed
- c. Site inspections to review construction progress
- d. Assist in review and resolution of punch list items

Christopher Hemmeter will be acting as a consultant to help review and to help advise as part of the Petitioner's consultant services.

DATED: Honolulu, Hawaii, December 17, 1987.

  
\_\_\_\_\_  
James T. Funaki  
Attorney for Petitioner  
HEMMETER-VMS KAUAI  
COMPANY III

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A87-614  
)  
HEMMETER-VMS KAUAI COMPANY III )  
) HEMMETER-VMS KAUAI  
) COMPANY III  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for approximately )  
299.79 acres at Kalapaki, Lihue, )  
Kauai, Hawaii, Tax Map Key Nos. )  
3-5-01: 1, por. 6, por. 27, 83 )  
por. 115, por. 116, por. 117, por. )  
118, 119, and por. 120; and )  
3-5-02: por. 15 )  
\_\_\_\_\_ )

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:

ROGER A. ULVELING, Director  
Department of Business and Economic Development  
State of Hawaii  
250 South King Street  
Honolulu, Hawaii 96813

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

cert. JAMES T. FUNAKI, Esq.  
Grosvenor Center, Suite 1400  
733 Bishop Street  
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, this 17th day of February 1988.

  
\_\_\_\_\_  
ESTHER UEDA, Executive Officer

DOCKET NO. A87-614 - HEMMETER-VMS KAUAI COMPANY III

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on February 17, 1988.

DIANE J. PLOTTS, President  
Hemmeter Corporation  
2424 Kalakaua Avenue  
Honolulu, Hawaii 96815

DANNY ARANZA, ESQ.  
Kobayashi, Watanabe, Sugita & Kawashima  
745 Fort Street, 8th Floor  
Honolulu, Hawaii 96813