

BEFORE THE STATE LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of)
HEMMETER/VMS KAUI COMPANY III)
For a Special Use Permit to)
Establish a Second 18-Hole Golf)
Course with Ponds, a Driving Range)
and Miscellaneous Accessory Uses)
Including Carriage Paths and)
Landscaping on Approximately 200)
Acres of Land Situate within the)
Agricultural District at)
Nawiliwili, Lihue, Kauai, Tax Map)
Key No.: 3-5-01: Portion of Parcel 6)
and Portion of Parcel 82)
_____)

DOCKET NO: SP86-361
HEMMETER/VMS KAUI
COMPANY III

JAN 7 1 47 PM '87
LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND ORDER

BEFORE THE STATE LAND USE COMMISSION

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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 fact and conclusions of law, and decision and order:

FINDINGS OF FACT

GENERAL DESCRIPTION

1. The Commission received the Special Use Permit request and record of the County of Kauai Planning Department on October 16, 1986.

2. Under the Special Use Permit, Petitioner proposes to establish a second 18-hole golf course, driving range, and miscellaneous accessory uses including carriage paths and landscaping (hereinafter the "Project") on approximately 200 acres of land situate within the State Land Use Agricultural District in Nawiliwili, Lihue, Island of Kauai.

3. The Project site is identified as Kauai Tax Map Key Numbers: 3-5-01: portion of parcel 6 and portion of parcel 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 the Westin Kauai Resort's plans to enhance the amenities available to the guests of the resort and the future 750-room hotel.

The proposed Project is an addition to the uses approved by the Commission in Docket No. SP86-360/Hemmeter/VMS Kauai Company III by Order filed on October 27, 1986, which allowed the redesign of the existing golf course and the establishment of a new driving range, golf clubhouse, waterways and boat docks, parking, public access and other miscellaneous uses on approximately 310 acres of land situate south of the Property.

5. The Property is used primarily for sugarcane cultivation. A small portion to the south is currently in golf course use as approved under Special Use Permit Docket Number SP70-77 filed by Amfac Properties.

6. Access to the Property will be shared with access to the Westin Kauai which is currently provided from Rice Street.

7. Hemmeter/VMS Kauai Company I, an affiliate of Petitioner owns Parcel 82. The Lihue Plantation Company owns parcel 6.

8. The Lihue Plantation Company, by letter dated August 8, 1986, authorized Petitioner to file this petition.

Summary of Environmental and Resource Related Concerns

9. The Property contains a combination of Lihue Silty Clay and Lihue Gravelly Silty Clay soils.

10. The Property is classified as "Prime Agricultural Land" according to the Department of Agricultural Lands of Importance to the State of Hawaii Classification system.

11. The Property is rated Master Productivity Rating B according to the Land Study Bureau.

12. The County sewage treatment plant, located to the north-northwest of the resort, emits noxious gas by-products and may impact portions of the proposed Project during limited and unusual wind conditions.

13. The County Public Works Department stated that potential problems may arise regarding the compatibility of the Lihue Sewage Treatment Plant with increased public access; that Petitioner resolve problems created by the withdrawal of cane lands currently used for effluent disposal, for golf course use; and that Petitioner retain or relocate an existing ditch

easement that runs from the sewage treatment plant to the ocean for emergency sewage outfall.

14. The State Department of Health stated its concerns that Petitioner should implement its agreement with Lihue Plantation Company to modify its mill wastewater disposal system in order to mitigate problems of water pollution and mosquito infestation associated with the existing method of disposing mill wastewater on the lower Lihue Plantation fields including the Property.

15. The State Department of Agriculture (DOA) stated that with respect to that portion of the Property currently in cane cultivation, the DOA's position is to discourage approval of special permits for large-scale uses of an urban nature which should more properly be classified in the State Urban District.

16. A noise study prepared by Darby and Associates in 1985 indicated that small portions of the northern part of the Property lie within the 60 Ldn and greater.

Petitioner states that 60 Ldn is an acceptable noise level for golf course use, and that the existing noise conditions will have no significant impact upon the golf course therefore no mitigation measures appear necessary.

Public Services and Facilities

17. Petitioner and Lihue Plantation Company proposes to expend approximately \$3.6 million in improvements to the existing mill wastewater disposal system to discontinue the use

of the lower cane fields for wastewater disposal. Petitioner projects the proposed improvements will be operational by March, 1987.

18. Petitioner proposes to drill wells for golf course irrigation to supplement use of sewage effluent in the primary irrigation system. At least one of the wells drilled will be for both withdrawal and injection of excess effluent.

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

20. Petitioner anticipates that all other public services such as potable water, energy and communication, sewage and solid waste disposal, police and fire protection will be adequate or can be upgraded, without significant adverse impacts, to serve the Property.

Conformance to Special Permit Guidelines

21. The withdrawal of the Property from sugar cane cultivation is considered a minor portion of Lihue Plantation's land holdings and will have minimal impacts to their agricultural operations and will not be contrary to the Land Use Law.

22. The proposed Project would not generate excessive noise, odors, emissions or traffic and will not adversely impact upon lands surrounding the Property.

23. The proposed Project will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. All public service functions are available and where they are not, improvements will be made by the Petitioner, as required by the appropriate government agencies.

24. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The proposed second golf course is an extension of the primary hotel/resort function of the overall Property, and functionally more a part of that than an agricultural activity.

25. 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.

26. On October 8, 1986, the County Planning Commission recommended that the subject special use permit be approved subject to the following conditions:

- "1. Requirements and concerns of the State Health Department, County Public Works, Water and Fire Departments shall be met and resolved with the respective agencies.
2. Applicant shall apply for the necessary permits to establish such use within one (1) year from the date of Land Use Commission review and approval, and complete construction of the golf course within three (3) years from the date of Land Use Commission review and approval.

3. The Planning Commission may impose additional conditions, restrictions, or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in the Comprehensive Zoning Ordinance or the State Land Use District Rules and Regulations."

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 Number 86-361 to establish a second 18-hole golf course, driving range and miscellaneous accessory uses including carriage paths and landscaping, on approximately 200 acres of land situate within the State Land Use Agricultural District at Nawiliwili, Lihue, Island of Kauai, Tax Map Key Number 3-5-01: portion of parcel 6 and portion of parcel 82 and approximately identified on Exhibit A attached hereto and incorporated by reference herein be approved subject to the following conditions:

1. Requirements and concerns of the State Health Department, County Public Works, Water and Fire Departments shall be met and resolved with the respective agencies.

2. Petitioner may not apply for the necessary permits to establish such use until after the Kauai County Council enacts an appropriate zoning ordinance permitting construction of the proposed 750-room hotel adjacent to Kukii Point and shall complete construction of the golf course within three (3) years after the County Council's enactment of such zoning ordinance.

3. The Planning Commission may impose additional conditions, restrictions, or requirements on the permits approved herein should unanticipated or unforeseen circumstances arise which require such additional conditions to insure compliance with the standards contained in the Comprehensive Zoning Ordinance or the State Land Use District Rules and Regulations.

DOCKET NO. SP86-361/HEMMETER/VMS KAUAI COMPANY III

Done at Honolulu, Hawaii, this 7th day of January 1987,
per motions on November 18, 1986 and December 16, 1986.

LAND USE COMMISSION
STATE OF HAWAII

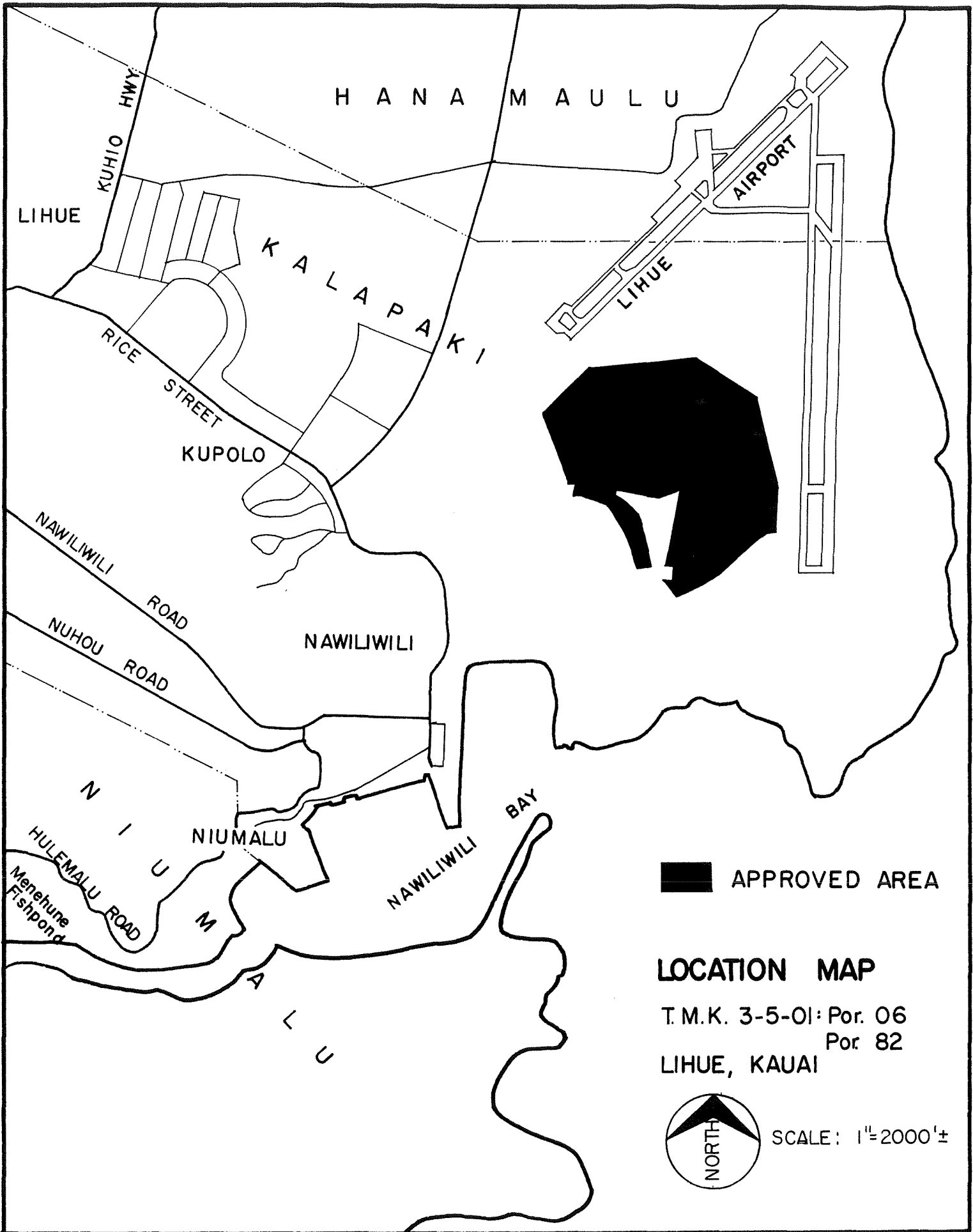
By *T. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

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

By *Toru Suzuki*
TORU SUZUKI
Commissioner

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

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




 APPROVED AREA

LOCATION MAP

T.M.K. 3-5-01: Por. 06
 Por. 82
 LIHUE, KAUAI



SCALE: 1"=2000'±

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Carriage Paths and Landscaping on)
Approximately 200 Acres of Land)
Situate within the Agricultural)
District at Nawiliwili, Lihue, Kauai,)
Tax Map Key No.: 3-5-01: Portion of)
Parcel 6 and Portion of Parcel 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 7th day of January 1987.



ESTHER UEDA
Executive Officer

SP86-361/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 January 7, 1987.

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

MR. JIM BELL
Belt, Collins and Associates
606 Coral Street
Honolulu, Hawaii 96813