

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A87-614
)
HEMMETER-VMS KAUAI) ORDER GRANTING MOTION TO
COMPANY III) MODIFY CONDITION
)
To Amend the Agricultural Land Use)
District Boundary into the Urban Land Use)
District for Approximately 299.79 Acres at)
Kalapaki, Lihu'e, Kaua'i, Hawai'i, Tax Map)
Key Nos: 3-5-01:1, por. 27, 83, por. 115,)
por. 116, por. 117, por. 118, 119, and 120;)
and 3-5-02: por. 15)
_____)

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)	CONDITION
To Amend the Agricultural Land Use)	
District Boundary into the Urban Land)	
Use District for Approximately 299.79)	
Acres at Kalapaki, Lihu'e, Kaua'i,)	
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por. 118, 119, and 120; and 3-5-02: por.)	
15)	
_____)	

2002 APR 10 P 12:35
LAND USE COMMISSION
STATE OF HAWAII

ORDER GRANTING MOTION TO MODIFY CONDITION

On January 30, 2002, Kauai Lagoons Company, Ltd. ("Movant"), successor-in-interest to Petitioner Hemmeter-VMS Kauai Company III, filed a Motion to Modify Condition ("Motion"), pursuant to sections 15-15-70 and 15-15-94, Hawai'i Administrative Rules ("HAR"). Movant requested that the Land Use Commission ("Commission") modify Condition Number 1 of the Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") dated February 17, 1988, to read as follows:

1. No residential, condominium, or hotel dwelling units shall be constructed within areas greater than the 60 DNL noise contour of Lihue Airport; provided however that such uses may be permitted within the 60 to 65 DNL contour, if there is an accompanying mitigation of interior noise levels down to 45 DNL.

The Motion stated, among other things, that Movant's revised master plan for the Kauai Lagoons Resort i) reconfigured several Kiele Golf Course holes; ii) shifted the location of the proposed hotel site further west; and iii) provided resort residential development in several designated areas around the golf course. The Motion further stated that this adjustment of land uses would result in the development of resort and residential areas outside of the 60 DNL contour.¹

On February 6, 2002, the Commission received a facsimile of the Statement of Position of the Kauai County Planning Department in Support of the Motion to Modify Condition.

The Motion came on for hearing before this Commission on February 7, 2002, in Honolulu, Hawai'i. Benjamin M. Matsubara, Esq., appeared on behalf of the Movant, and John W. K. Chang, Esq., appeared on behalf of the Office of Planning ("OP"). The County of Kaua'i Planning Department had previously informed the Commission staff that it would not be present at the

¹ A portion of the proposed hotel site would still be located within the 60 DNL contour but will be used for non-dwelling purposes such as parking and other accessory uses.

hearing. At the hearing, OP pointed out that the Department of Transportation, Airports Division ("DOT-AD"), reviewed the Movant's proposed modification to Condition Number 1, and recommended additional language to reflect that the mitigation of the noise levels should be to the 45 DNL noise level to be compatible with the DOT-AD's FAA Part 150 Noise Compatibility Program studies. The Movant stated that it had no objections to the DOT-AD's additional language.

Thereafter, a motion was made and seconded that Condition Number 1 of the Decision and Order dated February 17, 1988, be amended to read as follows:

1. No residential, condominium, or hotel dwelling units shall be constructed within areas greater than the 60 DNL noise contour of Lihue Airport; provided however that such uses may be permitted within the 60 to 65 DNL contour, if there is an accompanying mitigation of interior noise to the 45 DNL noise level.

Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried.

ORDER

Having duly considered the Movant's Motion, the written and oral arguments presented by the parties, and a motion having been made at a hearing conducted on February 7, 2002, in Honolulu, Hawai'i, and the motion having

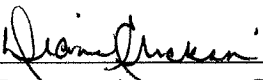
received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that Condition Number 1 of the Decision and Order dated February 17, 1988, be amended as follows:

1. No residential, condominium, or hotel dwelling units shall be constructed within areas greater than the 60 DNL noise contour of Lihue Airport; provided however that such uses may be permitted within the 60 to 65 DNL contour, if there is an accompanying mitigation of interior noise to the 45 DNL noise level.

All other conditions to the Decision and Order dated February 17, 1988, are reaffirmed and continue in effect.²

Dated: Honolulu, Hawai'i, April 10, 2002.

APPROVED AS TO FORM



Deputy Attorney General

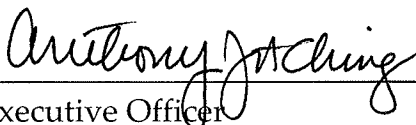
LAND USE COMMISSION
STATE OF HAWAII



By MERLE A. K. KELAI
Chairperson and Commissioner

Filed and effective on
April 10, 2002

Certified by:



Executive Officer

² Pursuant to the Order Regarding Petitioner's Motion For Clarification Of Decision And Order Of February 17, 1988, dated January 9, 1990, the Commission clarified Condition Numbers 1 and 2 and amended Condition Number 3.