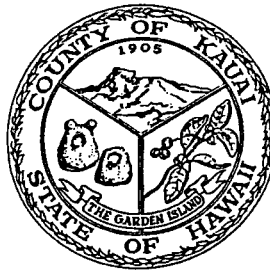


BERNARD P. CARVALHO, JR.
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

Rec'd By All Councilmembers

COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

August 27, 2009

Honorable Bill "Kaipo" Asing, Chairman
and Members of the County Council
County of Kauai
Lihue, HI 96766

RECEIVED
THE COUNTY OF KAUA'I

09 AUG 28 P 3:02

RECEIVED

ATTENTION: Tim Bynum , Public Works/Elderly Affairs Committee Chair

Dear Chairman Asing and Members of the County Council:

SUBJECT: *August 12, 2009 Public Works/Elderly Affairs Committee Meeting
Follow-up Information Request for C 2009-77, Relating to an update on the efforts to
Address the flooding Situation at Po'ipu Beach Park*

Pursuant to the referenced memorandum, the following corresponding response is provided.

Specifically, the referenced memorandum dated February 18, 2009 states in part "the Village at Po'ipu has prepared a preliminary engineering report (attached) that was approved by the Planning Department". To provide clarification, the Planning Department does not approve, certify, or provide recommendations for drainage reports, as the Department does not have the expertise of staff civil engineers, who are qualified to provide this service.

In the processing of Class III Zoning permits, Class IV Zoning permits, and Subdivisions, such as the Village at Po'ipu, the application and supporting information are forwarded to numerous governmental agencies (including but not limited to the Department of Public Works, State Highways, State Historic Preservation, State Department of Health, etc.) who have various authority and expertise along with a request to provided comments on the application.

Comments, recommendations, and requirements provided by applicable governmental agencies are incorporated into the Planning Department's analysis, conclusion and recommendation as conditions for the Planning Commission's approval or denial. These conditions become requirements for processing and approval of all future related construction permits (ie. Building permit, Grading permit, etc.). This requisite construction permit review by each applicable governmental agency, each with specific scopes of administrative authority and responsibility and expertise, facilitates a coordinated and comprehensive processing.

The following is a list of Exhibits attached for your reference and information:

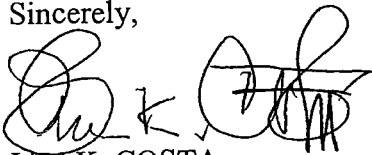
- Exhibit 1 Planning Dept. Letter dated June 29, 2000 to Mr. Max W.J. Graham, Jr. documenting the Planning Commission's approval of SMA (U)-2000-3, Project Development Use Permit U-2000-16, Shoreline Setback Variance SSV-2000-2, and Class IV Zoning Permit Z-IV-2000-21 for the construction and development of a 234-unit apartment-hotel.
- Exhibit 2 Planning Department's Staff report to the Planning Commission dated May 18, 2000, containing staff's evaluation, conclusion and recommendation for Z-IV-2000-21.
- Exhibit 3 Planning Department's transmittal of Zoning Permit Application Z-IV-2000-21, dated December 16, 1999, to the Department of Public Works requesting comments on the application, along with response signature by the County Engineer, dated 12/21/99, providing attached comments.
- Exhibit 4 Planning Dept. Letter dated April 26, 2001 to Mr. Max W.J. Graham, Jr. documenting the Planning Commission's approval of SMA (U)-2001-6 and Class IV Zoning Permit Z-IV-2001-29 for the construction of paved off-street parking lot with landscaping, underground electrical and waterlines, and vehicular circulation and access improvements property owned by the County of Kauai, adjacent to Po'ipu beach park.
- Exhibit 5 Planning Department's Staff report to the Planning Commission dated April 18, 2001, and Staff Additional Findings dated April 15, 2001 containing staff's evaluation, conclusion and recommendation for Z-IV-2001-29.

Honorable Bill "Kaipo" Asing, Chairman
and Members of the County Council
August 27, 2009
Page 3

- Exhibit 6 Transmittal of the Zoning Permit Application Z-VI-2001-29, dated February 6, 2001, from the Planning Department to the Department of Public Works requesting comments on the application, along with response signature by the County Engineer, dated 2/9/01, providing attached comments.
- Exhibit 7 Planning Dept. Subdivision Report for S-2003-48 to the Planning Commission providing subdivision application information, Tentative Approval and Final Approval recommendations, with attached recommended conditions of approval..
- Exhibit 8 Memorandum from the Department of Public Works dated December 2, 2008, to the Planning Director providing concurrence for the recommended final approval for subdivision S-2003-48.

Please feel free to call me or the Planning Department should you have any questions regarding the foregoing information or should you need additional information.

Sincerely,

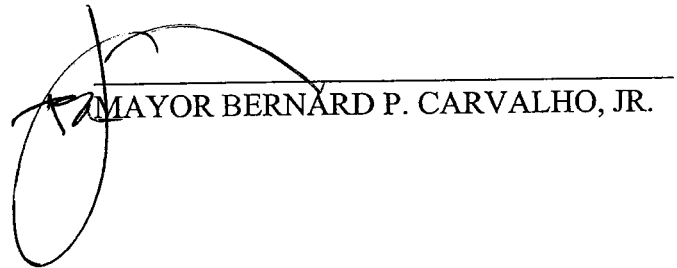


IAN K. COSTA
Director of Planning

IKC

Attachments:

APPROVED:



MAYOR BERNARD P. CARVALHO, JR.

MARYANNE W. KUSAKA
MAYOR



DEE M. CROWELL
PLANNING DIRECTOR
SHEILAH N. MIYAKE
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 241-6677
FAX (808) 241-6699

PLANNING DEPARTMENT

June 29, 2000

COPY

Mr. Max W.J. Graham, Jr.
Attorney at Law
Belles Graham Proudfoot & Wilson
Watumull Plaza
4334 Rice Street, Suite 202
Lihue, HI 96766

Subject: Special Management Area Use Permit SMA(U)-2000-3
Project Development Use Permit U-2000-16
Shoreline Setback Variance SSV-2000-2
Class IV Zoning Permit Z-IV-2000-21
Tax Map Key 2-8-17: 8, 12, 20 Poipu, Kauai
Marriott Ownership Resorts, Inc., Applicant

The Planning Commission at its meeting held on June 22, 2000 approved the subject permits to allow the construction and development of a 234-unit apartment-hotel consisting of 227 multi-family residential units, 7 hotel rooms, and ancillary uses. Approval is subject to the following conditions as recommended by the Planning Department and amended by the Planning Commission:

1. Relative to the applicant's proposed Poipu Park improvements and in order to initiate proper review of the proposed project, the following are recommended:
 - * a. As represented to the Planning Commission at its meeting held on March 9, 2000 and June 22, 2000 and provided that it is acceptable to the County of Kauai, the applicant shall implement and construct the proposed improvements (parking, drainage, landscaping, and traffic circulation) on the abutting parcel to the east owned by the County of Kauai identified by Tax Map Key 2-8-17:11 at a cost not to exceed \$800,000. If the applicant is able

to construct such improvements as may be approved by the County for less than \$800,000.00, then the applicant agrees to donate the difference between \$800,000.00 and the cost of improvements to the County for use in developing recreation facilities or parks in the Koloa-Poipu area or for purchasing safety equipment for use in the Koloa-Poipu area, or for such other public purposes as the County deems appropriate.

- b. Within one year from the date of Planning Commission approval of the subject permits, the applicant shall obtain the necessary approvals or clearances from the Kauai Planning Commission, Kauai County Council, Public Works Department, and other applicable County or State agencies, to construct the proposed improvements. The applicant may commence demolition, site work, landscaping, building pad work and building foundation work during this one year period.
- c. The park improvements shall be completed in the same period specified in Condition #2d below.

Due to the conceptual nature of the improvements proposed at this time, the Planning Commission reserves the authority to impose additional conditions relative to the specific nature and type of improvements planned for the County parcel (hereinafter "County Park"). Such conditions can be imposed, if any, during the review of the required Special Management Area Use Permit and other land use permits as deemed necessary. Permit requirements shall be resolved with the Planning Department.

2. Relative to construction of the entire project, the applicant shall:
 - a. prior to building permit application, submit to the Planning Department for design review, each building cluster in the project;
 - b. submit, relative to building design review, grading plans showing existing and finished grade elevations for the project, and building exterior and roof material/color schemes;
 - c. obtain building permit approval within one year from the date of Planning Commission approval; and
 - d. complete construction of the entire project approved under the subject permits within three (3) years from the date of issuance of building permit. "Complete

construction” shall mean that the project shall be substantially complete and occupancy permit issued.

3. Prior to building permit application, the applicant shall remit payment of the following fees:
 - a. Environmental Impact Assessment Fee (based on \$1,000 per unit for each apartment and hotel room; and
 - b. a Park Dedication Fee in lieu of land.

Relative to the park dedication fee, the applicant is advised that an appraisal report of the overall project must be submitted for referral to the County of Kauai Real Property Division in order to determine the amount of the park dedication fee. Furthermore, no credit for this fee shall be given for the County Park improvements on the adjacent parcel.

4. As represented, the project shall include a restaurant with a seating capacity of 100-150 persons that will be open to the general public.
5. In order to confirm the allowable density for the project, the applicant shall submit a certified shoreline survey for the property. A certified shoreline survey conducted within 6 months of the filing of the application is acceptable. Upon receipt of the survey, the applicant shall delineate the shoreline in the field for inspection purposes and made visible throughout the construction of the entire project.
6. Relative to the Shoreline Setback Variance, the applicant shall construct a paved, improved lateral public pedestrian access (“Beach Path”) along the entire shoreline fronting the project including a pedestrian access connecting the Beach Path to the County Poipu Beach Park at Hoone Road. The Beach Path shall be a minimum width of 6 feet and dedicated as an easement to the County in perpetuity. As agreed to by the applicant, the applicant shall:
 - a. install two public showers and two surfboard washing racks at a location to be resolved with the Planning Department;
 - b. allow public pedestrian access during all phases of construction of the project.

Prior to building permit application, the applicant shall resolve with the Planning Department, the final location of all proposed improvements and renovations

based on the certified shoreline survey, including areas to be planted with new landscaping. The applicant is advised that easement documents for the lateral public beach access that pre-existed Hurricane Iniki must be modified or cancelled. Subsequently, easement documents for the new realigned pedestrian access shall be submitted to the Planning Department for review and approval, executed, and recorded prior to issuance of building permit. The existing swimming pool to be repaired and renovated in the shoreline setback area shall not be increased in size.

7. Commercial beach concessions and activities within or along the shoreline setback area shall be prohibited unless reviewed and approved by the Planning Department or Planning Commission.
8. The applicant shall, in consultation with the Department of Public Works, adopt a waste management and disposal plan for the removal and disposal of materials generated as a result of all demolition work associated with the existing Waiohai Hotel facilities. The plan shall maximize the recycling of such materials and minimize their disposal at the Kekaha Sanitary Landfill. The plan shall be submitted for review and approval by the Public Works Department prior to commencement of any demolition work on the subject property.
9. The applicant shall resolve its view enhancements to mitigate any visual impacts to the immediate surroundings that the project may create. Grading and filling should be minimized to avoid any substantial increase in building heights and building floor elevations. The applicant shall also develop a plan for mitigating the effects of exterior lighting to the adjacent properties. The applicant shall resolve the foregoing requirements with the Planning Department prior to building permit application.
10. The landscaping plan to be developed for the project's overall view enhancements shall be incorporated into the overall landscaping plan for the project and subject to the review and approval of the Planning Department. Any existing landscaping (trees, plants) to be saved shall be identified on the overall layout of the master landscaping plan.
11. As represented, the applicant shall meet all CZO parking requirements for all uses proposed on the property with the exception of the resort-residential apartment units. For these units, the applicant shall provide a minimum of 1.4 parking stalls per unit. In addition to the offstreet parking requirements for the project, a total of ten (10) public parking spaces shall be provided. In consideration of the proposed public restaurant, the applicant shall adopt and implement an overflow

offstreet parking plan in order to minimize conflicts between public restaurant users and time-share users residing on the project.

12. The applicant shall re-evaluate the offstreet parking layout for the entire project and provide additional stalls for the time share sales office. The number of stalls to be provided shall be resolved with the Planning Department.
13. The applicant shall adopt a Shearwater Protection Program for the project in order to minimize the attractive aspects of lighting within the project to these birds. This plan shall be presented to the Planning Department for its approval. The applicant shall utilize down lighting to the maximum extent possible to avoid attracting Shearwaters, and/or may adopt a schedule that would reduce lighting on the subject property during the critical two-week period before and after the new moon each October. The applicant shall submit its Shearwater Protection Program to the Federal Fish and Wildlife Service and Planning Department for review and comment prior to adoption of the program.
14. Any signs to be used on the subject property that are visible from any public roadway, park, or other public place shall comply with the provisions of the County of Kauai Sign Ordinance.
15. Relative to access, there shall be no vehicular access from the east side of the property at the dead end section of Hoone Road. Any temporary access plans sought during construction of the project from points other than the main entrance along Poipu Road shall be subject to the review and comment by the Public Works Department and Planning Department.
16. Due to the archaeological sensitivity associated with the property, the applicant shall comply with the following conditions as recommended by the State Historic Preservation Division:
 - a. A qualified archaeologist shall be hired to conduct monitoring during the renovation, redevelopment and landscaping in the sandy substrate areas, areas which will be based on the soils engineering report. Monitoring shall be on-site during initial land alteration and then shall be on-call as needed. Prior to starting the monitoring work, an acceptable monitoring plan (scope of work) shall be submitted to the State Historic Preservation Division for review and approval. That monitoring plan will spell out a process for treating sites that are found for evaluating significance in consultation with our Division and for developing and executing mitigation work with the approval of our Division. It must be clear that if historic sites, including burials, are uncovered during

monitoring, construction must stop in the immediate vicinity and the archaeologist shall be allowed sufficient time to evaluate the site and carry out mitigation as needed. The plan must include provisions for an acceptable monitoring report, documenting all the findings.

- b. If burials are found, a burial treatment plan shall be prepared for inadvertent burial discoveries encountered during the monitoring of the project. The procedures outlined in Chapter 6E-43 shall be followed. Should burials be removed, their archaeological context (including plan maps and profiles) shall be documented and included in the monitoring report.
 - c. A preservation plan for Kiahouna Heiau will be developed. It must be acceptable to the State Historic Preservation Division. The division must verify in writing to the County when the plan is acceptable and when it has been successfully carried out.
17. Approval of the Project Development Use Permit (per the applicant's overall summary and description of the particular development standards sought for the project, Section VIII-Variance, pages 12 to 16, Supplemental Report dated March 9, 2000) does not construe approval of the current and pending lot layout design. The applicant shall resolve with the Planning Department the final layout and sizes of the 6 lots as proposed in the subdivision process. Other alternative layouts for the "landlocked lots" should be explored that involves easements in favor of one lot to the other or connecting pole sections to the main entry/driveway or Hoone Road. Details can be resolved at time of subdivision application review including but not limited to the following:
- a. construction of all utilities underground; and
 - b. construction of sidewalks and street lights along the main entrance beginning at its intersection with Poipu Road.

Unless certain exceptions to the CZO standards can be avoided or minimized by modifying the proposed 6-lot subdivision, the Project Development Use Permit acknowledges approval of the following exceptions as discussed in staff's evaluation:

- a. setbacks between buildings
- b. setbacks between buildings and property lines

- c. access for the 6-lot subdivision
 - d. reduction of the parking ratio for the apartment-hotel from 1.5 to 1.43 stalls per unit
 - e. lot coverage
 - f. apartment-hotel use from lot to lot within the project
 - g. waiving the requirement of constructing the project on the former footprint of the Waiohai Hotel
 - h. 5 feet setback for the Port Cochere of Building 1100
18. The time share sales office shall be limited solely for the purpose of selling and re-selling time share units within the proposed project and other similar time-share units in other projects owned by Marriott Ownership Resorts, Inc.. The sale of other local or non-local real estate including the partial or complete conversion of the timeshare sales office into a general real estate office shall be prohibited.
19. The applicant shall re-evaluate the offstreet parking layout and amount of parking stalls for the entire project and provide additional stalls for the time share sales office. The number of stalls to be provided shall be resolved with the Planning Department.
20. As represented by the applicant, in order to encourage all former Waiohai employees to apply for jobs within the project, the applicant shall: send letters to the known addresses of all former employees informing them of the availability of jobs; give notice through newspaper advertisements of such job availability; and, within any group of equally qualified applicants for a particular job, hire former Waiohai employees.
21. As represented by the applicant, the applicant will hire Kauai contractors to the extent possible and will encourage Kauai contractors to participate in the Project by employing the Kauai Contractor Protocol as described by the applicant.
22. Commencing on May 25, 2001, and on every May 25 thereafter until the completion of the project, the applicant shall submit a written report to the Planning Commission stating: the status of the project and the manner in which the applicant has complied with these conditions of approval.

Mr. Maxwell W.J. Graham
June 29, 2000
Page 8

23. The applicant shall resolve all applicable conditions as imposed by the Water Department, Fire Department, Public Works Department, and State Health Department.
24. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval.
25. The applicant is advised that prior to or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).



Dee M. Crowell
Planning Director

c: Public Works Department
Water Department
Fire Department
State Health Department
State Historic Preservation Division
Real Property Division

SUBJECT TO CHANGE

RE: Special Management Area Use Permit SMA(U)-2000-3
Project Development Use Permit U-2000-16
Shoreline Setback Variance SSV-2000-2
Class IV Zoning Permit Z-IV-2000-21

APPLICANT: Marriott Ownership Resorts, Inc.

EVALUATION:

Reconstruction of this resort complex is encouraged since it serves as a major visitor destination in the Poipu planning area and within the context of the overall function of the County's visitor industry. Although the density is less than the previous hotel, this project in effect will revive an inventory of visitor units that pre-existed the effects of Hurricane Iniki.

The applicant has addressed the issues of the requested land use permits that deals primarily with:

- a. criteria and development standards of the SMA and shoreline setback area; and
- b. certain exceptions sought from standards applicable to the RR-20 zoning district as sought through the Project Development Use Permit and Class IV Zoning Permit procedure.

The following are noted in evaluating the proposed project and the major issues pertaining to each permit:

SPECIAL MANAGEMENT AREA USE PERMIT

1. Beach Access - The proposed development will continue to provide adequate and improved public access due to the high coastal recreational value of the immediate coastal area. The public access will also provide that connection from parcel to parcel along the shoreline for the benefit of all resort facility users and residents in the area. It is noted that the proposed beach access will realign the pedestrian path that pre-existed Hurricane Iniki. Any existing easement documents for the pre-Iniki beach access must be retrieved and modified or cancelled accordingly. As represented, the pedestrian path will be connected to the Poipu Beach Park parcel situated on the mauka side of Hoone Road and to the beach access situated to the west that will run along the ocean front side of the Poipu Beach Hotel property.
1. Views: Based on the concerns of the homeowners association of the Kiahuna Plantation apartments, there are competing interests relative to the potential impact this project would have, relative to surrounding landowners, the applicant and the Special Management Area (SMA). Staff notes that under the provisions of the Section 4C.(3), Guidelines of the SMA rules and regulations, impact on views should be minimized if the development would "interfere or detract from the line of sight

EXHIBIT
2

toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline". The development in this instance is far removed from a State highway. Views "to and along the shoreline" would be considered improved because:

- a. when viewed from the ocean, the overall layout and design of the proposed project is less massive than the original hotel complex;
- b. the central lagoon system and swimming pool will enhance the openness of the overall layout of the project.
- c. all of the ocean front buildings would be set further back than the original hotel;
- d. lateral views along the shoreline would increase because the applicant is adhering to the guidelines of the Kauai Urban Design Plan by keeping the 4-story sections of the project outside of the applicable building transition zones along the shoreline.

In this instance, the Kiahuna homeowners association concerns are valid under Section 3b.(3), Policies (Scenic and Open Space Resources) of the rules. It states "Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline". As previously stated, the department has not been informed of any resolution between the homeowners association and the applicant. Staff's review of the latest conceptual layout of the buildings on the mauka side of the property appears to show that the buildings may be higher if the land is being filled to accommodate an extension of the open air parking lot. Substantial grading and filling should be avoided especially if it is intended to increase the existing ground elevation anywhere on the property. Likewise, filling of the property and raising the finished grade to accommodate the proposed "underground" parking lot should be prohibited.

3. Historic Resources - The applicant has demonstrated that it would respond to the archaeological sensitivity of the property during all phases of demolition and construction of the project. The applicant is advised to adhere to the guidelines and recommendations of the State Historic Preservation Commission relating to mitigation and burial treatment plans as result of inadvertent burial finds.
- * 4. Drainage - The central lagoon system has been designed to accommodate the drainage capacities of the apartment complex and surrounding properties and should not generate adverse impacts to the adjacent coastal ecosystem.

In view of the foregoing, the overall proposed development:

1. would provide and restore coastal recreational opportunities accessible to the general public;

Marriott Ownership Resorts, Inc. Eval.

Z-IV-2000-21

5/18/2000

Page 2

2. would protect and have minimum impact on coastal ecosystems in the immediate area;
3. would provide continued and adequate public access to and along shorelines due to the recreational value of the nearby shoreline areas; and
4. would not have an adverse impact to the SMA.

SHORELINE SETBACK VARIANCE

The shoreline setback variance is necessary to accommodate the realignment of the public beach access-pedestrian path, public showers, surf racks, and renovation of the existing swimming pool. The visibility of these improvements should be negligible and should not generate adverse impacts to the abutting shoreline. To properly review the setback variance improvements, the applicant should submit to the Planning Department as more detailed plans become available, the specific location of the proposed improvements. The "shoreline" should also be staked out and be visible prior to and during all phases of construction in order to verify the final setbacks for the ocean front apartment buildings.

PROJECT DEVELOPMENT USE PERMIT:

Certain exceptions or "variances" from CZO development standards that are sought through the Project Development Use Permit are reasonable within the context of the entire project. Such variances as described by the applicant include nonconforming "landlocked" parcels, location of apartment-hotel uses per lot, lot coverage, and setback distances between buildings and property lines. Because these variances are generated primarily by the layout of the revised six-lot subdivision, each nonconforming situation should be acknowledged as a deed restriction in each of the affected lots. The 5 feet setback proposed for the porte cochere (Building 100) is reasonable. The immediate surroundings relative to the location of the structure are considered special circumstances applicable to the property because the adjacent lot it is setback from is in favor of the applicant by way of a utility easement contained in the adjacent lot.

The applicant should also explore, before final lot layout is confirmed, other possible alternatives to minimize the nonconforming conditions as described above and in its supplemental report. For example, the nonconforming accesses for the "landlocked" parcels can be avoided if pole sections are designed for each lot and connected to the main driveway entrance.

Other exceptions as sought through the Project Development Use Permit process are noted as follows:

1. Offstreet Parking for Time Share Sales Office The waiving of the provision of 35 offstreet parking stalls during normal and daily business hours (Exhibit D,

Marriott Ownership Resorts, Inc. Eval.

Z-IV-2000-21

5/18/2000

Page 3

Supplemental Report) for the time share sales office is substantial. While the applicant is requesting this waiver on the basis that potential customers will be shuttled, other potential customers may also include free independent travelers. It would be difficult to enforce and rely on this reason for granting this exception. Therefore, the applicant should reassess its offstreet parking plan.

2. Hurricane Iniki Ordinance

- a. An exception to the hurricane ordinance that requires the reconstruction of the use on the same building footprint warrants consideration since it would prohibit reconstruction projects of this nature. In this instance, the use has changed from a hotel to an apartment-hotel. Strict adherence to the ordinance creates an unreasonable hardship for a developer to design a totally brand new concept and layout for a project of this size.
- b. Density – Density calculations for the apartment-hotel should be subject to the review of the certified shoreline survey for the property. The survey is necessary to verify the actual land area and the location of the Open District. If all or a portion of Open District as depicted on the zoning map are now situated below the shoreline as a result of the effects of Hurricane Iniki, the density calculation for the project may change. Therefore the 227 apartment units and 7 hotel rooms cannot be confirmed at this time.

3. Overall Offstreet Parking for the Project - The applicant's request to apply a parking ratio of 1.5 stalls per unit to 1.43 stalls per unit is considered a minimum departure from the standards. Otherwise, the applicant intends to comply with all other offstreet parking standards for commercial and office related uses, including the provision of 10 stalls designated solely for use by the general public.

The applicant has demonstrated that the project will be reconstructed with minimum impact to the environment and that certain improvements required for a project of this nature will be provided. In order to insure proper integration of the project into the neighborhood and surrounding community, the following should also be recognized at this time:

1. Disposal of Demolition Material - The applicant has adequately demonstrated its intent to implement a waste disposal program during demolition work and conducted in a manner that would be in the best interest of the safety and welfare of residents and landowners nearby. The waste management and disposal program must be submitted to the Public Works for review and comment prior to demolition work.
2. Access - Access to the apartment project should be limited to the existing main entrance to the property. As represented no access shall be allowed on the east side of the parcel along Hoone Road. Any requests for temporary access along the east side of the property during construction of the project should be reviewed by the Planning Department and Public Works Department. In addition to vehicular access,

Marriott Ownership Resorts, Inc. Eval.

Z-IV-2000-21

5/18/2000

Page 4

provisions for pedestrian access such as sidewalks along the main driveway up to its intersection with Poipu Road should be provided. The applicant is advised that Section 9-2.3(e)3 of the Subdivision Ordinance requires the provisions of sidewalks in Resort Districts with densities permitted at 10 or more units per acre.

3. Utilities - All electrical, water, sewer, communication utilities are available and the development should not overburden existing utility systems in the area. In order to enhance traffic and pedestrian safety, street lights should also be planned for the main entrance driveway in accordance with Section 9-2.7(a)(4) of the Subdivision Ordinance. Section 9-2.7(a)(3) further requires that all electrical utility lines, street light wiring and other communications services must be installed underground.

2. Restrictions on Certain Commercial Uses on Campus

- a. The time share sales office should be used solely for the purpose of selling and re-selling time share units in the project or other similar time share units in other projects owned by applicant.
- b. No commercial beach concessions should be established along the shoreline unless reviewed and approved by the Planning Department or Planning Commission.

3. Other Proposed Commercial and Accessory Uses

- a. The proposed 100-150 seat restaurant should be in the best interest of the general public and local community. The applicant is advised, however, that the 10 offstreet public parking stalls plus the 28 stalls (based on 1 stall for every 200 square feet and 15 employees) may not be sufficient. In view of the proposed restaurant, an overflow offstreet parking plan should be adopted to avoid parking lot user conflicts between the general public, guests and visitors residing in the project.
- c. The convenience store and recreational facilities are considered appropriate and accessory to the overall project and should not generate adverse impacts to the surrounding community. The child care center is also considered an accessory to the project provided that it is limited to the residents and guests on campus and not to the broader community.

3. Building Design Review - Due to the conceptual nature of the plans submitted at this time, the applicant is advised that the overall project shall be subject to a complete design review process prior to building permit review application. In addition to the proposed structures, this process should include proposed grading plans for the property with finished floor elevations of each building cluster and a landscaping master plan. In no way should the existing ground elevation of the property be graded and filled to accommodate the subfloor parking lot.

3. Building Exterior and Outdoor Lighting Fixtures – Due to the annual Shearwater fallout season on Kauai, the applicant should exercise good judgement in selecting the type of outdoor lighting fixtures proposed on campus such as pedestrian path lights and security lights. Downward facing lights are preferred over bare bulb or upward facing lights used to illuminate buildings or landscaping. The applicant may also consider a Shearwater fallout prevention plan that reduces outdoor lighting and is sensitive to those prevailing times of the year when Shearwater fallout is most frequent.

POIPU PARK IMPROVEMENTS

The applicant's willingness and commitment to construct the improvements at no cost to the County would definitely benefit the general public and users of the beach park facilities. It is also an opportunity to beautify the land. The intended improvements can be acknowledged at this time subject to the approval of the County Administration and Kauai County Council. A new land use permit application including a Use Permit and Special Management Area Use Permit is necessary and if approved, the improvements should be completed prior to issuance of occupancy permit for the apartment-hotel.

CONCLUSION:

Based on the foregoing, the following are concluded:

1. Relative to the Special Management Area Use Permit, the development should not have any substantial adverse environmental or ecological effect. Any adverse environmental or ecological effect that may result will be minimized to the extent practicable and is clearly outweighed by the public health, safety, and welfare, and other compelling interest.
2. Relative to the Shoreline Setback Variance, the setback variance is necessary to accommodate the pedestrian path and convenience of the public enjoying ocean based recreational activities along the immediate shoreline of the property. The proposed improvements (beach access, showers, surfboard rack, renovated swimming pool) should not generate any adverse impacts to the shoreline.
3. Relative to the Project Development Use Permit and Class IV Zoning Permit, the exceptions sought for the development of the project are reasonable for a project of this nature and size. The applicant is advised, however, that certain conditions as discussed previously in staff's evaluation are necessary in order to insure proper integration of the project into the Poipu resort community.

It is finally concluded that due to the conceptual nature of the project at this time, a design review process should be required to address the various development standards discussed herein. The design review process should include the final grading plans and building pad elevations. Grading and filling that would substantially increase the height of the proposed buildings or increase the existing ground elevation should be prohibited.

Marriott Ownership Resorts, Inc. Eval.

Z-IV-2000-21

5/18/2000

Page 6

RECOMMENDATION:

Based on the foregoing reasons, it is hereby recommended that Project Development Use Permit U-2000-16, Special Management Area Use Permit SMA(U)-2000-3, Shoreline Setback Variance SSV-2000-2, and Class IV Zoning Permit Z-IV-2000-21 be approved subject to the following conditions:

1. Relative to the applicant's proposed Poipu Park improvements and in order to initiate proper review of the proposed project, the following are recommended:
 - a. As represented to the Planning Commission at its meeting held on March 9, 2000 and provided that it is acceptable to the County of Kauai, the applicant shall implement and construct the proposed improvements (parking, drainage, landscaping, and traffic circulation) on the abutting parcel to the east owned by the County of Kauai identified by Tax Map Key 2-8-17:11.
 - b. Within one year from the date of Planning Commission approval of the subject permits, the applicant shall obtain the necessary approvals or clearances from the Kauai Planning Commission, Kauai County Council, Public Works Department, and other applicable County or State agencies, to construct the proposed improvements.
 - c. The park improvements shall be completed in the same period specified in Condition #2d below.

Due to the conceptual nature of the improvements proposed at this time, the Planning Commission reserves the authority to impose additional conditions relative to the specific nature and type of improvements planned for the County parcel (hereinafter "County Park"). Such conditions can be imposed, if any, during the review of the required Special Management Area Use Permit and other land use permits as deemed necessary. Permit requirements shall be resolved with the Planning Department.

2. Relative to construction of the entire project, the applicant shall:
 - a. prior to building permit application, submit to the Planning Department for design review, each building cluster in the project;
 - b. submit, relative to building design review, grading plans showing existing and finished grade elevations for the project, and building exterior and roof material/color schemes;
 - c. obtain building permit approval within one year from the date of Planning Commission approval; and

- d. complete construction of the entire project approved under the subject permits within two (2) years from the date of issuance of building permit. "Complete construction" shall mean that the project shall be substantially complete and occupancy permit issued.
3. Prior to building permit application, the applicant shall remit payment of the following fees:
 - a. Environmental Impact Assessment Fee (based on \$1,000 per unit for each apartment and hotel room; and
 - b. a Park Dedication Fee in lieu of land.

Relative to the park dedication fee, the applicant is advised that an appraisal report of the overall project must be submitted for referral to the County of Kauai Real Property Division in order to determine the amount of the park dedication fee. Furthermore, no credit for this fee shall be given for the County Park improvements on the adjacent parcel.

4. As represented, the project shall include a restaurant with a seating capacity of 100-150 persons that will be open to the general public.
5. In order to confirm the allowable density for the project, the applicant shall submit a certified shoreline survey for the property. A certified shoreline survey conducted within 6 months of the filing of the application is acceptable. Upon receipt of the survey, the applicant shall delineate the shoreline in the field for inspection purposes and made visible throughout the construction of the entire project.
6. Relative to the Shoreline Setback Variance, the applicant shall construct a paved, improved lateral public pedestrian access ("Beach Path") along the entire shoreline fronting the project including a pedestrian access connecting the Beach Path to the County Poipu Beach Park at Hoone Road. The Beach Path shall be a minimum width of 6 feet and dedicated as an easement to the County in perpetuity. As agreed to by the applicant, the applicant shall:
 - a. install two public showers and two surfboard washing racks at a location to be resolved with the Planning Department;
 - b. allow public pedestrian access during all phases of construction of the project.

Prior to building permit application, the applicant shall resolve with the Planning Department, the final location of all proposed improvements and renovations based on the certified shoreline survey, including areas to be planted with new landscaping. The applicant is advised that easement documents for the lateral public beach access that pre-existed Hurricane Iniki must be modified or

cancelled. Subsequently, easement documents for the new realigned pedestrian access shall be submitted to the Planning Department for review and approval, executed, and recorded prior to issuance of building permit. The existing swimming pool to be repaired and renovated in the shoreline setback area shall not be increased in size.

7. Commercial beach concessions and activities within or along the shoreline setback area shall be prohibited unless reviewed and approved by the Planning Department or Planning Commission.
8. The applicant shall, in consultation with the Department of Public Works, adopt a waste management and disposal plan for the removal and disposal of materials generated as a result of all demolition work associated with the existing Waiohai Hotel facilities. The plan shall maximize the recycling of such materials and minimize their disposal at the Kekaha Sanitary Landfill. The plan shall be submitted for review and approval by the Public Works Department prior to commencement of any demolition work on the subject property.
9. The applicant shall resolve its view enhancements to mitigate any visual impacts to the adjacent Kiahuna Plantation apartments. Grading and filling should be minimized to avoid any substantial increase in building heights and building floor elevations. It shall be the applicant's responsibility to inform the Planning Commission and Planning Department that this issue has been satisfied prior to building permit application. The applicant shall also develop a plan for landscaping the open parking lot situated on the mauka side of the property for mitigating the effects of lighting to the Kiahuna Plantation resort-residential (hereinafter apartment) project.
10. The landscaping plan to be developed for the project's overall view enhancements shall be incorporated into the overall landscaping plan for the project and subject to the review and approval of the Planning Department. Any existing landscaping (trees, plants) to be saved shall be identified on the overall layout of the master landscaping plan.
11. As represented, the applicant shall meet all CZO parking requirements for all uses proposed on the property with the exception of the resort-residential apartment units. For these units, the applicant shall provide a minimum of 1.4 parking stalls per unit. In addition to the offstreet parking requirements for the project, a total of ten (10) public parking spaces shall be provided. In consideration of the proposed public restaurant, the applicant shall adopt and implement an overflow offstreet parking plan in order to minimize conflicts between public restaurant users and time-share users residing on the project.
12. The applicant shall re-evaluate the offstreet parking layout for the entire project and provide additional stalls for the time share sales office. The number of stalls to be provided shall be resolved with the Planning Department.

13. The applicant is advised to exercise proper outdoor lighting techniques and select appropriate lighting fixtures to address the annual Shearwater fallout season. The applicant shall utilize downward facing lighting fixtures to the maximum extent possible to avoid attracting the seabird. The applicant may also adopt a Shearwater Protection Program that reduces lighting and is sensitive to those prevailing times of the year when Shearwater fallout is most frequent. The protection program shall be submitted to the Federal Fish and Wildlife Services and Planning Department for review and comment prior to adoption of the program.
14. Any signs to be used on the subject property that are visible from any public roadway, park, or other public place shall comply with the provisions of the County of Kauai Sign Ordinance.
15. Relative to access, there shall be no vehicular access from the east side of the property at the dead end section of Hoone Road. Any temporary access plans sought during construction of the project from points other than the main entrance along Poipu Road shall be subject to the review and comment by the Public Works Department and Planning Department.
16. Due to the archaeological sensitivity associated with the property, the applicant shall comply with the following conditions as recommended by the State Historic Preservation Division:
 - a. A qualified archaeologist shall be hired to conduct monitoring during the renovation, redevelopment and landscaping in the sandy substrate areas, areas which will be based on the soils engineering report. Monitoring shall be on-site. The applicant shall resolve all applicable conditions as recommended by the State Health Department, Water Department, Public Works Department, and Fire Department during initial land alteration and then shall be on-call as needed. Prior to starting the monitoring work, an acceptable monitoring plan (scope of work) shall be submitted to the State Historic Preservation Division for review and approval. That monitoring plan will spell out a process for treating sites that are found for evaluating significance in consultation with our Division and for developing and executing mitigation work with the approval of our Division. It must be clear that if historic sites, including burials, are uncovered during the monitoring, construction must stop in the immediate vicinity and the archaeologist shall be allowed sufficient time to evaluate the site and carry out mitigation as needed. The plan must include provisions for an acceptable monitoring report, documenting all the findings.
 - b. If burials are found, a burial treatment plan shall be prepared for inadvertent burial discoveries encountered during the monitoring of the project. The procedures outlined in Chapter 6E-43 shall be followed. Should burials be removed, their archaeological context (including plan maps and profiles) shall be documented and included in the monitoring report.

- c. A preservation plan for Kiahouna Heiau will be developed. It must be acceptable to the State Historic Preservation Division. The division must verify in writing to the County when the plan is acceptable and when it has been successfully carried out.
17. Approval of the Project Development Use Permit (per the applicant's overall summary and description of the particular development standards sought for the project, Section VIII-Variance, pages 12 to 16, Supplemental Report dated March 9, 2000) does not construe approval of the current and pending lot layout design. The applicant shall resolve with the Planning Department the final layout and sizes of the 6 lots as proposed in the subdivision process. Other alternative layouts for the "landlocked lots" should be explored that involves easements in favor of one lot to the other or connecting pole sections to the main entry/driveway or Hoone Road. Details can be resolved at time of subdivision application review including but not limited to the following:
- a. construction of all utilities underground; and
 - b. construction of sidewalks and street lights along the main entrance beginning at its intersection with Poipu Road.

Unless certain exceptions to the CZO standards can be avoided or minimized by modifying the proposed 6-lot subdivision, the Project Development Use Permit acknowledges approval of the exceptions as discussed in staff's evaluation:

- a. setbacks between buildings
 - b. setbacks between buildings and property lines
 - c. access for the 6-lot subdivision
 - d. reduction of the parking ratio for the apartment-hotel from 1.5 to 1.43 stalls per unit
 - e. lot coverage
 - f. apartment-hotel use from lot to lot within the project
 - g. waiving the requirement of constructing the project on the former footprint of the Waiohai Hotel
 - h. 5 feet setback for the Port Cochere of Building 1100
18. The time share sales office shall be limited solely for the purpose of selling and re-selling time share units within the proposed project and other similar time-

Marriott Ownership Resorts, Inc. Eval.

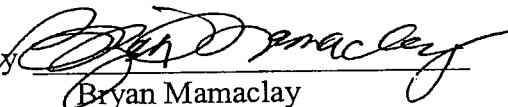
Z-IV-2000-21

5/18/2000

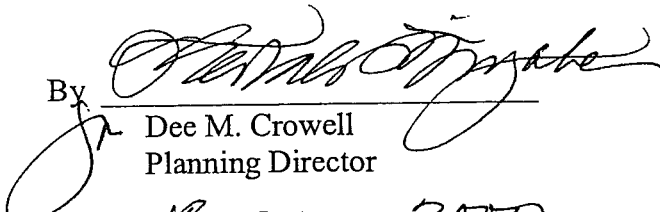
Page 11

share units in other projects owned by Marriott Ownership Resorts, Inc.. The sale of other local or non-local real estate including the partial or complete conversion of the time share sales office into a general real estate office shall be prohibited.

19. The applicant shall re-evaluate the offstreet parking layout and amount of parking stalls for the entire project and provide additional stalls for the time share sales office. The number of stalls to be provided shall be resolved with the Planning Department.
20. The applicant shall resolve all applicable conditions as imposed by the Water Department, Fire Department, Public Works Department, and State Health Department.
21. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval.
22. The applicant is advised that prior to or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

By 
Bryan Mamaclay
Planner

Approved & Recommended to Commission

By 
Dee M. Crowell
Planning Director
Date: 18 May 2000

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473, LIHUE, HI 96766

FROM: Dee Crowell, Director (BRYAN) DATE: December 16, 1999

SUBJECT: Zoning Permit Application Z-IV-2000-21, Project
Development Use Permit Application P.D. U-2000-16,
Shoreline Set Back Variance SSV-2000-2 and Special
Management Area Use Permit SMA(U)-2000-3, MARRIOTT
OWNERSHIP RESORTS, INC.

TO: (X) PW - Engineering Div.
() PW - Sewers
() PW - Parks & Recreation
() PW - Solid Waste
(X) Water Dept.
(X) State Health Dept.
(X) Historic Preservation Div.-DLNR
(X) Fire Dept.
() Economic Development
() Kauai Historic Preservation Review Commission (KHPRC)
() Kauai Highways Division - State DOT
() Airports Division - State DOT
() Harbors Division - State DOT
() Land Use Commission - State DBEDT
() Office of Planning - State DBEDT
() State Dept. of Agriculture
() Kauai Land Management Div. - State DLNR

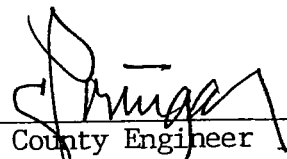
RECEIVED
DEC 27 1999
COUNTY OF KAUAI

FOR YOUR COMMENTS (pertaining to your department): 12/21/99 PW12.214

Please see attachment for comments.

Signature _____

County Engineer



Please return comments by January 3, 2000. Mahalo!

KK/cu

EXHIBIT
3

Z-IV-2000-21
P.D. U-2000-16
SSV-2000-2
SMA-2000-3
Marriott Ownership Resorts, Inc.
12/21/99

FOR YOUR COMMENTS:

1. As mentioned in the application, portion of the site is shown to be in the high coastal flood hazard zone. Building will need to be elevated and designed to resist flooding.
2. Portion of the site also serves as a ponding basin for the more frequent storm flows. Ponding basin capacity will need to be maintained. It may also be necessary to enlarge the ponding basin volume and seepage capacity especially with the proposed buildings, road, parking, and other impermeable surfacing which generates more runoff and reduces seepage.
3. The applicant proposes to resubdivide the property to facilitate the phased construction. The subdivision ordinance requires each lot to have access to a roadway. Subdivision roads are required to be designed and constructed to County Road Standards. We will not review or approve a roadway plan that does not comply to Section 9-2.3, Street, in the Kauai County Code of Ordinance.
4. The traffic report indicates that a second access at Hoone/Hoowili Road is to be used. However, the conceptual plan indicates that there will be no access to Hoone/Hoowili Road. We are concerned with parking in the area especially if the project employees, visitors, and guests will overflow into the County parking lot. The problem becomes more acute since a portion of Hoone Road and the parking lot is an unimproved site.

MARYANNE W. KUSAKA
MAYOR



COPY

DEE M. CROWELL
PLANNING DIRECTOR

SHEILAH N. MIYAKE
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 241-6677
FAX (808) 241-6699

PLANNING DEPARTMENT

April 26, 2001

Max W.J. Graham, Jr., Esq.
Belles Graham Proudfoot & Wilson
Attorneys at Law
4334 Rice Street, Suite 202
Lihue, HI 96766

Subject: Use Permit U-2001-5
Special Management Area Use Permit SMA(U)-2001-6
Class IV Zoning Permit Z-IV-2001-29
Tax Map Key 2-8-17:11 Poipu, Kauai

The Planning Commission at its meeting held on April 24, 2001 approved the subject permits to allow the construction of a paved offstreet parking lot with landscaping, underground electrical and waterlines, and vehicular circulation and access improvements on lands owned by the County of Kauai immediately mauka of the Poipu Beach Park facilities. Approval is subject to the following conditions:

- * 1. Based on the current representations of the applicant and as represented to the Planning Commission at its meeting held on March 9, 2000 and June 22, 2000, the applicant shall implement and construct the proposed improvements (parking lot, drainage, underground irrigation and electrical lines, landscaping and traffic circulation) on the subject property at a cost not to exceed \$800,000. The parking lot improvements shall be completed on or before June 22, 2004.
- * 2. Due to the conceptual nature of the improvements approved at this time, the applicant shall resolve with the Planning Department and Public Works Department:
 - a. specific site layout and construction plans for the parking lot improvements;
 - b. landscaping plans

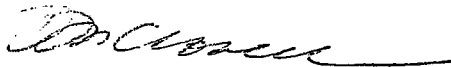
EXHIBIT
4

Mr. Max W.J. Graham, Esq.
April 26, 2001
Page 2

3. The parking lot created under the subject permits shall be for the sole benefit and use by the general public. In this instance and primarily because of the applicant's abutting property to the west, the "general public" shall not include employees and guests of the applicant's 237-unit apartment-hotel project.
4. The applicant shall enter into an agreement with the County of Kauai, that Marriott Ownership Resorts Inc. including any future property management entities, successors or owners of the property, shall participate in enforcing the offstreet parking plan for the apartment-hotel project. This agreement shall include a statement that an offstreet parking enforcement plan shall be formulated that will educate guests and owners of units in the apartment-hotel project the distinction between parking on the resort campus and parking on the subject property.
5. Prior to construction of the parking lot improvements, an accounting system of the actual improvement costs to build the parking lot improvements shall be established between the applicant and County of Kauai in order to verify whether such costs will be less than or in excess of the \$800,000 "cap". This system shall include a definition of "actual improvement costs" or an agreement of what an actual improvement cost is in order to avoid any delay in the accounting system as construction progresses.
- * 6. Since the County of Kauai will be the owner of the parking lot, the improvements shall be conveyed via dedication deed or other appropriate legal document. Draft copies of the conveyance document shall be submitted to the Planning Department for review and acceptance by the County Attorney's Office.
- * 7. As agreed to by the applicant and to reiterate the conditions imposed on the apartment-hotel project, the cost of the parking lot improvements shall not qualify for any credit from the park dedication fee.
8. Since this project is on public land and as recommended by the Public Works Department, the construction plans shall be submitted to the Disability and Communication Access Board for review and approval.
9. Upon completion of the apartment-hotel project, the applicant shall be responsible in insuring that the temporary access road is barricaded with landscaping or a visible barrier. Any improvements that may have been placed in the road such as a roadway base or utilities shall also be removed. The applicant is further advised that the use of this access road on a permanent basis or for other uses in favor of the apartment-hotel project shall be subject to further review and approval by the Planning Commission and County of Kauai.

Mr. Max W.J. Graham, Esq.
April 26, 2001
Page 3

10. The applicant shall resolve with the respective agency, the recommendations of the State Health Department and Department of Water.
11. Due to the archaeological sensitivity associated with the subject property and adjacent parcels, the applicant shall comply with the conditions imposed by the State Historic Preservation Division (letter dated February 26, 2001) and the Kauai Historic Preservation Review Commission (memorandum dated March 16, 2001).
12. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with conditions of approval.
13. The applicant is advised that prior to or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).



Dee M. Crowell
Planning Director

- c: Public Works (Engineering and Parks and Recreation)
Water Department
State Health Department
State Historic Preservation Division - DLNR
Fire Department
Real Property Division

SUBJECT TO CHANGE

RE: Use Permit U-2001-5
Special Management Area Use Permit SMA(U)-2001-6
Class IV Zoning Permit Z-IV-2001-29

APPLICANT: Marriott Ownership Resorts Inc.

EVALUATION

The subject permits are necessary to implement land use permit conditions of approval for the applicant's proposed 237-unit apartment-hotel situated immediately to the west. Overall the applicant's request should be in the best interest of the public since the following benefits will be generated:

1. The existing "parking lot" will be paved and improved with designated access points thereby mitigating dust nuisances that may have been associated with the site, generating safer vehicular traffic movements and enhancing pedestrian safety to and from the parking lot.
2. The landscaping will physically beautify the area and complement the function of the Poipu Beach Park facilities as a major destination for shoreline based recreational activities.
3. The project will restore public and community events that have previously occurred on the site.
4. The improvements will be constructed and dedicated to the County of Kauai at no cost to the County.

USE PERMIT

The proposed project should not detract from but complement the Special Treatment "Public" and "Cultural" designations of the property. It will serve the public need for offstreet parking at Poipu Beach Park and therefore will be welcomed by the general public as an amenity of the beach park facilities. Provided that the applicant adheres to the requirements of the State Historic Preservation Division, the proposed parking lot should not adversely affect any known cultural historic sites that have been associated with the area in the past. Cultural sensitivity is high primarily across Hoowili Road on Tax Map Key 2-8-17:13 and 24. Any disturbance to the site has been limited to this section of the property and to its current use as an unimproved parking lot. Other elements of the project relative to the use permit procedure are noted as follows:

1. Landscaping

While landscaping within the parking lot will definitely beautify the area, a final landscaping plan should be submitted for review and approval together with the

Public Works-Parks and Recreation Division since the County of Kauai will assume responsibility and maintenance once the improvements are completed. Landscaping at the driveway intersections should be also of the type that can be kept at lower heights to maintain adequate sight distance for traffic.

2. Underground Utilities

Other than shallow subsurface grading that will occur to accommodate the paved parking lot, underground trenching is necessary to accommodate the electrical and irrigation lines proposed in this project. Since an archaeological monitor will be present during grading and trenching activities during construction, there should be minimum impacts to cultural sites or historic findings.

3. Drainage

The existing drainage pond will be kept since it will be an integral part of maintaining the natural drainage patterns of the immediate and surrounding area. As depicted on the landscape plan, the perimeter of the pond will be appropriately landscaped. Maintenance of the drainage pond should not generate adverse impacts to the neighborhood but serve as a critical component of the natural drainage system.

In order to acknowledge conveyance or dedication of the improvements to the County of Kauai certain conditions must be considered in this process:

- a. The parking lot must be for the sole benefit and use by the general public. However, the general public should not include employees and guests of the applicant's apartment-hotel project.
- b. An accounting system of the actual improvement costs to build the parking lot improvements must be established between the applicant and County of Kauai in order to verify whether such costs will be less than or in excess of the \$800,000 "cap".
- c. Actual improvement costs also need to be defined and agreed upon prior to construction in order to avoid any delay in the accounting system as construction progresses.
- d. Since the County of Kauai will be the owner of parking lot, the improvements should be conveyed via dedication deed or other appropriate legal document.
- e. As agreed to by the applicant and to reiterate the conditions imposed on the apartment-hotel project, the cost of the parking lot improvements will not qualify for any credit from the park dedication fee.

- f. Since this project is on public land, the construction plans should be submitted to the Disability and Communication Access Board for review and approval, as recommended by the Public Works Department.

Temporary Access Road

The temporary access road as situated on the westerly boundary of the parking lot site will serve as access for the applicant during construction of the apartment hotel project. Under the terms of the revocable right-of-entry obtained by the applicant from the County of Kauai, the temporary access has been provided specifically for this purpose and will terminate under the time constraints imposed for the completion of the entire apartment-hotel project. "Completion" in this instance means issuance of occupancy permit within three (3) years from issuance of building permit from the Building Division.

Upon completion of the apartment-hotel project, the applicant should be responsible in insuring that access within this area of the property by the general public including guests or residents of the apartment-hotel is prohibited. This may be done with landscaping or a visible barrier. Any improvements that may have been placed in the road such as a temporary roadway base or utilities must be removed.

The applicant is further advised that the use of this access road on a permanent basis or for other uses in favor of the apartment-hotel project shall be subject to further review and approval by the Planning Commission and County of Kauai.

SPECIAL MANAGEMENT AREA USE PERMIT

Coastal Ecosystems

There should be no effects to coastal ecosystems since the parking lot is substantially mauka of the shoreline. Excess drainage from storm waters are intended to remain on the property and not drain on to nearby shoreline areas.

Scenic and Open Space Resources

Provided that proper landscaping techniques are applied, the project will beautify the area and complement the visual ambience of the adjacent resort facilities and public beach park. No buildings are proposed and therefore the project should not be associated with impacting views or congesting the scenery of the area.

Recreational Resource

The improved parking lot will enhance and function as an accessory to the public's use of recreational resources at Poipu Beach Park. The improvements will also enhance the

value of the subject property as public land and increase public recreation opportunities since public and community events will be restored on the site upon completion.

Historic Resources

Based on the comments from the Kauai Historic Preservation Division and the State Historic Preservation Division, the project has been adequately reviewed for compliance and measures are in place to minimize impacts to cultural or historic resources. As represented by the applicant, an archaeological monitor is expected to be present on site during all phases of the project including planting of landscaping.

Economic Uses

The proposed project is not expected to have direct long term, negative effects on the local economy. Indirect and positive economic benefits, however, should result since the project will enhance the desirability and experience of the area which in turn is beneficial to the Poipu area since it serves as major visitor destination of the island.

Coastal Hazards

The County of Kauai flood insurance rate maps identifies portions of the subject situated in or near a flood zone. The proposed development will not involve any substantial filling should not cause any increase in flooding on the lot or the immediate area since the parking lot and drainage pond are being designed to retain flood waters on the property.

Managing Development

The applicant has appropriately met with local community organizations including islandwide representatives and organizations of the resort and business community in order to disclose the proposed project. The applicant therefore has demonstrated its efforts to inform the public of the project.

Public Participation

Through the meetings with local community organizations and representatives and organizations of the resort and business community, public participation was encouraged and obtained during the development review process.

Beach Protection

The proposed project physically will not have any impact to the shoreline, Poipu Beach Park facilities, and sandy beach areas of the immediate area.

Marine Resources

The proposed project physically will not have any impact on or use any nearshore marine resources.

Based on the foregoing, the proposed project meets the goals and objectives of the coastal zone management program. Because this project is limited to landscaping and asphalt or concrete paving, it should not be generate any adverse visual or physical impacts to the Special Management Area.

Furthermore, the proposal does not:

- a. reduce the size of any beach or other usable area for public recreation.
- b. reduce or impose restrictions upon public access to nearby tidal and submerged lands or beaches within the special management area.
- c. Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries or existing agricultural uses of land in the area.

CONCLUSION

Based on the foregoing findings and evaluation, it is concluded that the proposed project conforms to the criteria in granting a Use Permit in that the use should not generate adverse impacts to the surrounding neighborhood. Overall, the parking lot should not detract from the designated zoning district of the land nor should the use adversely impact historic or cultural resources.

It is finally concluded that the proposed project conforms to the goals and objectives of the coastal management program and with the policies and guidelines of the Special Management Area Rules and Regulations in that:

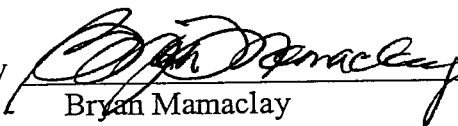
1. The development will not have any substantial adverse environmental or ecological effect. Any adverse environmental or ecological effect that may result will minimized to the extent practicable and is clearly outweighed by public health, safety and welfare, and other compelling public interest.
2. The development is consistent with the County General Plan and the Comprehensive Zoning Ordinance of the County of Kauai.

RECOMMENDATION

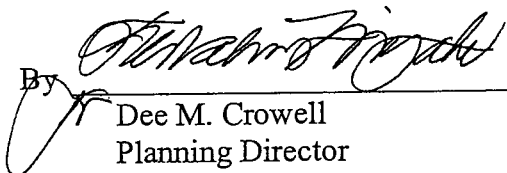
Based on the foregoing reasons, it is hereby recommended that Use Permit U-2001-5, Special Management Area Use Permit SMA(U)-2001-6 and Class IV Zoning Permit Z-IV-2001-29 be approved subject to the following conditions:

1. Based on the current representations of the applicant and as represented to the Planning Commission at its meeting held on March 9, 2000 and June 22, 2000, the applicant shall implement and construct the proposed improvements (parking lot, drainage, underground irrigation and electrical lines, landscaping and traffic circulation) on the subject property at a cost not to exceed \$800,000. The parking lot improvements shall be completed on or before June 22, 2004.
2. Due to the conceptual nature of the improvements approved at this time, the applicant shall resolve with the Planning Department and Public Works Department:
 - a. specific site layout and construction plans for the parking lot improvements;
 - b. landscaping plans
3. The parking lot created under the subject permits shall be for the sole benefit and use by the general public. In this instance and primarily because of the applicant's abutting property to the west, the "general public" shall not include employees and guests of the applicant's 237-unit apartment-hotel project.
4. The applicant shall enter into an agreement with the County of Kauai, that Marriott Ownership Resorts Inc. including any future property management entities, successors or owners of the property, shall participate in enforcing the offstreet parking plan for the apartment-hotel project. This agreement shall include a statement that an offstreet parking enforcement plan shall be formulated that will educate guests and owners of units in the apartment-hotel project the distinction between parking on the resort campus and parking on the subject property.
5. Prior to construction of the parking lot improvements, an accounting system of the actual improvement costs to build the parking lot improvements shall be established between the applicant and County of Kauai in order to verify whether such costs will be less than or in excess of the \$800,000 "cap". This system shall include a definition of "actual improvement costs" or an agreement of what an actual improvement cost is in order to avoid any delay in the accounting system as construction progresses.
6. Since the County of Kauai will be the owner of the parking lot, the improvements shall be conveyed via dedication deed or other appropriate legal document. Draft copies of the conveyance document shall be submitted to the Planning Department for review and acceptance by the County Attorney's Office.
7. As agreed to by the applicant and to reiterate the conditions imposed on the apartment-hotel project, the cost of the parking lot improvements shall not qualify for any credit from the park dedication fee.

8. Since this project is on public land and as recommended by the Public Works Department, the construction plans shall be submitted to the Disability and Communication Access Board for review and approval.
9. Upon completion of the apartment-hotel project, the applicant shall be responsible in insuring that the temporary access road is barricaded with landscaping or a visible barrier. Any improvements that may have been placed in the road such as a roadway base or utilities shall also be removed. The applicant is further advised that the use of this access road on a permanent basis or for other uses in favor of the apartment-hotel project shall be subject to further review and approval by the Planning Commission and County of Kauai.
10. The applicant shall resolve with the respective agency, the recommendations of the State Health Department and Department of Water.
11. Due to the archaeological sensitivity associated with the subject property and adjacent parcels, the applicant shall comply with the conditions imposed by the State Historic Preservation Division (letter dated February 26, 2001) and the Kauai Historic Preservation Review Commission (memorandum dated March 16, 2001).
12. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with conditions of approval.
13. The applicant is advised that prior to or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

By 
Bryan Mamaclay
Planner VI

Approved & Recommended to Commission

By 
Dee M. Crowell
Planning Director

Date: 4.18.01

RE: Special Management Area Use Permit SMA(U)-2001-6
Use Permit U-2001-5
Class IV Zoning Permit Z-IV-2001-29

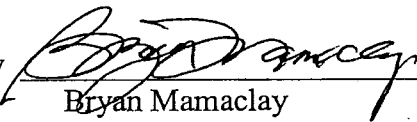
APPLICANT: Marriott Ownership Resorts, Inc.

ADDITIONAL FINDINGS:

The public hearing for the subject permits was held on March 13, 2001 at which time the Planning Commission heard and received testimony from public witnesses relative to the proposed project. A concerned resident noted its objection to the proposed parking lot, however, the majority of testimony received from residents and representatives of the business and resort community clearly indicated an overwhelming support for the project due to the inherent benefits that would be generated by the development of this improved parking lot in that:

1. additional and improved offstreet parking would be available for the general public and users of the Poipu Beach Park facilities;
2. beautification of this area would enhance the experience for both residents and visitors residing in the immediate area; and
3. additional space ~~that~~ would be available for special events in the interest of the general public.

Comments from the Kauai Historic Preservation Review Commission and the State Health Department attached herewith were timely received prior to and upon closing of the public hearing.

By 
Bryan Mamaclay
Planner


Date: 4-15-01

D.2.

APR 24 2001

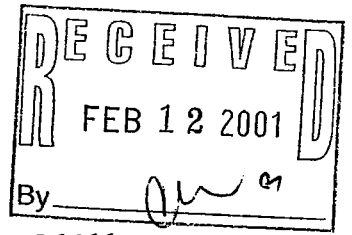
COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473
LIHUE, KAUAI, HAWAII 96766

MEMORANDUM

DATE: March 16, 2001
TO: Kauai County Planning Commission/Department
FROM: Kauai Historic Preservation Review Commission 
SUBJECT: Poipu Beach Park Parking Lot & Accessory Improvements
(TMK 2-8-17: 11, Poipu)

This is to inform you that the Kauai Historic Preservation Review Commission (KHPRC) met on March 1 and 15, 2001 to review the proposed improvements to the Poipu Beach Park parking lot area. The following recommendations are offered:

1. That the final monitoring report (or other report as deemed appropriate by SHPD) include references to the various maps that are on file at the Kauai Historical Society which show cultural resources in the project vicinity. Further, that oral history interviews be conducted with several long time residents of the area, such as but not limited to Red Tin, Abel Mederios, George Sueoka, Springwater Kaulili, Jr., to document historic resources, if any, which may have been situated at the project site.
2. That Dr. Kikuchi's recommendations be appropriately included or referenced in the monitoring plan and/ associated reports.
 - Landscaping of the parking lot should include Naupaka as well as other native plants
 - The Research Aims section of the Monitoring Plan states that the earliest occupation occurred and predated A.D. 500. Dr. Kikuchi indicated that that date was based on shells and when shells are tested, the dates come out earlier. His tests were based on ashes, carbon and soil and the results were dated A.D. 1300.
 - Item 5 of the Services To Be Provided section of the Monitoring Plan should include the provision that after research and analysis is complete, all artifacts, etc. are returned to Kauai for storage and safe keeping.
 - Similarly, item 9 should be revised to state that archaeological remains be repositied on Kauai – recommends the Kauai Community College since they will soon have a storage facility.
2. That these final reports be subject to the review and approval of SHPD in consultation with the KHPRC.



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473, LIHUE, HI 96766

FROM: Dee M. Crowell, Director (BRYAN) Date: February 6, 2001

SUBJECT: Zoning Permit Application Z-IV-2001-29 and Use Permit Application U-2001-25, and SMA Use Permit Application SMA(U)-2001-6, MARRIOTT OWNERSHIP RESORTS, INC.

- TO:
- PW – Engineering Div.
 - PW – Sewers
 - PW – Parks & Recreation
 - PW – Solid Waste
 - Water Department
 - State Health Dept.
 - State Historic Preservation Div. – DLNR
 - Fire Department
 - State Highways Div. – DOT
 - State Airports Div. – DOT
 - State Land Use Commission – DBEDT
 - State Office of Planning – DBEDT
 - State Dept. of Agriculture
 - U.S. Fish and Wildlife Service

PLANNING DEPT.
01 FEB 26 12:53
COUNTY OF KAUAI

FOR YOUR COMMENTS (pertaining to your department:)

see comments on attached sheet

CT:GNT:RY:GU/plo

February 22, 2001

A handwritten signature in cursive script that reads "Clyde Takekuma".

Clyde Takekuma, Chief
District Env. Health Program, Kauai

Please return comments by February 21, 2001. MAHALO!

ZONING PERMIT APPLICATION: Z-IV-2001-29
USE PERMIT APPLICATION: U-2001-25
SMA USE PERMIT APPLICATION: SMA(U)-2001-6
APPLICANT: MARRIOTT OWNERSHIP RESORTS, INC.

Based on our review of the application and our on-site survey of the property, we offer the following environmental health concerns for your consideration.

1. The property may harbor rodents that will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control" of Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
2. The applicable requirements of Chapter 11-46, entitled "Community Noise Control" of Title 11, HAR, pertaining to construction activities and stationary sources shall be complied with.
3. Temporary fugitive dust emissions could be emitted during site preparation and construction. In accordance with Chapter 11-60.1 entitled "Air Pollution Control", Title 11, HAR, effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by the construction work from impacting the surrounding area. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
4. In accordance with Chapter 11-58.1 entitled "Solid Waste Management Control", Title 11, HAR, the grubbed material, demolition waste and construction waste that are generated by the project shall be disposed of in a manner or at a site this is approved by the State Department of Health. The open burning of any of these wastes on or off site is prohibited.
5. National Pollution Discharge Elimination System (NPDES) permit may be required if more than five (5) acres are disturbed and storm water enters State waters.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when more detailed information is submitted.

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473, LIHUE, HI 96766

FROM: Dee M. Crowell, Director (BRYAN)

Date: February 6, 2001

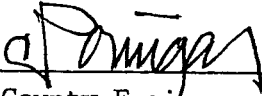
SUBJECT: Zoning Permit Application Z-IV-2001-29 and Use Permit Application U-2001-25, and SMA Use Permit Application SMA(U)-2001-6, MARRIOTT OWNERSHIP RESORTS, INC.

TO: (X) PW – Engineering Div.
() PW – Sewers
(X) PW – Parks & Recreation
() PW – Solid Waste
(X) Water Department
(X) State Health Dept.
(X) State Historic Preservation Div. – DLNR
(X) Fire Department
() State Highways Div. – DOT
() State Airports Div. – DOT
() State Land Use Commission – DBEDT
() State Office of Planning – DBEDT
() State Dept. of Agriculture
() U.S. Fish and Wildlife Service

PLANNING DEPT.
01 FEB 12 A5:38
COUNTY OF KAUAI

FOR YOUR COMMENTS (pertaining to your department:) 2/9/01 PW2.039

Detailed construction plans will need to be submitted to the Department of Public Works for review and approval. The plans must also be submitted to the Disability and Communication Access Board for review and acceptance.


County Engineer

Please return comments by February 21, 2001. MAHALO!

KK/cu

EXHIBIT
6

COUNTY OF KAUAI
PLANNING DEPARTMENT

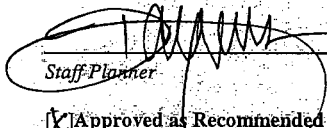
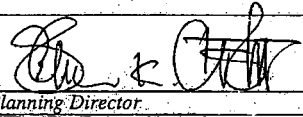
S U B D I V I S I O N R E P O R T

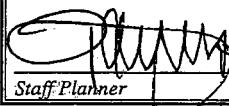
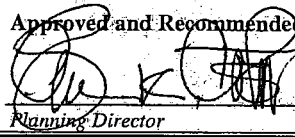
S - 2 0 0 3 - 4 8
(PART II)

Applicant: ERIC KNUDSEN TRUST Date Accepted: April 09, 2003
 Surveyor/Authorized Agent Kodani & Associates, Inc. Prelim Approval July 08, 2003

Map Title LAND COURT APPLICATION 956, CONSOLIDATION OF LOTS 198-A, 198-B, 198-C, AND 198-D, AS SHOWN ON MAP 62, AND LOT 171, AS SHOWN ON MAP 18, AND SUBDIVISION OF SAID CONSOLIDATION INTO LOTS 1 THRU 63, INCLUSIVE AND SUBDIVISION OF LOT 388-C AS SHOWN ON MAP 89 INTO LOTS 388-C-1 AND 388-C-2 AT KŌLOA, KAUAI, HAWAII

GENERAL INFORMATION						
Tax Map Key (4) 2-8-14:19-21, 30	Property Size 141 acres	Zoning R-6/Open	General Plan Residential Comm.	State Land Use Designation Urban		
Amount of Lots 65	Land Classification (for Ag Parcels) Not Applicable		Permits Required None	Maximum Density Utilized Yes		
CZO Requirements Met: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, Explain:						
* AGENCY COMMENTS *						
<input checked="" type="checkbox"/> Public Works:	Pending	<input checked="" type="checkbox"/> Water:	Pending	<input checked="" type="checkbox"/> Health:	April 23, 2003	
<input checked="" type="checkbox"/> DOT-Highways:	April 21, 2003	<input checked="" type="checkbox"/> SHPD:	May 06, 2000	Other:		
* EXISTING ROAD RIGHT-OF-WAY(S) *						
Road Name	Existing Width	Required Width	Paved YES	NO	Reserve	Dedication
Kiahuna Plantation Road	60 feet	60 feet	<input checked="" type="checkbox"/>			
* APPLICABLE FEES *						
<input checked="" type="checkbox"/> Environmental Impact Assessment (EIA)		Park Dedication	<input checked="" type="checkbox"/> Determined by Appraisal Report			
\$23,500.00		Appraisal Required				

TENTATIVE APPROVAL	
<p>EVALUATION: The development proposes to subdivide property mauka of the Kiahuna tennis court facility in Po'ipū. As represented, the subdivision includes a total of 51 lots within the Residential District (R-6) and 6 roadway lots. The development gains access through a private road (Kiahuna Plantation Road) that comes off of Po'ipū Road and crosses over a portion of Hapa Road, which is an unimproved County roadway and currently being utilized for bike and pedestrian access only. It is also considered a "Historic" roadway and as such, there are no intentions to improve this roadway.</p> <p>In considering the subject application, it should also be noted that these parcels are subject to conditions/requirements of previous zoning permits and zoning amendment petitions. Therefore prior to final subdivision approval, the application shall resolve all of the applicable requirements affecting these parcels pertaining to the zoning amendment petitions as well as the decision by the State Land Use Commission.</p>	
<p>RECOMMENDATION: <input checked="" type="checkbox"/> Tentative Approval (Part II) Subject to: Conditions <Next Page></p>	
<p> Staff Planner</p>	<p>08 JAN 2004 Date</p>
<p><input checked="" type="checkbox"/> Approved as Recommended Comments:</p>	
<p> Planning Director</p>	<p>1/8/04 Date</p>

FINAL APPROVAL	
<p>Acceptance Date: _____ Comments: <u>* provided that the Applicant obtains FINAL subdiv. Approval from the County Dept of Water and State Historic Preservation Div. - DNR no later than December 8, 2008.</u></p>	<p><input checked="" type="checkbox"/> All Conditions Complied With</p>
<p> Staff Planner</p>	<p>DEC 03 2008 Date</p>
<p>Approved and Recommended to the Commission:</p>	
<p> Planning Director</p>	<p>12/4/08 Date</p>

EXHIBIT

CONDITIONS OF TENTATIVE APPROVAL: S-2003-48

1. Requirements of the Planning Department:

- a. An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review.
- b. An Environmental Impact Assessment Fee of Twenty-Three Thousand Five Hundred Dollars (\$23,500.00) shall be paid to the County of Kaua'i.
- c. The applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.
- d. All existing and proposed easements shall be identified in the deed descriptions of affected lots and shown on the final subdivision map. Draft copies of the deed descriptions shall be submitted to the Planning Department for review and approval.
- e. The applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on 8½" x 13" paper). The maps should be detailed such that emergency vehicles, police services, postal deliveries, etc. are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map.
- f. The subdivider shall establish bus stops/shelters pursuant to Ordinance No. 406. The details shall be resolved with the Planning Department and Department of Public Works prior to construction plan approval.
- g. Relative to Conditions 1.e. & 1.f., the applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- h. Prior to final subdivision approval, the subdivider shall resolve the applicable requirements of the State Land Use Commission Decision and Order(s), the AGREEMENT RE CONDITIONS OF APPROVAL entered into with the County of Kauai, as well as Ordinances No. PM-31-79, PM-148-87, and PM-334-97 that affect these properties. Specifically, the following conditions shall apply to this subdivision:

Conditions of Docket No. A-76-418:

- 7. (archaeology work)
- 8. (employment and contractors)
- 14. (internal roadways will be private)
- 12. (preparation of traffic impact analysis report)
- 10. (preparation of a water master plan)
- 13. (sewer facilities)
- 11. (master drainage plan)
- 16. (civil defense)

Conditions of Ordinances PM-31-79 (supplemented by Ordinances PM-148-87, and PM-334-97):

- 5. (archaeology)
- 7. (employment and contractors)
- 18. (Hapa Road)
- 14. (water service)
- 13. (sewer facilities – coordinate with Land Use Commission's Condition 13)
- 11. (drainage)

CONDITIONS OF TENTATIVE APPROVAL: S-2003-48

- 12. (grading)
- 16. (road improvements)
- 17. (landscape buffer along Po'ipū Road)
- 19. (employee housing, additional parking for beachgoers, and amphitheater)
- 15. (amphitheater)

The subdivider shall coordinate the resolution of these conditions with Subdivision application S-2004-16. Conditions may be added, deleted, and /or modified by the Planning Department in the process of resolving this matter.

- i. Relative to the requirements/standards set forth in Ordinance No. 777, the subdivider shall resolve with the Planning Department the provision of public access.

If public access is required, the applicant shall propose an access plan identifying the access location(s) for the review and approval of the Planning and Public Works Departments. Furthermore, proper documents shall be prepared and ready for execution prior to final subdivision approval. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- j. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

- k. The subdivider shall resolve with the Planning Department whether they will request to extend Ordinance Nos. PM-200-90, PM-201-90, and PM-252-92 or nullify these ordinances. Should these ordinances be nullified, the subdivider shall inform the Planning Department whether they will be seeking a reinstatement of zoning established under Ordinance No. PM-31-79 or whether they will apply for zoning independent of any existing ordinances. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- l. The subdivider shall prepare a master plan covering lands involving Tax Map Keys: 2-8-14: 1, 2, 3, 4, and 19 to present a more comprehensive overview of this project's role within the overall development scheme of the area. Concerns relating to the roadway system for traffic circulation, subdivision layout, provision of infrastructure, future land uses, etc. can be more clearly assessed upon review of the master plan. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

- m. The subdivider shall resolve with the Planning and Public Works Departments the current roadway layout and its relationship on providing access (driveways, stub-outs, easements, etc.) to abutting lands in relation to condition 1.l. The Planning Department reserves the right to impose additional conditions relating to this matter while in the process of resolving this condition.

2. Requirements of the Department of Public Works (DPW):

- a. A Master Plan shall be prepared and submitted for approval prior to any tentative approval action. The master plan should address concerns on traffic circulation, road layout, parks and drainage, and the existing Hapa Road.

3. Requirements of the Department of Water (DOW):

- a. The subdivider shall prepare and receive Department of Water's approval of a Water Master Plan for full development of the area. The Water Master Plan shall also address all source, storage and transmission facilities necessary for the proposed development.

CONDITIONS OF TENTATIVE APPROVAL: S-2003-48

- b. The subdivider shall pay the Department of Water the following charges in effect at the time of payment to the department. At the present time, the subdivider shall pay a Facilities Reserve Charge of \$145,600 (56 lots at \$2,600 per lot). The actual amount will be determined by the approved Water Master Plan, final subdivision map, and the approved construction drawings for the project.
- c. The subdivider shall prepare and get Department of Water's approval on construction drawings for necessary water system facilities and either construct said facilities or post a performance bond for said facilities. These facilities shall include:
 - (1) *All facilities as required in the approved Water Master Plan for the project.*
- d. If bonding, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map and deeds:

"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kaua'i."

The subdivider shall record this deed restriction with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.

4. Requirements of the State Department of Health (DOH):

- a. The proposed development shall be serviced by the Po'ipū Water Reclamation Facility's wastewater sewer collection system.
- b. The property could be harboring rodents that will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- c. The noise from equipment use when the lots are further developed could impact the nearby residents. The applicable maximum permissible sound levels as stated in Chapter 11-46, entitled "Community Noise Control", Title 11, HAR, shall not be exceeded unless a noise permit is obtained from the Department of Health.
- d. Temporary fugitive dust emissions could be emitted when the subdivided lots are developed. In accordance with Chapter 11-60.1, entitled "Air Pollution Control", Title 11, HAR, effective air pollution control measures shall be provided to minimize or prevent any fugitive dust emissions caused by the construction work from impacting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- e. In accordance with Chapter 11-58.1, entitled "Solid Waste Management Control", Title 11, HAR, the grubbed material and construction waste generated when the site is further developed shall be disposed of at a solid waste disposal facility that is approved by the State Department of Health. The open burning of any of these wastes on or off site is prohibited.
- f. A National Pollutant Discharge Elimination System (NPDES) general permit coverage is required for construction activities, including clearing, grading, and excavation, that result in the disturbance of equal or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different time on different schedules under a larger common plan of development or sale. **An**

CONDITIONS OF TENTATIVE APPROVAL: S-2003-48

NPDES Permit is required before the commencement of the construction activities.

A Notice of Intent (NOI) to be covered by a NPDES general permit for the above activity shall be submitted at least 30 days before the commencement of the respective activity.

5. Requirements of the State Historic Preservation Division of the Department of Land and Natural Resources:
 - a. An archaeological inventory survey shall be conducted on all parcels (19, 20, 21 and 30) of this application including resurveying of old sites by a qualified archaeologists prior to final subdivision approval. A report documenting the archaeological work shall be submitted to the State Historic Preservation Division for review and approval. The report should include extensive background research on the history of the church and land commission award for this parcel. The report shall also include significance evaluations and proposed mitigation treatments for any significant historic sites.
 - b. If significant historic sites are recommended for mitigation, then the applicant shall develop detailed mitigation plans (scope of work) and submit these to the State Historic Preservation Division for review and approval. The Division must verify in writing that these plans have been successfully executed prior to any land alteration.
 - c. If burials are discovered during the survey, a burial treatment plan shall be prepared following the procedures outlined in chapter 6E-43 and its rules. Coordination with the Kaua'i Island Burial Council is required as part of the approval of burial treatment. Contact DLNR Historic Preservation Burials Program for information on this matter (Kanai @ 808.692.0037).
6. The applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions

COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS

TO: PLANNING DIRECTOR

S-2003-48
SUBDIVISION NO.

FROM: COUNTY ENGINEER
VIA ENGINEERING DIVISION *WK*
DATE: December 2, 2008

OWNER: Eric Knudsen Trust
REGISTERED SURVEYOR: Clyde Kodani
TAX MAP KEY: 2-8-014-:19, 20, 21 & 21 and 30

COUNTY OF KAUAI
DEC 10 AM 11:20

RE: Consolidation of Lots 198-A, 198-B, 198-C and 198-D and Subdivision of Said Consolidation Into Lots 1 thru 63, Inclusive and Subdivision of Lot 388-C into Lots 288-C-1 and 388-C-2 at Kōloa, Kaua'i, Hawai'i

PRELIMINARY MAP
CONSTRUCTION PLANS
CONSTRUCTION INSPECTION FEE
AGREEMENT & BOND
COMPLETION OF IMPROVEMENT
FINAL MAP
DEDICATION

PLANNING DEPT.

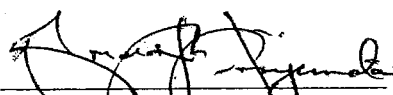
 X

COMMENTS:

1. FORM & CONTENT OF MAP & SUPPLEMENTAL DOCUMENTS
2. SEWER:
3. PARK:
4. DRAINAGE.
5. ROAD:

6. OTHERS: We have no objections to recommending final map approval so long as subdivision bonding has been posted in the amount of \$9,474,500 as noted in our correspondence to you dated September 11, 2008, a copy of which is enclosed for your information and use. The subdivision bond amount is more than adequate to cover the Hapa Trail Improvements (Rock wall restoration on one side of the trail fronting the subdivision; DCAB approval for the Hapa Trail Improvements; and surface treatment of the trail to be natural path and natural landscaping rather than a 10 foot paved path or 10 foot crushed rock pathway.). Construction Inspection fee has been collected by the Department in the amount of \$47,373.70.

- a. Transmitted herewith for your review & approval is the approved construction plan tracings
- b. Engineer Estimate for Construction of Roads, Drainage and Sewer is estimated at
- c. Request Developer to deposit with Public Works Department a Construction Inspection Fee of
- d. As-built tracings have been received
- e. Deed is approved
- f. Attached Deed requires revision(s) as follows


DONALD M. FUJIMOTO, P.E.
COUNTY ENGINEER

WK
attachment
cc: S-2003-48 w/attachment
PW Fiscal Office Officer w/attachment

EXHIBIT

