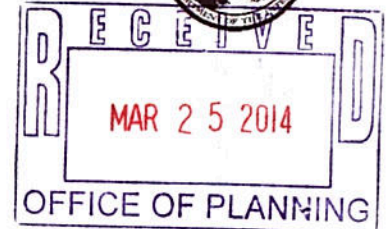




United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



MAR 24 2014

75339

ORIGINAL

In Reply Refer To:
2014-TA-0142

Mr. Jesse K. Souki
Office of Planning
State of Hawai'i
235 South Beretania Street
Honolulu, Hawai'i 96786

Subject: Technical Assistance for Motion to Amend Conditions Nos. 5 and 7 through 22 of Decision and Order, TMK 2-8-12: 05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-12: 77; 2-8-29: 1-94, Poipu, Kaua'i

Dear Mr. Souki:

The U.S. Fish and Wildlife Service (Service) received your letter dated January 28, 2014, regarding the effects of a Motion to Amend by Moana Corporation (Kiahuna Mauka Partners, LLC (KMP)) which proposes to delete conditions numbers 5 and 7 through 22 of Decision and Orders dated July 7, 1977 and August 5, 1997. The deletions are proposed by KMP on the basis of administrative efficiency that the said conditions have been met fully or substantially met, and are no longer applicable, or can and will be enforced by the County of Kaua'i and thus no longer required to be enforced by the Land Use Commission.

We reviewed the Motion to Amend pursuant to the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The information you provided and pertinent information in our files, indicate the endangered Kaua'i cave wolf spider (*Adelocosa anops*) and endangered Kaua'i cave amphipod (*Spelaeorchestia koloana*) are in the vicinity of TMK 2-8-14: 05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-15: 77; 2-8-29: 1-94. Critical habitat has been federally designated for these species on approximately 6-acres of land surrounding and including the Kiahuna Makai Cave on April 9, 2003 (68 FR 17430-17470). Adjacent properties have also been designated critical habitat for these cave species. For the conservation and protection of the endangered Kaua'i cave wolf spider and Kaua'i cave amphipod we are providing the following recommendations to assist you in the preparation of the State's response to the Land Use Commission's hearing on the Motion. The Service's position has not changed from our last correspondence with KMP on October 26, 2006, reiterating that the absence of the cave spider or amphipods from the accessible Kiahuna Makai Cave does not indicate that they do not exist within the mesocaverns of the surrounding areas. Therefore, we are unable to concur with KMP's request to delete Condition No. 7 of Decision and Orders dated July 7, 1977 and August



OP EXHIBIT C

5, 1997 due to the fact that building in the areas surrounding the cave that contain these mesocaverns could result in take of the cave spider or amphipod. We have no comment on Conditions Nos. 5 and 8-22 since they do not pertain to ESA listed species and therefore do not fall under our jurisdiction.

The Kaua'i cave wolf spider and the Kaua'i cave amphipod are obligate cave-dwelling arthropods restricted to the Koloa basin of the island of Kaua'i where lava tubes and other cave bearing rock substrate are present. Urban, agricultural development and quarrying operations within the area threatens the habitat of these cave arthropods. Another threat comes from non-native insect species that may prey upon and also compete for limited food resources. Human visitation and use of caves are threats including urban and commercial pesticide use. Environmental threats such as extended droughts also threaten these species by altering the high-humidity environment to which these arthropods are adapted and facilitating invasion by non-native species.

These species live in inaccessible mesocaverns (voids and inaccessible passages) as well as large cave passages making estimates difficult. Few of the known caves in the Koloa District provide appropriate habitat for these arthropods which are typically only found in the dark and stagnant air zones (two of five cave zones typified by low air movement, elevated relative humidity, and reduced temperature fluctuations) of caves and require high humidity conditions (Bousfield and Howarth 1979; Hadley *et al.* 1981; Ahearn and Howarth 1982). The limited number of occupied caves greatly limits our knowledge of the life history requirements of these arthropods.

The Service has conducted nine surveys in the Kiahuna Makai Cave between the years of 1998 and 2003. The Service has not been able access to conduct further surveys of Kiahuna Makai Cave since 2003. The last survey of the site on September 17, 2003, no cave spiders or amphipods were observed. However, this cave is important for both animals because historic occurrences in the 1990s. The Service designated critical habitat for both species in Kiahuna Makai Cave due to its importance in the overall recovery of these species. It is probable that the endangered Kaua'i cave wolf spider and the Kaua'i cave amphipod are still present on the property in voids and passages inaccessible by humans.

All areas designated as critical habitat are deemed essential to the conservation of these species providing for a widely distributed pattern of the highest quality habitat left in the Koloa Basin. In the case of the cave dwelling animals, areas designated provide occupied and unoccupied habitat for protection against catastrophic events by allowing a wider distribution throughout the Koloa Basin. Designated surrounding mesocaverns incorporate the areas where the majority of the cave animals are likely to occur, providing refugia from fluctuating conditions in caves and are essential to the conservation and recovery of the species.

Previous discussions between the Service and KMP identified KMP's intent to develop the property surrounding the Kiahuna Makai Cave. We recommend that KMP applies for an incidental take permit, because development of the area could result in take of listed species. As part of the incidental take permit process, KMP will need to develop a habitat conservation plan (HCP). Through this process, private landowners are able to carry out otherwise lawful activities

(i.e., home building) while protecting and conserving listed species in compliance with the ESA. Landowners are assured that if “unforeseen circumstances” arise, we will not require the commitment of additional restrictions on the use of land or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permittee.

Any projects occurring where endangered and threatened animal species exist must avoid take of federally listed species under the ESA. The ESA defines “take” as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harass” is further defined as an intentional or negligent act or omission which created the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering. The term “harm” means an act which actually injures or kills listed species. Such acts may include significant habitat modification or degradation where there is a likelihood of adverse impacts to these species by significantly impacting essential behavioral patterns. In addition, if a project contains a Federal nexus (*i.e.*, Federal permit or Federal monies), private landowners or project proponents need to consult with the Service under section 7 of the ESA.

In addition to contacting the Service regarding the development of an HCP, guidelines have been developed by KMP in discussion with the Service in 2003 to minimize impacts to the cave spider and amphipods and their habitats. They are: 1) the Kiahuna Makai Cave will not be collapsed, 2) plantings of milo and other suggested planting will be planted on top of the cave foot print, 3) the cave location will not be published on public maps, 4) a disclosure about critical habitat and the Kaua‘i cave wolf spider and the Kaua‘i cave amphipod will be given to any successor owners, 5) a 50-foot no build zone will be established above Kiahuna Makai Cave areas to make sure no structures are built on top of the cave. Areas in the critical habitat designated lands with exposed rock or places where the soil layer is less than a foot deep will not be graded, paved, or filled or underlying caves collapsed, 6) the cactus and haole koa now occupying lands surrounding and above the cave will be removed by hydroaxel/slash busters, and 7) if during construction a subsequent cave is found, the owners will stop work around the newly found cave and immediately notify the Service which will provide guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of guidelines or actions developed during consultation with the Service.

The guidelines are still needed to minimize impacts to cave habitats that have been, and continue to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, and other activities associated with development and agriculture. In addition, a 50-foot no-build buffer zone around the cave will not guarantee avoidance of take of the cave animals. However, avoiding areas with exposed rock or places where the soil layer is less than a foot deep will greatly minimize the chance of adversely affecting cave animals either by direct loss or injury to individuals or by altering existing habitat which diminishes its quality or function. Although not stated in the 2003 guidelines, the use of pesticides, herbicides, and other chemicals around the cave and on the property should also be used with extreme caution, as liquid substances and smoke or fumes can percolate through the cracks and crevices of cave habitats effecting cave spiders and amphipods.

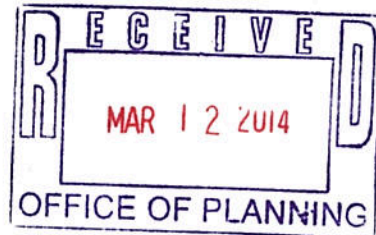
Although guidelines to minimize development impacts have been established, the Services does not support the deletion of Condition No. 7 in the Decision and Orders dated July 7, 1977 and August 5, 1997 due to the possible presence of the Kaua'i cave spider and Kaua'i cave amphipod in the voids or passage ways on the property that are inaccessible to humans. These species are only known to occur in the Koloa basin on the island of Kaua'i and further restricted to areas where above and below ground alterations to lave tubes and other cave bearing rock substrates have not occurred.

We appreciate your efforts to conserve endangered species. If you have questions regarding this response, please contact Joy Hiromasa Browning, Fish and Wildlife Biologist (phone: 808-792-9400 or email: Joy_Browning@fws.gov).

Sincerely,



Aaron Nadig
Acting Assistant Field Supervisor:
O'ahu, Kaua'i, NWHI, Am. Samoa



GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI
IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

75322

HWY-PS 2.6692

ORIGINAL

March 10, 2014

TO: JESSE K. SOUKI, DIRECTOR
OFFICE OF PLANNING
DEPARTMENT OF BUSINESS ECONOMIC DEVELOPMENT AND TOURISM

FROM: GLENN M. OKIMOTO, PH.D.
DIRECTOR OF TRANSPORTATION *Glenn M. Okimoto*

SUBJECT: MOTION TO AMEND CONDITIONS OF APPROVAL, LAND USE COMMISSION
DOCKET NO. A76-418, MOANA CORPORATION,
PROPOSED ACTION: MOTION TO DELETE CONDITIONS 5 AND 7 THRU 22 OF
DECISION AND ORDER, POIPU, KAUAI
TMK: (4) 2-8-14:5, 7, 8, POR. 19, 20, 21, 26-36; 2-8-15:77; 2-8-29:1-94

Thank you for the opportunity to respond to the subject motion from Petitioner, Kaihuna Mauka Partners, LLC, dated January 7, 2014. This Petition of Moana Corporation to amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 457.54 acres of the subject lands was filed by the State Land Use Commission as Docket No. A76-418 on July 7, 1977, and an Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by the Land Use Commission was filed and effective on August 5, 1997. Portions of the land area are referred to as the Knudsen Property and as the Sports Shinko Property.

The Department of Transportation (DOT) objects to the Petitioner's request to delete Condition No. 12 of the Decision and Order in the subject Land Use Commission Docket A76-418, and DOT has the following comments regarding Condition No. 12:

1. The traffic generated by the project will have an impact on Kaunualii Highway, State Route 50, particularly at the intersections of Kaunualii Highway with Maluhia Road and with Koloa Road.
2. The Traffic Impact Analysis Report (TIAR) prepared by Austin, Tsutsumi and Associates, dated December 8, 2003 and finalized September 13, 2005, which we reviewed, analyzes the 210-acre Knudsen Property [TMK: (4) 2-8-013:001 and 2-8-014:001 to 004, 019 and 037].
3. The TIAR identified above did not analyze the other properties in the subject Docket A76-418, including the Sports Shinko Property. If and when the County of Kauai requires an updated TIAR that includes the Sports Shinko Property, the DOT would appreciate the opportunity to review and comment on any updated TIAR, as specified in Condition No. 12.

If you have any questions, please contact Gary Ashikawa, Systems Planning Engineer, Highways Division, Planning Branch, at 587-6336.

AN ORDINANCE AMENDING ORDINANCE NO. 164
COMPREHENSIVE ZONING ORDINANCE OF THE
COUNTY OF KAUAI
(Moana Corporation)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. That the Zoning Map ZM-KO & PO 300 is hereby amended by changing the present "Open District (O)" to "Neighborhood Commercial District (C-N) and Residential Districts (R-20), (R-10), (R-6), (R-4)" for TMK: 2-8-14; Por. 1, 5, 6; 2-8-13: Por. 5, Poipu, Koloa, as recommended by the Planning Commission subject to the following conditions:

1. For the purpose of relieving the housing impact which will result from the proposed development, and in lieu of the 140 home sites to be provided by the Applicant, the Applicant will contribute the sum of \$2,000,000 to the County of Kauai to be used for the implementation of a County housing program. The sum will be paid as single family residential lots are sold on the basis of \$10,000 per lot sold in the development, but no later than 5 years from the date construction commences in this development. At the end of 5 years, the balance of the \$2,000,000 shall be due and payable to the County in one lump sum, unless the Applicant is unable to perform due to economic conditions beyond its control, in which event the Applicant shall seek an extension from the Council.

This condition shall be subject to the withdrawal by the Land Use Commission of the State of Hawaii of its conditions numbered 1, 2, 3 and 4, relating to housing and the amending of condition No. 9 relating to performance time to provide housing as contained in its Decision and Order in Docket No. A-76-418, dated July 7, 1977.

The County of Kauai will assist the Applicant in petitioning the Land Use Commission to delete the aforesaid housing conditions from its Decision and Order in the aforesaid Docket No. A-76-418.

2. In order to satisfy the need for employee housing, the Applicant shall make available to employees:
 - a) Rental housing at a reasonable cost, which would be based on ability to pay.

Because not all employees will need housing, the Applicant shall establish qualifying criteria to determine what employees are in need of housing and how many units will be needed.

3. The Applicant shall make the recreational and other amenities of the development such as golf course, golf clubhouse, swimming facilities, tennis courts, and theater and cultural center available for public use at reasonable usage fees.

4. That the Applicant dedicate to the County of Kauai approximately 20 acres of land makai of Poipu Beach Road and abutting Poipu Beach Park for expansion of the park.

With respect to this condition, the dedication shall occur as soon as Applicant may reasonably obtain a subdivision of said property, but shall not be required to make the dedication in less than 2 years from the date of zoning approval but not more than 5 years from that date hereof.

The Applicant shall further sign an agreement with the County to this effect; such agreement shall give the County the right to occupy and improve the property if necessary.

5. The Applicant shall preserve:
 - a) the five (5) archaeological sites identified in the archaeological and biological report and shall cause no construction or alteration or other land disturbances on said sites except for preservation and restoration of the sites.
 - b) the two lava tubes containing the habitat of the eyeless big-eyed hunting spider and protect these from man-made encroachments. Permission to re-survey three (3) other caves that are potential habitats, shall be granted for scientific purposes, before these caves are destroyed.
6. No site identified in the report, "Archaeological and Biological Survey of the Proposed Kiahuna Golf Course Village Area, Koloa, Kona, Kauai Island, Hawaii" shall be graded, grubbed, bulldozed, or in any way destroyed unless in accordance with a plan, mutually agreed upon by the Applicant and the archaeologist that has been prepared whereby the archaeological salvage will be accomplished by means of coordinating any grading, grubbing or similar work by the Applicant with the archaeological salvage.
7. That to whatever extent possible within the confines of union requirements and applicable legal prohibitions against the discrimination in employment the Applicant, as represented, shall hire Kauai contractors as long as they are reasonably competitive with other contractors, and employ residents of Kauai in the temporary construction and permanent hotel related jobs. The Applicant may have to employ non-Kauai residents for particular skilled jobs when no Kauai resident possess such skills. However, the Applicant shall cooperate with, and utilize, whatever government training program may be available so that Kauai residents can be trained to fill such jobs. For the purposes of this condition, the Commission relieves the Applicant of this requirement if he is subjected to anti-competitive restraints on trade or other monopolistic practices.
8. The Applicant shall provide a minimum 6 feet wide public pedestrian access from the commercial area to the beach site. Public restrooms and showers shall also be provided and maintained by the Applicant in the vicinity

of the existing beach right-of-way. The Applicant shall further provide alternative parking plans for additional parking stalls for beach-goers in the vicinity of the Hoone Street cul-de-sac. The public parking area proposed by the commercial area shall be used for back-up parking needs for beach goers.

9. When the final route for the by-pass roadway from Poipu to Koloa is determined, the Applicant shall participate in his pro rata share of the cost of the by-pass road. If the alignment of the roadway traverses over the owner's property, then the portion of property required for the roadway shall be dedicated to the County by the owner. The pro rata share will be established in a manner agreed upon by the Applicant and the Department of Planning and Public Works.

Furthermore, should the by-pass road occur along the East boundary of the project, the owner shall be required to dedicate a 40 feet strip of land abutting Weliweli Subdivision for roadway purposes, and the Applicant shall participate in his pro rata share of the cost of the by-pass road. Until the final by-pass route is determined, no development shall be allowed within this 40 feet strip. Should the by-pass road not occur along the East boundary of the project, the 40 feet strip shall be kept as a buffer zone between the project and the abutting Weliweli Subdivision. The Applicant shall be entitled to use the land area comprising the 40 feet strip in the calculation of the permissible number of lots in the abutting rezoned area.

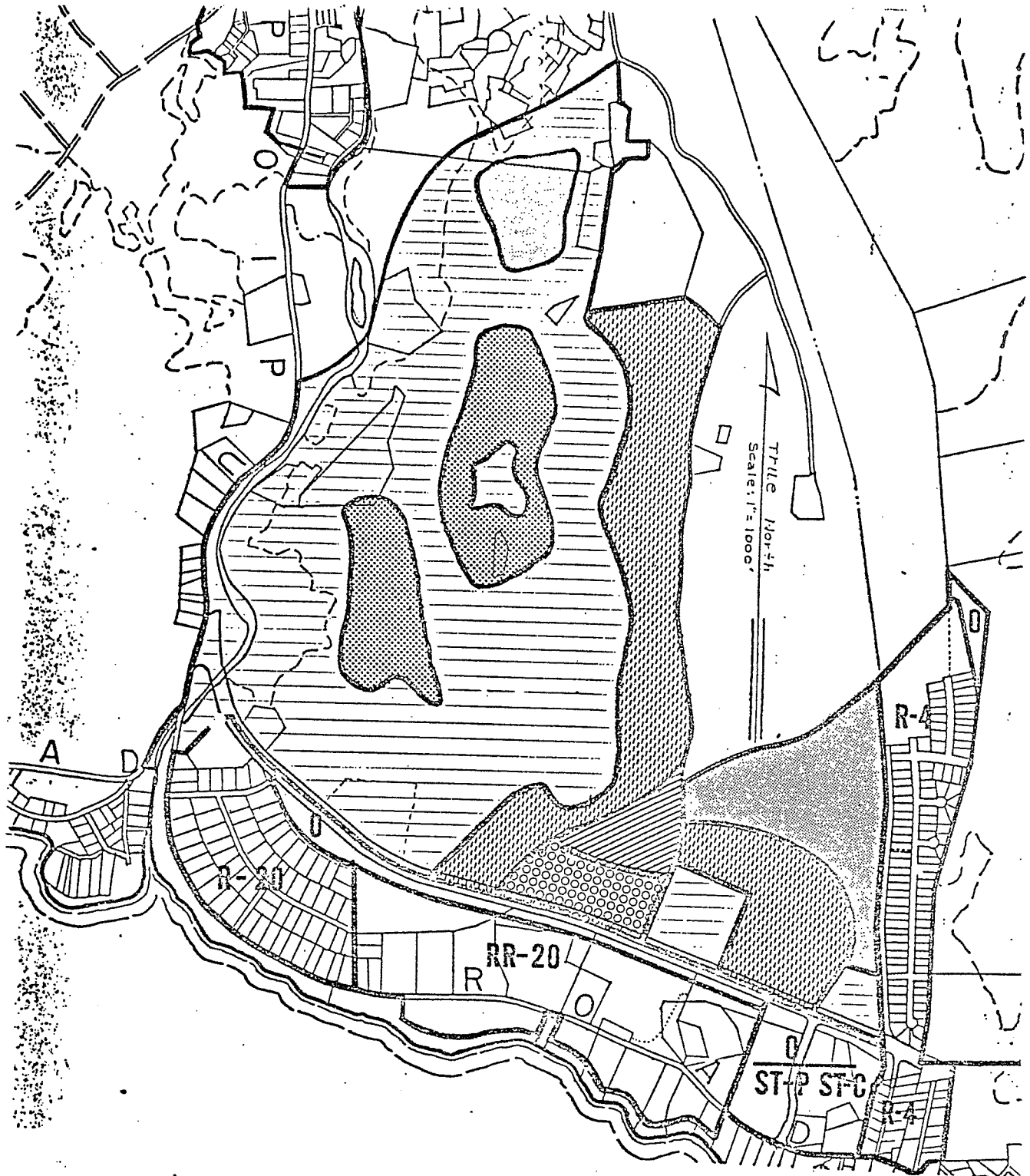
Furthermore, should funds not become immediately available to construct the by-pass road, the Applicant shall work with the Planning and Public Works Departments to consider providing an interim alternate road through the site connecting Poipu to Koloa, to resolve potential traffic congestion that would occur on Poipu Road.

10. All interior roadways shall comply with the County standards. Direct lot access to Poipu Road shall not be permitted. Lot accesses shall be from the interior roads.
11. The drainage diversion channels shall be reviewed and approved by the Public Works Department, and settling basins shall be provided if required.
12. The grading of the subject development shall comply with Grading Ordinance No. 262. The maximum area of land that may be opened for grading or grubbing is 20 acres. Additional area shall not be opened for grading or grubbing until measures to prevent dust or erosion problems in the area already graded or grubbed have been satisfactorily completed.
13. The Applicant shall be required to tie in its efforts in providing sewage facilities for the project with County Planning for sewage facilities, and shall work with the Department of Health and Department of Public Works towards the development of a regional sewage treatment plant.







14. If Applicant is to use water provided by the Department of Water, Applicant shall be required to contribute to the Department of Water its pro rata share of the cost to provide domestic water to the subject parcel.
15. The proposed amphitheatre site shall be kept and reviewed for possible relocation, if necessary, to minimize noise impacts to Weliweli Subdivision. Site location, stage orientation, facility design, landscaped berms, limitations on uses, and other means of reducing noise impacts shall be utilized in the planning of this facility.
16. All access roads shall be provided to within 250 feet to all sections of all building structures and shall not be less than 20 feet wide. Fire extinguishers installed as required by the NFPA 10, Installation of Fire Extinguishers. Fire hydrants complying with water department standards shall be located within 250 feet and not to exceed 500 feet from the protected buildings.
17. A landscaped buffer zone shall be provided along Poipu Road. Open vistas from Poipu Road to the golf course shall be, however, provided to create a feeling of openness along the Poipu Road.
18. The Applicant shall meet with the Planning Department and Public Works Department relative to the future improvements to Hapa Road, and its relationship to the traffic circulation.
19. Prior to the approval of any subdivision or zoning permit, the Applicant shall provide the following:
 - a) Qualifying criteria for employee housing and preferential rates or purchase prices for employees;
 - b) Alternative plans for additional parking areas for beachgoers located in the vicinity of Hoonani Road cul-de-sac;
 - c) Amphitheatre design criteria, use restrictions and alternative site if relocation is necessary.
20. Applicant shall obtain building permits, electrical permits and plumbing permits prior to starting construction of any structures to be erected on the property.
21. Prior to and during any development or construction, all applicable State and County laws, codes, ordinances, rules and regulations be complied with.

SECTION 2. The Planning Commission is directed to note the change on the official Zoning Map ZM-KO & PO 300 on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the district as amended.

SECTION 3. This ordinance shall take effect upon its approval.



L E G E N D

	Proposed Amendment To Zoning Map From Ag. District To R-4 District
	" " " " " " " " " R-6 "
	" " " " " " " " " R-10 "
	" " " " " " " " " R-20 "
	" " " " " " " " " C-N "
	Open District

LOCATION SHOWING
 PROPOSED AMENDMENT TO ZONING MAP ZM-KO & PO-30C
 FROM
 OPEN DISTRICT (O) TO R-4, R-6, R-10, R-20, C-N DISTRICTS
 KOLOA, POIPU, KAUAI

ZA-79 B

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that hereto attached is a true and correct copy of Bill No. 585 (Draft 1), As Amended, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on March 20, 1979, by the following vote:

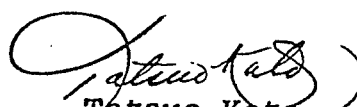
FOR ADOPTION: Baptiste, Hew, Sarita, Tsuchiya,
Yadao, Yotsuda

AGAINST ADOPTION: Yukimura

ABSENT & NOT VOTING: None

TOTAL - 6,
TOTAL - 1,
TOTAL - 0.

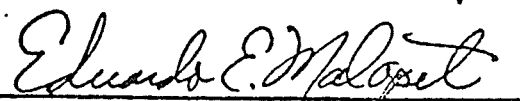
Dated at Lihue, Kauai, Hawaii,
this 23rd day of
March, A. D. 1979.


Tatsuo Kato
Deputy County Clerk
County of Kauai

Date of transmittal to the Mayor:

March 23, 1979

Approved this 23rd day of
March, A. D. 1979.


Eduardo E. Malapit
Mayor
County of Kauai