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AN EQUAL OPPORTUNITY EMPLOYER

COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 275
LIHU'E, KAUAI, HAWAII 96766

RECEIVED

APR 25 P3:45

OFFICE OF ENVIRONMENTAL
QUALITY CONTROL

April 22, 2002

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
235 South Beretania Street
State Office Tower, Suite 702
Honolulu, Hawaii 96813

Re: **Final Environmental Assessment for County of Kauai
Poipu Park Improvements**
Action Use Permit: Special Management Area Use Permit SMA(U)-2001-6;
Use Permit (U)-2001-25: Class IV Zoning Permit ZA-IV-2001-29
EA Approving Agency: Department of Public Works, County of Kauai
Property: Lot 220, Land Court Application No. 956
Poipu, Koloa, Kauai, Hawaii
Kauai TMK No.: (4) 2-8-17:11 (8.27 acres)
Owner: County of Kauai

Dear Ms. Salmonson:

The Department of Public Works, County of Kauai, has reviewed the Final Environmental Assessment for this subject project, and has made a Finding Of No Significant Impact (FONSI) determination. Please publish notice of availability for this project in the May 8, 2002 Environmental Notice.

I have enclosed the following materials relative to this matter:

1. OEQC The Environmental Notice Publication Form (with attached Project Summary).
2. Four (4) copies of the Final Environmental Assessment prepared by Marriott Ownership Resorts, Inc. for the above-identified action.

Ms Genevieve Salmonson, Director
Office of Environmental Quality Control
April 22, 2002
Page 2

Should you have any questions, please feel free to contact Wallace Kudo of my staff at
(808) 241-6620.

Very truly yours,


CESAR C. PORTUGAL
County Engineer

WK

Enclosure

cc: Max W. J. Graham, Jr., Esq.
Mr. Greg Kamm

2002-05-08-KA-FEA-Poipu Beach Park ^{FINAL EA} MAY 8 2002
BELLES GRAHAM PROUDFOOT & WILSON Improvements **FILE COPY**

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Attorneys for Applicant
MARRIOTT OWNERSHIP RESORTS, INC.

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In The Matter Of The Application) SPECIAL MANAGEMENT AREA USE
) PERMIT SMA(U)-2001-6
Of) USE PERMIT (U)-2001-25
) CLASS IV ZONING PERMIT
MARRIOTT OWNERSHIP RESORTS,) ZA-IV-2001-29
INC., for a Special Management Area Use)
Permit, a Use Permit, and a Class IV Zoning) ENVIRONMENTAL ASSESSMENT;
Permit for real property situated at Poipu,) EXHIBITS "A" - "K"
Koloa, Kona, Kauai, Hawaii, identified by)
Kauai TMK No. (4) 2-8-17:11 (8.27 acres).)
_____)

ENVIRONMENTAL ASSESSMENT

Comes now MARRIOTT OWNERSHIP RESORTS, INC., Applicant in the above-captioned proceedings, by and through its undersigned attorney, and hereby submits the following Environmental Assessment pursuant to the provisions of Hawaii Revised Statutes ("HRS") Chapter 343 and Hawaii Administrative Rules ("HAR") Title 11, Chapter 200:

I. SUMMARY OF PROPOSED ACTION.

1. The subject matter of this Environmental Assessment ("EA") is an 8.27 acre parcel of real property located in Poipu, Koloa, District of Kona, Island and County of Kauai, State of Hawaii ("Subject Property"). The owner of the Subject Property is the County of Kauai ("County"). The Subject Property is located on the north (mauka) side of Hoone Road, across from the Poipu Beach Park. The County also owns the Poipu Beach Park, which is located between Hoone Road and the shoreline. Although the Subject Property is unimproved, it is presently being used as a vehicular parking area by persons who use the Poipu Beach Park.

The Applicant, Marriott Ownership Resorts, Inc. ("Applicant"), is the owner of certain real property known as the "Waiohai Property", which is located adjacent to, and to the west of, the Subject Property. The Planning Commission of the County of Kauai ("Planning Commission") has recently approved permits ("Waiohai Permits") allowing the Applicant to develop a timeshare Apartment-Hotel on the Waiohai Property. As a condition of the approval of the Waiohai Permits, the Applicant has agreed to construct improvements to the Subject Property in an amount not to exceed \$800,000.00 in order to develop parking, drainage, landscaping, pedestrian access, and traffic circulation. These improvements will be located on the southern half of the Subject Property. The Applicant intends to construct a paved parking area for approximately 130 vehicles adjacent to Hoone Road, together with other related improvements. In addition, the Applicant will landscape the area around the parking facility with trees and bushes, and will grass the remaining southern half of the Subject Property.

In order to undertake such development, the Applicant first will need to obtain the Planning Commission's approval for an Special Management Area ("SMA") Use Permit

pursuant to the provisions of the Special Management Area Rules and Regulations of the County of Kauai ("SMA Rules"), and a Use Permit and a Class IV Zoning Permit pursuant to the provisions of the Comprehensive Zoning Ordinance of the County of Kauai ("CZO"). Because the Applicant proposes to use County lands for the proposed development, the Applicant is required by the provisions of HRS Section 343-5(a)(1) to prepare this EA and submit it to the Department of Public Works of the County of Kauai ("Public Works Department").

II. OWNER/APPLICANT.

2. MARRIOTT OWNERSHIP RESORTS, INC. is the Applicant in this matter (hereinafter referred to as "Applicant"). Michael J. Belles, Esq. and Max W. J. Graham, Jr., Esq. of Belles Graham Proudfoot & Wilson have been authorized to file the Application on behalf of the Applicant pursuant to the Authorization attached hereto and incorporated herein as Exhibit "A".

3. The County of Kauai ("County") is the sole owner of the property described in Exhibit "B", attached hereto and incorporated herein ("Subject Property"). The Applicant has been authorized by the County to file the Application pursuant to the Authorization attached hereto and incorporated herein as Exhibit "C".

III. APPROVING AGENCY.

4. The Public Works Department is the County agency which is responsible pursuant to HRS Section 343-5(c) and HAR Section 11-200-4(a)(2) for accepting, receiving and approving this EA.

IV. CONSULTED AGENCIES.

5. The following governmental agencies have been, or will be, consulted by the Applicant in the Application process before the Planning Commission and in the preparation of the final EA in this matter: Planning Department, County of Kauai; Department of Public Works, County of Kauai; Fire Department, County of Kauai; State Highways Division, Department of Transportation, State of Hawaii; Environmental Health Division, Department of Health, State of Hawaii; and the Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii.

V. GENERAL DESCRIPTION OF PROPOSED ACTION.

A. Proposed Use of Subject Property.

6. The Applicant owns the Waiohai Hotel property located to the west of the Subject Property, identified by Kauai Tax Map Key Nos. (4) 2-8-17:7, 8, 12, 20 ("Waiohai Property"). The Planning Commission has approved permits allowing the Applicant to develop a timeshare Apartment-Hotel on the Waiohai Property, as set forth in Special Management Area Use Permit SMA(U)-2000-3, Project Development Use Permit PD(U)-2000-16, Shoreline Setback Variance SSV-2000-2 and Class IV Zoning Permit ZA-IV-2000-21 ("Waiohai Permits").

7. Conditions 1, and 2.d., of the Waiohai Permits provide as follows:

"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:

. . .

- 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.

8. In order to meet the provisions of Conditions 1 and 2.d., the Applicant proposes to construct or install the following improvement ("Improvements"), within the southern portion of the Subject Property, as shown on the Poipu Park Plan attached hereto and incorporated herein as Exhibit "F":

- a. A paved parking area with approximately 130 parking spaces;
- b. Two access (entrance/exit) points, one located on Hoone Road and one located on Hoowili Road;
- c. Landscaping, including trees, bushes and grass;
- d. Drainage facilities; and
- e. Underground utilities (including the construction of irrigation waterlines, and the construction of trenches for electric lines to be installed by the County and/or the locating and renovation of existing electric lines or conduits).

9. The Applicant intends to transform the southern portion of the Subject Property from an unimproved parking area into an improved, landscaped, parking facility. The parking and driveway area will be covered with asphalt material. Trees, bushes and grass will be planted to enhance the overall beauty and appearance of this area. Portions of the Subject Property to the north of the parking area will be grassed and irrigated. The existing Pond on the Subject Property will not be disturbed.

B. Permits Requested and Required.

10. The following permits will be required for the proposed construction, development and use of the Subject Property and Improvements ("Development"):

a. SMA Use Permit. The Subject Property is located in the SMA. The total cost of the proposed development within the SMA will exceed \$125,000.00. Therefore, in order to proceed with the development, the Applicant needs an SMA Use Permit as defined in Section 7.3C. of the SMA Rules.

b. CZO Use Permit. A Use Permit is being requested pursuant to CZO Articles 9 and 20 in order to allow the Applicant to construct the proposed Improvements within the Special Treatment-Cultural/Historic District and the Special Treatment - Public Facilities District.

c. Class IV Zoning Permit. A Class IV Zoning Permit is a procedural requirement for a development in the CZO Open District requiring a Use Permit. See CZO Sec. 8-7.7 and 8-8.7.

VI. AFFECTED ENVIRONMENT.

A. Description of Property and Land Use Designations.

11. The Subject Property is shown on the Location Map, attached hereto and incorporated herein as Exhibit "D", and on the Kauai Tax Map, attached hereto and incorporated herein as Exhibit "E". The Subject Property is approximately 8.27 acres in size and is located at Poipu, Koloa, Kona, Island and County of Kauai, State of Hawaii. The Subject Property is classified by the State Land Use Commission ("SLUC") in the Urban District. The Subject Property is designated by the County of Kauai General Plan in the Resort Classification. The Subject Property is located within the County of Kauai Comprehensive Zoning Ordinance ("CZO") Open District, Special Treatment-Cultural/Historic District, and Special Treatment - Public Facilities District. The Subject Property is located within the Poipu-Koloa Visitor Destination Area ("VDA") of the County of Kauai. The Subject Property is located within the Special Management Area ("SMA") of the County of Kauai. Portions of the Subject Property are located within the CZO Tsunami Constraint District (S-TS) and within the CZO Shore Constraint District (S-SH).

B. Present Uses of Subject Property.

12. The Subject Property is a largely unimproved/vacant lot used in connection with the adjacent Poipu Beach Park. The southern portion of the Subject Property adjacent to Hoone Road is used for parking by members of the public who use the Poipu Beach Park. A pond ("Pond") is located within this southern portion, adjacent to Hoowili Road. The Pond was constructed by the County in the early 1980's, and has no special historic or cultural

values. The primary purpose of the Pond is to function as a holding basin to collect excess surface runoff water.

There is also an open, grassed stage area ("Stage") in the middle of the Subject Property, just north of the parking area and Pond. The northern side of the Stage is defined by a low (approximately 2-3 foot high) rock wall. The Stage is occasionally used for public performances and functions.

C. Location of Subject Property and Description of Surrounding Lands.

13. The southern portion of the Subject Property is bounded by Hoone Road. To the south of Hoone Road are three (3) house lots (two with homes, and one which is vacant) and the County's Poipu Beach Park. The western portion of the Subject Property is adjacent to the Waiohai Property and to the Kiahuna Condominium Project (Phase V). The northern portion of the Subject Property is adjacent to Poipu Road. The eastern portion of the Subject Property is adjacent to Hoowili Road. To the east of Hoowili Road is a paved parking area (used by persons using the Poipu Beach Park) and a commercial building (which has a restaurant and other commercial activities). General uses in this area include resort (hotel and condominium), commercial, public park, open space, and residential.

VII. IMPACTS OF PROPOSED ACTION/MITIGATION/ALTERNATIVES.

A. Impacts/Mitigation.

14. Botanical Resources. Dr. Winona P. Char of Char & Associates prepared a botanical resources assessment report dated December 11, 2000 ("Char Report"), a copy of which is attached as Exhibit "G". Dr. Char noted that the parking area is presently composed of bare, hard packed soil and that the vegetation on the Subject Property is dominated

by introduced species (Bermuda grass, monkey pod, koa haole, etc.). A few native species were found, all of which are indigenous. Dr. Char found no threatened or endangered species, or species of concern, on the Subject Property. As a result, Dr. Char concluded that the proposed Development on the Subject Property will not have a significant negative impact on the botanical resources.

15. Avifaunal And Feral Mammals. Dr. Phil Bruner prepared an Avifaunal And Feral Mammal Survey dated December 17, 2000, a copy of which is attached hereto as Exhibit "H". Dr. Bruner found that due largely to the presence of the existing Pond, this portion of the Subject Property provides habitat for a variety of native, migratory and introduced birds. The Pond serves as a foraging site for native waterbirds. Dr. Bruner also concluded that human activity and disturbance at this locality is significant, since the lower portion of the Subject Property already serves as a parking lot for Poipu Beach Park. Dr. Bruner concluded that the only resource important to native birds on the Subject Property is the Pond. Although the Pond is small and exposed to disturbance it is still utilized by native waterbirds. As a result, the Applicant will maintain the Pond in its present location.

The Subject Property does not abut nor is it situated within a Natural Area Reserve or Wildlife Refuge or Sanctuary.

16. Historical Resources. The Applicant is not aware of any existing archaeological, cultural or historical resources on the surface of the Subject Property in which the Development will take place which will be affected by the Development. There may be such resources located on the Subject Property north of the area to be developed, but those locations will be left undisturbed. As shown on Exhibit F, no development will take place north of the

Stage other than grassing and the installation of underground irrigation lines. As noted in a letter from Nancy McMahon, Kauai Archaeologist, State Historic Presevation Division, dated November 28, 2000 (attached hereto as Exhibit "I"), there are no physical archaeological sites on the Subject Property where the improvements are to be made, although subsurface sites and/or burials could be present. As a result, Ms. McMahon recommended that the Applicant prepare an archaeological monitoring plan. The Applicant has done so, and a copy of the Applicant's Archaeological Monitoring Plan (dated November 24, 2000) and a letter dated December 18, 2000, from Don Hibbard, Administrator, State Historic Preservation Division, approving the Plan, have been attached hereto as Exhibit "J".

Pursuant to the Plan, the Applicant will have an archaeologist monitor any ground-disturbing activities. Should any surface or subsurface cultural features be encountered during the Development, the Applicant will cease all activities in the immediate area, will seek archaeological consultation, and will preserve and/or salvage any significant remains or artifacts. In the event of inadvertent burial discovery, the Applicant will cease all construction activity in the affected area and immediately contact the Historical Preservation Division of the Department of Land and Natural Resources.

17. Air Quality/Noise. The proposed Development will have little or no long-term impacts on the air quality and ambient noise levels in the area. Air quality and ambient noise levels may be affected at a minimal level during the construction phase of the Development. All vehicles or equipment used by the Applicant during construction will be properly muffled, housed and maintained to reduce any noise impacts or emission impacts. The Environmental Protection Agency (EPA) and State of Hawaii air quality standards will not be exceeded.

18. Flooding and Drainage. Some portions of the Subject Property are situated within or near a flood zone (Zone AE, Elevation 9-13 feet) as shown on the Federal Emergency Management Agency ("FEMA") flood insurance rate maps for Kauai County, Hawaii (Flood Insurance Rate Map 150002 - 0194D). Improvements located in the Zone AE area will conform to all applicable governmental standards. The proposed Development will have little if any contributory impact on flooding on or around the Subject Property. Additional surface water flows caused by the Development will be maintained on-site.

19. Utilities. The Applicant will use the existing Poipu Beach Park water service (from the Department of Water of the County of Kauai) for irrigation purposes. No phone service presently exists, nor is any such service proposed. Existing water facilities are presently adequate to provide the demand for such services that will be generated by the proposed Development.

20. Wastewater Treatment and Disposal/Solid Waste. The Subject Property will not need any wastewater disposal systems. Solid waste disposal will be handled by the County.

21. Fire and Police Services/Schools. Fire services in the vicinity are located in Poipu, approximately two miles from the Subject Property. Police services are available in Poipu Kai, approximately one mile from the Subject Property. The close proximity of these fire and police services to the Subject Property will minimize response time should an emergency occur. The proposed Development of the Subject Property will not significantly increase the need for existing fire and police services. The closest schools are Koloa Elementary School, Chiefess

Kamakahahei Middle School, and Kauai High School. The proposed Development will not generate any additional enrollment in these schools.

22. Traffic Circulation. The major roads servicing the Subject Property are Poipu Road, Hoowili Road, and Hoone Road, all of which are County roadways. The proposed Development will not increase traffic on these roads.

23. Recreational Resources. The Development will provide improved parking for the County of Kauai's Poipu Beach Park, which is located along the shoreline makai (south) of the Subject Property. Presently, there are limited public recreational opportunities taking place on the portion of the Subject Property to be developed (including parking and use of the Stage). The Development will have no negative impact on the use of the Stage. Therefore, the proposed Development will not have any negative impact on any public recreational opportunities located on the Subject Property. The construction of the Development will improve the use of, and access to, the Stage, the Poipu Beach Park, and the shoreline in the vicinity of the Subject Property. The Development will also fulfill the provisions of the Waiohai Permits.

24. Scenic and Open Space Resources. The proposed Development will enhance the scenic and open space resources on and around the Subject Property. The Development will be compatible with and blend into the surrounding area. The Development will not interfere with any views along the shoreline. The landscaping will generally improve the overall appearance and scenic quality of the Subject Property.

25. Coastal Ecosystems. The Subject Property, being located near the shoreline, is part of the coastal ecosystem of that area. However, the proposed Development will have no significant negative impact on this ecosystem. The Development and Improvements will

be constructed and maintained so as to avoid any erosion or increased runoff into the adjacent shoreline. The paving of the Subject Property will reduce the amount of dust and soil run-off presently being generated by the use of this unimproved area for vehicular parking. No aspect of the Development will endanger the coastal ecosystem or have any negative impacts on it.

26. Economic Uses. The proposed Development will create short term economic benefits associated with the construction of the Improvements, and will have no negative effects on the economy. Upgrading the parking for the Poipu Beach Park will support the overall Poipu Visitor Destination Area and will generate indirect, long-term economic benefits.

27. Managing Development/Public Participation. The Development on the Subject Property is complimentary to, and consistent with, present and future development in this area of Poipu. The Applicant will offer to meet with a wide range of individuals and groups (e.g., the Board of Directors of the Koloa Community Association, the Kauai Economic Development Board, the Board of Directors of SPARK, the Board of Directors of the Poipu Beach Resort Association, the Board of Directors of the Kauai Visitors Bureau, and the Board of Directors of the Kauai Chamber of Commerce), either on a consolidated or individual basis, in order to disseminate information about the project and encourage participation in the planning and review process. Members of the public will be given an opportunity to participate in the planning and review process for this Application through meetings and public hearings.

28. Beach Protection/Marine Resources. All of the Improvements will be located mauka (north) of the Poipu Beach Park and Hoone Road, set back well behind the shoreline and the Shoreline Setback Area. As such, the Project will have no impact on the beach areas in front of the Poipu Beach Park, and the open space along the shoreline will be conserved.

The Project will not involve any development within the beach or coastal area which would have any impact on marine or coastal resources.

29. Compliance with SMA. The construction of the Development on the Subject Property will have no significant negative impact on the SMA. The proposed Development will be compatible with existing uses in areas on or around the Subject Property. The Development will not have substantial, negative impacts on scenic or open space resources within the SMA. The Development will not significantly increase runoff or otherwise endanger the coastal ecosystem. The Subject Property is located in a coastal hazard area. All Improvements on the Subject Property will be designed and constructed consistent with requirements applicable to development within flood areas. The proposed Development will have no significant adverse effects on recreational, historic, economic, beach, or marine resources and will not create any greater impacts than those that presently exist. Approval of the project will not result in the foreclosure of future management options for development in the Poipu area. The Applicant will give appropriate notice and information to the public concerning this Application, and the public will have the opportunity to participate in the planning and review process, including the public hearing to be held in this matter.

30. Adjacent County Properties. The County is the owner not only of the Subject Property, but also certain properties located to the east of Hoowili Road identified by Kauai Tax Map Key Nos. (4) 2-8-17:13, 14, 23, and 24 ("County Properties"), as shown on the Tax Map attached as Exhibit "E". The County is also the owner of the Poipu Beach Park, located makai of Hoone Road, and identified by Kauai Tax Map Key No. (4) 2-8-17:1.

The County property described by Kauai Tax Map Key No. (4) 2-8-17:23 ("Parcel 23") has been improved with paved parking, which provides parking to members of the public who use the Poipu Beach Park. During peak use times, this parking area is often full, and as a result during such times members of the public also use the unimproved area within the southern portion of the Subject Property for parking purposes.

There are a number of cultural and historic sites and resources located within the northern portion of the Subject Property (above the Stage), and within the other County Properties (with the possible exception of Parcel 23). As noted, no development (other than grassing and installation of underground irrigation) will take place within these areas of the Subject Property.

31. County Special Treatment Districts. The Subject Property and the County Properties are all located within the CZO Open District and also within the CZO Special Treatment – Public Facilities District and the Special Treatment – Cultural/Historic District. The Subject Property has been placed within the Special Treatment – Public Facilities District because it is used for recreational purposes by members of the general public in conjunction with the Poipu Beach Park. As noted, the southern portion of the Subject Property is already used for public parking purposes, and the Stage is used for public functions. The Applicant's proposal to improve the southern portion of the Subject Property for parking purposes, and to enhance its visual appearance with landscaping, is all consistent with the underlying reason which led to the Subject Property's placement in the Special Treatment – Public Facilities District.

The Subject Property and the County Properties have been placed into the Special Treatment – Cultural/Historic District because of the significant archaeological

and historic sites and resources located on the northerly portions of these properties. However, as noted, the portion of the Subject Property which will be improved has already been highly disturbed by past activities, including its present use for vehicular parking. There are no known archaeological or historic sites located within the portion of the Subject Property which will be developed. The Applicant will take special care not to engage in any development activities north of the Stage area other than the grassing activities and installation of underground utilities as described above (which will be subject to archaeological monitoring). As a result, the proposed Development and Improvements will be consistent with the goal of protecting the archaeological and historic resources in this area, and thus will be consistent with the goals of the Special Treatment – Cultural/Historic District.

32. Compatibility With Other Uses. The proposed use of the Subject Property for improve vehicular parking is consistent with and compatible with other uses in the area, which include residential, resort, open space, parking, and park uses. To minimize impacts on two nearby lots upon which houses have been constructed, which are identified by Kauai Tax Map Key Nos. (4) 2-8-17:6 and 21 ("Residential Lots"), the entrance into the parking facilities on Hoone Road will be located to the east of these Residential Lots. The proposed landscaping of the Subject Property will add to the visual ambiance and beauty of the area, to the benefit of the owners of the Residential Lots, the Waiohai Property, and the general public. The Development will be designed to handle any excess surface waters created by the paving on site. The Development will not have any greater impact on the neighborhood or the general welfare of the community than is presently being experienced as a result of its use as a parking area. Conversely, paving the parking area will serve to reduce dust emissions, while landscaping the

area will serve to buffer noise and improve the appearance of the area. As a result, the Development and the construction of the Improvements will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood, will not be detrimental or injurious to property and improvements in the neighborhood, will not be detrimental or injurious to the general welfare of the community, and will not cause any substantial harm for environmental consequences on either the Subject Property or any other lands or waters in the area.

33. Cultural Practices. The proposed Development and Improvements will have no impacts on any known cultural practices, including any traditional or customary practices of native Hawaiians. There are no known cultural practices and/or traditional or customary practices of native Hawaiians that are presently occurring within the portion of the Subject Property to be developed. There are no special gathering practices taking place within the area to be developed. The Development will not detrimentally affect access to the shoreline or other adjacent areas. There are no known religious practices taking place within the Development area. There are no known cultural or historic sites or resources located within the portion of the Subject Property to be developed, and the proposed Development will have no negative impact on any cultural or historic sites or resources located in adjacent areas.

B. Alternatives.

34. There are two possible alternatives to improving the Subject Property as proposed. The first would be to prohibit any further use of the Subject Property for vehicular parking purposes. This would serve the purpose of preserving the Subject Property in its present condition. Since the Subject Property at present for the most part unvegetated, this means that it

would be susceptible to further erosion. It would also continue to be unattractive visually. Furthermore, prohibiting any further parking on the Subject Property would aggravate the already inadequate parking needs in this area.

The second alternative would be to allow the Subject Property to be used for vehicular parking, but not improve it. In other words, to continue the status quo. However, this will continue to cause erosion and dust emission from vehicular use of this area. It will also do nothing to improve the visual appearance of this area. Finally, it will conflict with the intent of the County to improve the Subject Property, as expressed in the conditions of the Waiohai Permits.

VIII. DETERMINATION, FINDINGS, AND JUSTIFICATION.

A. Significance Criteria.

35. As discussed in the following, the proposed action will not have any significant effects on the environment, including any primary or secondary consequences, or any short-term, long-term or cumulative effects.

a. The proposed action does not involve an irrevocable commitment to loss or destruction of any natural or cultural resources. There are no known natural or cultural resources on the Subject Property that will be significantly impacted by the proposed action.

b. The proposed action will not curtail the range of beneficial uses of the environment. The proposed action will not curtail any of the present uses of the Subject Property or the adjacent area. Rather, the proposed action will facilitate the public use of the Subject Property, the adjacent Poipu Beach Park, and the adjacent coastal environment.

c. The proposed action will not conflict with the long-term environmental policies or goals and guidelines as expressed in HRS Chapter 344, and any revisions thereof and amendments thereto, court decisions, or executive orders. The proposed action is consistent with the State's environmental policy to preserve and maintain open space and to provide recreational activities, particularly in coastal areas. In addition, the proposed Improvements to the Subject Property will help to minimize erosion and reduce dust emissions and will beautify the area.

d. The proposed action will not substantially affect the economic or social welfare of the community or State. By providing improved parking and access to the Poipu Beach Park, the public facilities located thereon, and the coastal resources of this area, the proposed action will serve to enhance the Koloa-Poipu Visitor Destination Area and improve one of the economic bases of this community. The proposed action will have no negative impact on the social welfare of the community or State, and instead will serve to improve the public good by providing an enhancement to the appearance of, and recreational uses in, this area.

e. The proposed action will not substantially affect public health.
The proposed action will have no negative impacts on public health.

f. The proposed action will not involve substantial secondary impacts, such as population changes or effects on public facilities. The proposed Improvements to the Subject Property will not create any secondary impacts, but instead will serve to enhance the public facilities in this area.

g. The proposed action will not involve substantial degradation of environmental quality. The proposed Improvements to the Subject Property will not result in

any degradation of the environmental quality of this area. Rather, the proposed action will improve the environmental quality of the area by reducing dust emissions from the use of the Subject Property and by reducing erosion. In addition, it will enhance the visual characteristics of the area.

h. The proposed action is individually limited and will not, in conjunction with other activities, have a cumulative effect on the environment or involve a commitment for larger actions. There are no other known activities in the area which, together with the proposed action, will have a cumulative negative effect on the environment of this area. The Improvements to the Subject Property do not involve or require any commitment for any larger actions in the future. Rather, the proposed action is complimentary to the existing uses presently being undertaken in this area.

i. The proposed action will not substantially affect a rare, threatened or endangered species, or its habitat. As noted herein, the proposed action will not have any significant impacts on any rare, threatened or endangered species and/or habitats. The existing Pond on the Subject Property will be maintained in its present condition.

j. The proposed action will not detrimentally affect air or water quality or ambient noise levels. On a temporary basis, during the construction of the Improvements on the Subject Property, the construction activities may have short-term effects on air quality and/or ambient noise levels. However, there will be no long-term impacts. Rather, by reducing dust emissions and erosion, and by providing landscaping to buffer vehicular noises, the proposed action will serve to improve air quality and ambient noise levels.

k. The proposed action will not affect an environmentally sensitive area such as the flood plain, Tsunami zones, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters. Although portions of the Subject Property are located in a flood plain and Tsunami zone, the proposed Improvements will not have a negative impact on these areas. In addition, the Improvements will serve to alleviate problems of erosion and dust emissions in this area. The proposed Improvements will have no negative impacts on the Pond or any of the coastal waters in the area.

l. The proposed action will not substantially affect scenic vistas and view planes identified in County or State plans or studies. The proposed action will have no negative impact on scenic vistas or view planes in this area. Rather, the landscaping to be installed will serve to enhance the scenic beauty of this area.

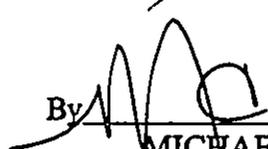
m. The proposed action will not require substantial energy consumption. The proposed action will not require substantial energy consumption. Water to be used for irrigation purposes will be obtained from the adjacent Poipu Beach Park, which has sufficient water resources for such uses.

B. Determination.

36. Based on the information and analysis set forth in this EA, the Applicant requests: that the Department of Public Works find that the proposed action will have no significant impacts on the environment; and that the Department of Public Works enter a determination of Finding Of No Significant Impact for the proposed action.

DATED: Lihue, Kauai, Hawaii, APR 10 2002.

BELLES GRAHAM PROUDFOOT & WILSON

By  _____
MICHAEL J. BELLES
MAX W. J. GRAHAM, JR.
Attorneys for Applicant
MARRIOTT OWNERSHIP RESORTS, INC.

In the Matter of the Application of Marriott Ownership Resorts, Inc., for a Special Management Area Use Permit, a Use Permit, and a Class IV Zoning Permit for real property situated at Poipu, Koloa, Kona, Kauai, Hawaii, identified by Kauai TMK No. (4) 2-8-17:11 (8.27 acres), Before The Planning Commission of the County of Kauai; ENVIRONMENTAL ASSESSMENT; EXHIBITS "A" - "K"

EXHIBITS

Exhibit "A"	Marriott Ownership Resorts, Inc. Authorization
Exhibit "B"	Description of Subject Property
Exhibit "C"	County of Kauai Authorization
Exhibit "D"	Location Map
Exhibit "E"	Tax Map
Exhibit "F"	Poipu Park Plan
Exhibit "G"	Botanical Resources Assessment Report
Exhibit "H"	Avifaunal and Feral Mammal Survey
Exhibit "I"	Nancy McMahon Letter
Exhibit "J"	Archaeological Monitoring Plan and Don Hibbard Letter
Exhibit "K"	Comment and Response Letter

EXHIBIT "A"

EXHIBIT "A"

MARRIOTT OWNERSHIP RESORTS, INC. AUTHORIZATION

MARROITT OWNERSHIP RESORTS, INC. hereby authorizes Michael J. Belles and/or Max W.J. Graham to act on its behalf and to file and process on its behalf any and all applications necessary to obtain any governmental permits and approvals relating to construction on the real property situated at Poipu, Koloa, Kauai, Hawaii described as Lot 220 of Land Court Appl. 956 (8.27 ac.), Kauai TMK No. (4) 2-8-17:11 ("Subject Property"), including but not limited to the following:

1. Demolition Permits, building permits, grading permits, stockpile permits, grubbing permits, driveway permits, sign permits, use permits, Special Treatment District use permits, zoning permits and Special Management Area permits issued by any department agency, board or commission of the County of Kauai, including those requiring approval or consent of any department, agency, board or commission of the State of Hawaii.

2. Permits for Underground Injection Control, wastewater systems, or any other permits issued by the Department of Health or other department, agency, board or commission of the State of Hawaii.

3. Any other permits or approvals required for construction of the proposed parking facilities and park improvements on the Subject Property.

Dated: 11/27/00

MARRIOTT OWNERSHIP RESORTS, INC.

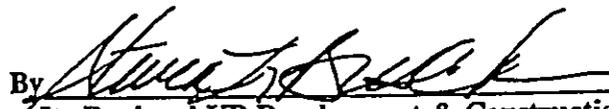
By 
Its Regional VP Development & Construction
Steven L. Busch

EXHIBIT "B"

EXHIBIT "B"

All of that certain parcel of real property situate at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, described as follows:

Lot 220, area 8.270 acres, as shown on Map 43 filed with said Land Court Application No. 956.

Being a portion of the premises described in Transfer Certificate of Title No. 335,476.

SUBJECT, HOWEVER, to the following:

1. Declaration of Conditions dated July 27, 1977, recorded in Liber 12379, Page 549.

2. The provisions contained in that certain instrument dated August 27, 1937, filed as Document No. 40955, made by and between the McBryde Sugar Company, Limited, Bishop Trust Company, Limited, Trustee for Eric A. Knudsen and Augustus F. Knudsen, Eric A. Knudsen and Augustus F. Knudsen, and Bishop Trust Company, Limited.

3. Stipulation dated June 7, 1951, made in the matter entitled "CARL E. SCHIMMELFENNING, 'Petitioner' vs. GROVE FARM COMPANY, LIMITED, BISHOP TRUST COMPANY, LIMITED, TRUSTEE FOR AUGUSTUS F. KNUDSEN, and COOKE TRUST COMPANY, LIMITED, and VALDEMAR J. L'ORANGE KNUDSEN, TRUSTEES FOR ERIC A. KNUDSEN, 'Respondents'," filed in the Circuit Court of the Fifth Circuit, Territory of Hawaii (now known as State of Hawaii), under E. No. 144, and filed as Document No. 135050, re: rights to receive water from the Konohiki of the Ahupuaa of Koloa in a constant stream in the amount of 45,000 gallons per day, it being understood that the decree will determine the water rights petitioner's land is entitled to under the Hawaiian law of water rights.

END OF EXHIBIT "B"

EXHIBIT "C"

COUNTY OF KAUAI AUTHORIZATION

THIS COUNTY OF KAUAI AUTHORIZATION is made this 29th day of January, 2001, 2000, by the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, whose mailing address is c/o Department of Public Works, 4444 Rice Street, Suite 275, Lihue, Kauai, Hawaii 96766, hereinafter called the "County", in favor of MARRIOTT OWNERSHIP RESORTS, INC., a Delaware corporation, whose mailing address is 6649 Westwood Boulevard, Suite 500, Orlando, Florida 32821, hereinafter called "MORI".

I. RECITALS

1. The County is the owner of certain property known as Lot 220 of Land Court Application 956 located in Poipu, Koloa, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 2-8-17:11 ("County Property").

2. MORI is the owner of certain property located in Poipu, Koloa, Kauai, Hawaii, known as Lot 1 of Land Court Consolidation 135, Lot 2 of Land Court Application 1801, Lot 4 and Lot 5 of Land Court Consolidation 125, and Lot 173 and Lot 174 of Land Court Consolidation 956, all of which are identified by Kauai Tax Map Key Nos. (4) 2-8-17:7, 8, 12 and 20 ("MORI's Property").

3. The Planning Commission of the County of Kauai has granted MORI certain permits to develop a resort development on the MORI Property to be known as the "Marriott's Waiohai Beach Club" ("Project"). The Permits are identified as Special Management Area Use Permit SMA (U)-2000-3, Project Development Use Permit PD (U)-2000-16, Shoreline Setback Variance Permit SSV-2000-2, and Class IV Zoning Permit ZA-2000-21 ("Project Permit").

4. Conditions 1 and 2.d., of the Project Permit provide as follows:

"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:

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.

5. The County is willing to grant MORI authorization to construct and develop the improvements to the County Property ("Park Improvements") as contemplated by the Project Permit.

II. AUTHORIZATION

The County hereby authorizes MORI and its attorneys and agents to act on its behalf and to file and process on its behalf any and all applications necessary to obtain any governmental permits and approvals relating to construction on, and development of, the Park Improvements on the County Property, including but not limited to the following:

1. Demolition Permits, building permits, grading permits, stockpile permits, grubbing permits, driveway permits, sign permits, use permits, Special Treatment District use permits, zoning permits and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai, including those requiring approval or consent of any department, agency, board or commission of the State of Hawaii.

2. Permits for Underground Injection Control, wastewater systems, or any other permits issued by the Department of Health or other department, agency, board or commission of the State of Hawaii.

3. Any other permits or approvals required for construction of the proposed Park Improvements on the County Property.

Dated: January 29, 2001

COUNTY OF KAUAI

By Maryanne W. Kusaka
MARYANNE W. KUSAKA
Its Mayor

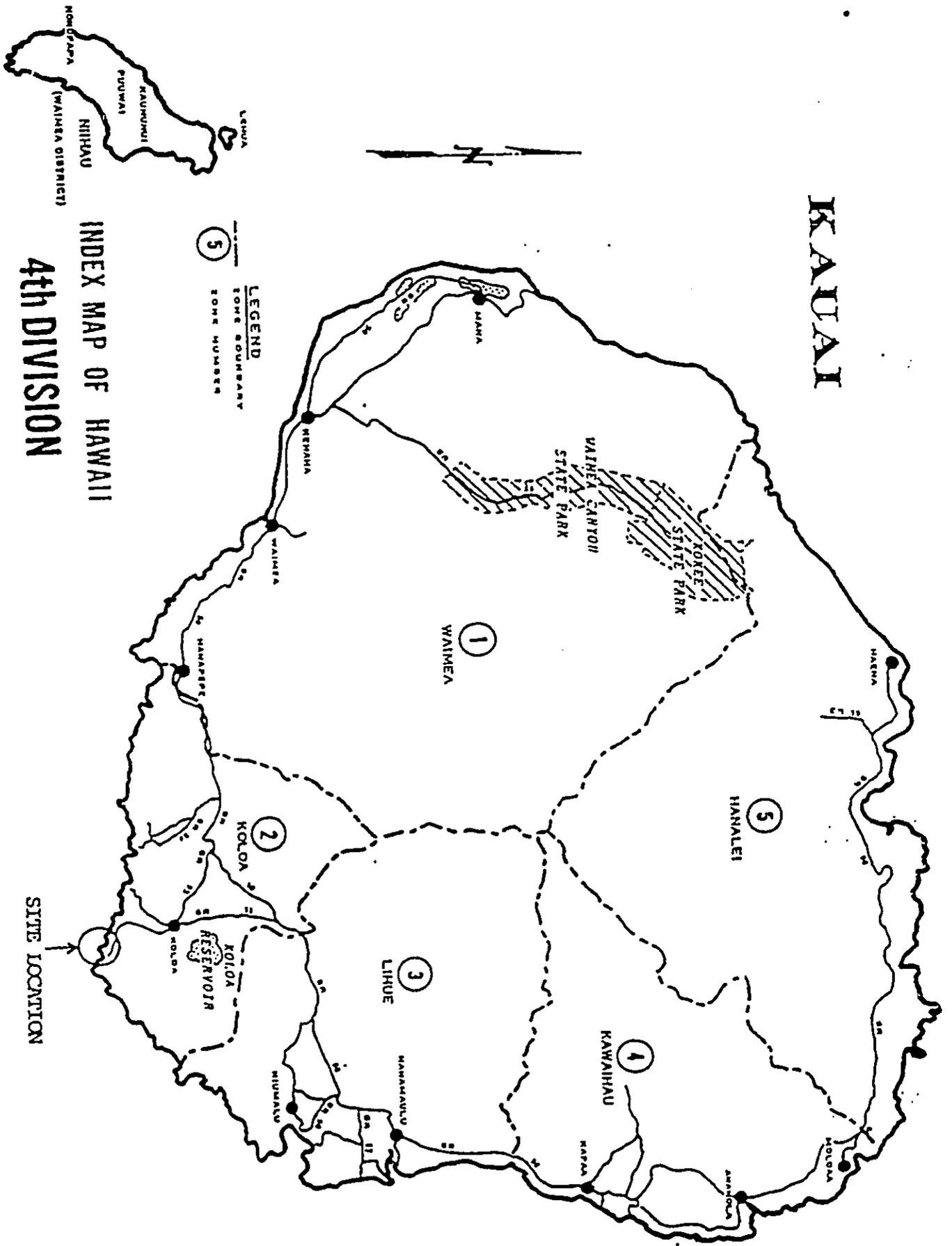
By Peter A. Nakamura
PETER A. NAKAMURA
Its County Clerk

APPROVED AS TO FORM
AND LEGALITY:

Hartwell H. K. Blake
HARTWELL H. K. BLAKE
County Attorney, County of Kauai

EXHIBIT "D"

KAUAI



INDEX MAP OF HAWAII
4th DIVISION

EXHIBIT D

EXHIBIT "E"

EXHIBIT "F"

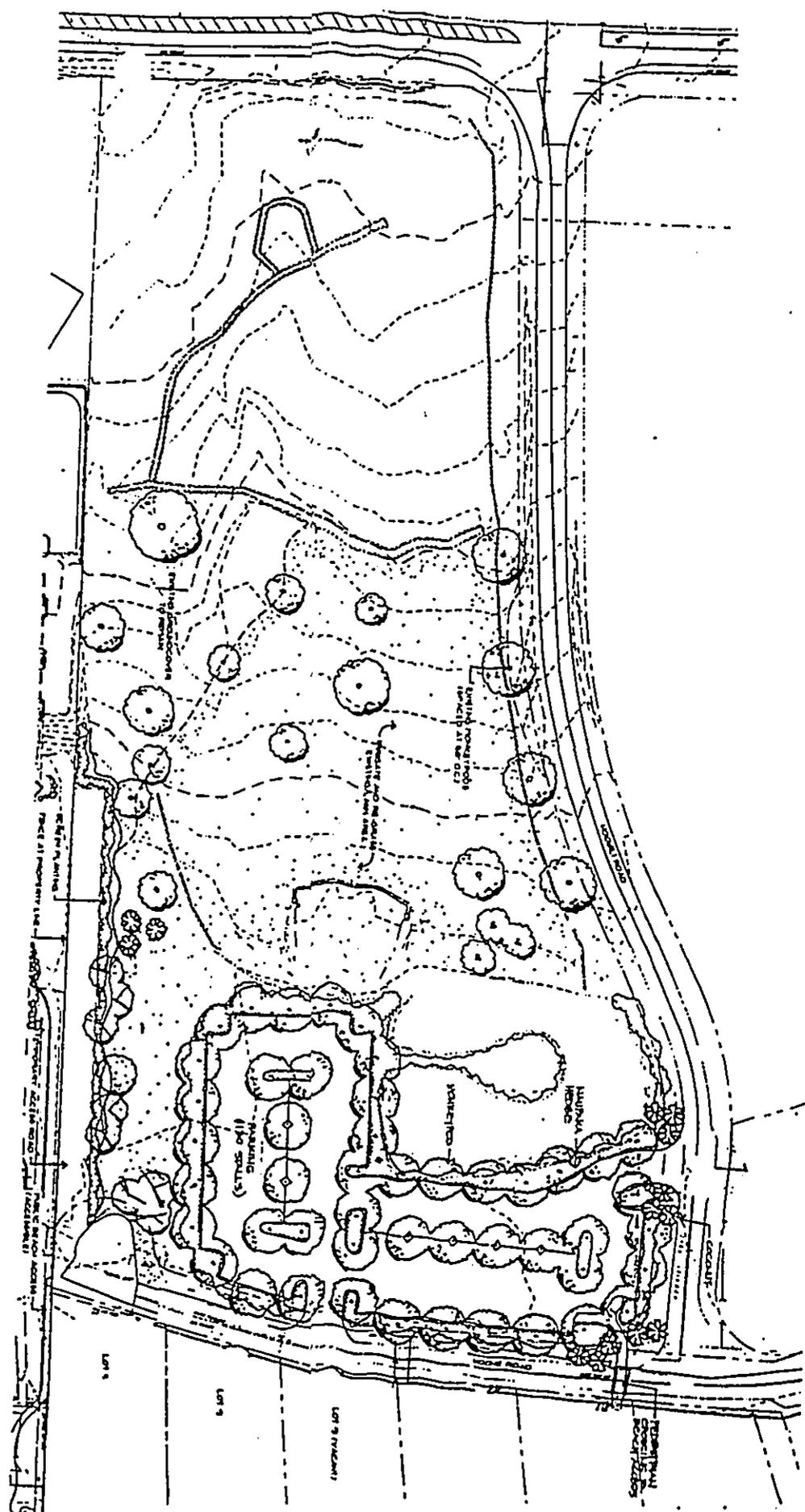


EXHIBIT "F"

SCALE	1" = 10'
DATE	

NO.	DATE	BY	REVISION

Polpu Beach Park
 Revised Landscape Plan - Option "A"

Trogg Clarke & McChey
 LANDSCAPE ARCHITECTS
 1000 ...
 ...

EXHIBIT "G"

CHAR & ASSOCIATES

Botanical/Environmental Consultants

4471 Puu Panini Ave.
Honolulu, Hawaii 96816
(808) 734-7828

11 December 2000

MVCI
c/o Greg Kamm
Planning & Management
P.O. Box 1200
Koloa, Kaua'i, HI 96756

SUBJECT Po'ipu Park Improvements - TMK (4)2-8-17:11
Po'ipu, Koloa District, Kaua'i

Dear Mr. Kamm:

The ±8.27-acre Po'ipu Park site is located immediately east of the Marriott Vacation Club Inc. (MVCI) Waiohai project site. MVCI intends to improve the park with pavement, driveways, and landscaping.

A botanical resources assessment study was conducted for the Po'ipu Park improvements on 22 November 2000. The primary objectives of the study were to provide a general description of the vegetation on the site, search for threatened and endangered species as well as species of concern, and identify areas of potential environmental problems or concerns.

Description of the Vegetation

The plant names used in this report follow Wagner et al. (1990). The few recent plant name changes since 1990 follow those recorded in the Hawaii Biological Survey series (Evenhuis and Miller 1995-1998; Evenhuis and Eldredge 1999-2000).

An existing unpaved parking area is found on the south (makai) portion of the park. Due to daily vehicular and pedestrian traffic, this site is largely bare, hard-packed soil. A few patches of Bermuda grass or manienie (Cynodon dactylon) are scattered here and there. Along the fence line adjacent to the Waiohai parcel, the vegetation consists of a narrow band of koa haole (Leucaena leucocephala) scrub with Guinea grass (Panicum maximum). Also found here are a few Indian pluchea (Pluchea indica) and castor bean (Ricinus communis) shrubs.

EXHIBIT G

Mauka (north) of the dirt parking lot is a small U-shaped pond. Low mats of water hyssop (Bacopa monnieri) along with a few clumps of kaluha sedge (Bolboschoenus maritimus) border the open water areas of the pond. Other plants also found around the pond in smaller numbers are Leptochloa uninervia, false daisy (Eclipta alba), beach morning glory or pohuehue (Ipomoea pes-caprae), and kipukai (Heliotropium curassavicum).

A large, open, grassy lawn and a raised grassy stage area are also found mauka of the parking lot. Bermuda grass is the main lawn grass; weedy grasses such as wiregrass (Eleusine indica) and swollen fingergrass (Chloris barbata) are occasional to locally common. A varied assortment of weedy, mostly annual, species are also found on the lawn area. These include Sida ciliaris, cheese weed (Malva parviflora), Boerhavia coccinea, coat buttons (Tridax procumbens), false mallow (Malvastrum coromandelianum), nutgrass (Cyperus rotundus), and khaki weed (Alternanthera pungens). A few large trees, mostly monkeypods (Samanea saman), are found scattered in this area or lining the Ho'owili Road boundary. A rock wall bordering the grassy lawn area to be improved supports a number of taller weedy species including 'uhaloa (Waltheria indica), lion's ear (Leonotis nepetifolia), Spanish needle (Bidens pilosa), hairy abutilon (Abutilon grandifolium), castor bean, and koa haole.

Discussion

The vegetation on the areas proposed for the park improvements is dominated by introduced species such as Bermuda grass, monkeypod, koa haole, etc. Introduced species are all those plants which were brought to the Hawaiian Islands by humans, intentionally or accidentally, after Western contact, that is, Cook's arrival in the islands in 1778. A few native species are found on the site. Water hyssop, kaluha sedge, kipukai, and beach morning glory are found around the small, man-made pond. One small landscape planting of hala (Pandanus tectorius) is found on the lawn area near the pond. A few plants of 'uhaloa occur near the rock wall.

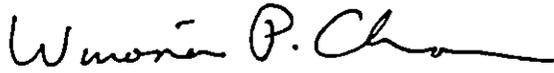
All of the native species are indigenous, that is, they are native to Hawai'i and elsewhere.

No threatened and endangered species or species of concern (U.S. Fish and Wildlife Service 1999) occur on the site. This is not surprising since the park area is periodically mowed and maintained.

The proposed improvements are not expected to have a significant negative impact on the botanical resources. All of the plants found on the site can be found in similar lowland habitats throughout the Hawaiian Islands. There are no reasons to impose any restrictions, conditions, or impediments to the proposed improvements for the park.

Please do not hesitate to contact me should you have any questions regarding the findings in this report.

Sincerely,

A handwritten signature in cursive script that reads "Winona P. Char". The signature is written in dark ink and is positioned above the printed name.

Winona P. Char

References

- Evenhuis, N.L. and S.E. Miller, editors. 1995-1998. Records of the Hawaii Biological Survey. Bishop Museum Occasional Papers Nos. 41-56.
- Evenhuis, N.L. and L.G. Eldredge, editors. 1999-2000. Records of the Hawaii Biological Survey. Bishop Museum Occasional Papers Nos. 58-64.
- U.S. Fish and Wildlife Service. 1999. U.S. Fish and Wildlife Service species list, plants. March 23, 1999. Pacific Islands Ecoregion Office, Honolulu, HI.
- Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawai'i. 2 vols. University of Hawai'i Press and Bishop Museum Press, Honolulu, HI. Bishop Museum Special Publication 83.

EXHIBIT "H"

AVIFAUNAL AND FERAL MAMMAL SURVEY FOR
THE WAIOHAI PROJECT/POIPU PARK
TMK (4) 2-8-17:11 POIPU, KAUAI

Prepared for:

Marriott Ownership Resorts, Inc. and Greg Kamm
Project Manager
P.O. Box 537
Koloa, Kauai

Prepared by:

Phil Bruner
Environmental Consultant
Faunal (Bird & Mammal) Surveys
Box 1775
BYU-H
Laie, Hawaii 96762

19 December 2000

EXHIBIT H

INTRODUCTION

This report provides the findings of a one day (7 December 2000) field survey of a 8.27 acre parcel, TMK (4) 2-8-17:11 located at Poipu, Kauai. In addition, the report includes references to pertinent published and unpublished sources. The objectives of the field survey were:

- 1- Document what birds and mammals occur on or near the property.
- 2- Note resources important to native and migratory species.

SITE DESCRIPTION

A mixture of habitats occur on and adjacent to the property. The majority of the site is open with either grass or bare earth. A small pond with emergent vegetation is located in the makai portion of the site. Similar small ponds also occur on other nearby lands. The makai section also provides parking for Poipu Beach Park.

STUDY METHODS

The entire site was surveyed on foot. Nearby lands were also examined in order to see what potential species occurred in the area. Because of the open nature of the site all birds were identified visually. Mammals were recorded by either visual sightings or

by tracks and scats. Data were obtained just after dawn and shortly before sunset when birds are most active and human disturbance was minimal.

The weather during the survey was clear and relatively calm. Scientific names used in this report follow Pyle (1997) and Honacki et al. (1982). These sources use currently accepted taxonomy.

RESULTS AND DISCUSSION

Resident Endemic (Native) Birds:

Two native species were recorded in the small pond located on the makai section of the property. A single adult female Black-necked Stilt (*Himantopus mexicanus knudseni*) was foraging along the edge of the pond from 07:00 to 07:45 am. This species was not recorded on the faunal survey of the adjoining Waiohai Hotel site (Bruner 1999). The Hawaii population (subspecies) of the Black-necked Stilt is a federally listed endangered species (Pratt et al. 1987). The pond is shallow enough for a wader like the stilt. Ground predators such as dogs, cats and the Small Indian Mongoose (*Herpestes auropunctatus*) are a major threat to nesting stilt (Hawaii Audubon Society 1993). Fortunately the mongoose is not established on Kauai. The other native bird observed at the pond was a juvenile Black-crowned Night-Heron (*Nycticorax nycticorax*). This bird was also foraging around the edge of the pond from 06:15 to 06:40am. This species is the only native waterbird that is not listed as endangered or threatened. This species was recorded by Bruner (1999) on the adjoining Waiohai Hotel property. The small pond is

exposed to disturbance from people utilizing the parking lot. Waterbirds can forage at this pond but it is unlikely that it could be used for nesting due to disturbance and its accessibility to predators.

Three endangered waterbirds also occur on Kauai: Hawaiian Coot (*Fulica alai*), Koloa or Hawaiian Duck (*Anas wyvilliana*), and Common Moorhen (*Gallinula chloropus*). Any or all of these species could also forage at this small pond. No native land birds were tallied on the survey. The only possible species that might on rare occasion be seen in this area is the Short-eared Owl or Pueo (*Asio flammeus*). This bird is listed as endangered by the States of Hawaii on the island of Oahu, but not endangered on Kauai.

Migratory Birds:

Two migratory species were observed on the property. Three Pacific Golden-Plover (*Pluvialis fulva*) and four Ruddy Turnstone (*Arenaria interpres*) were foraging on the areas mauka of the parking lot. These species are common winter migrants to Hawaii and are not listed as endangered or threatened. The Wandering Tattler (*Heteroscelus incanus*) could forage around the pond. This species was reported on Bruner's (1999) survey.

Introduced Birds:

Twelve species of introduced birds were tallied on the survey (Table 1). This compares with eleven species recorded by Bruner (1999) on adjoining property. None of these species are listed as endangered or threatened.

Feral Mammals:

Two cats (*Felis catus*) were seen along the edge of the property. Dog tracks were abundant. The endangered Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) was not observed. This species occurs in a wide variety of habitats on Kauai (Tomich 1986). No rats or mice were noted, but likely occur in this area.

SUMMARY

This property is a modified landscape surrounded by other developed and altered lands. However, it does contain a variety of habitats utilized by native, migratory and introduced birds. A small pond is used by foraging native waterbirds. Nearby lands also have small ponds. The only mammals recorded were common introduced species.

TABLE 1

Introduced species of birds recorded at Waiohai Project/Poipu Park, Poipu, Kauai.

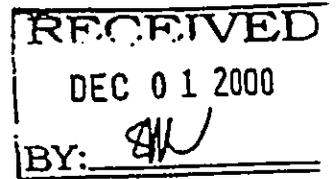
COMMON NAME	SCIENTIFIC NAME
Cattle Egret	<i>Bubulcus ibis</i>
Red Junglefowl	<i>Gallus gallus</i>
Spotted Dove	<i>Streptopelia chinensis</i>
Zebra Dove	<i>Geopelia striata</i>
Common Myna	<i>Acridotheres tristis</i>
Japanese White-eye	<i>Zosterops japonicus</i>
Northern Cardinal	<i>Cardinalis cardinalis</i>
Red-crested Cardinal	<i>Paroaria coronata</i>
Western Meadowlark	<i>Sturnella neglecta</i>
House Finch	<i>Carpodacus mexicanus</i>
House Sparrow	<i>Passer domesticus</i>
Java Sparrow	<i>Padda oryzivora</i>

SOURCES CITED

- Bruner, P.L. 1999. Survey of the avifauna and feral mammals for the proposed Waiohai Project, Poipu, Kauai. Unpubl. ms. Prep. For Greg Kamm Planning and Management, Kauai.
- Hawaii Audubon Society. 1993. Hawaii's Birds. Fourth edition. Hawaii Audubon Society, Honolulu.
- Honacki, J.H., K.E. Kinman and Koepl ed. 1982. Mammal species of the world: A taxonomic and geographic reference. Allen Press Inc., and the Association of Systematic Collections, Lawrence, Kansas.
- Pratt, H.D., P.L. Bruner and D.G. Berrett. 1987. A field guide to the birds of Hawaii and the tropical Pacific. Princeton Univ. Press.
- Pyle, R.L. 1997. Checklist of the birds of Hawaii - 1997. *'Elepaio* 57(7):129-138.
- Tomich, P.Q. 1996. Mammals in Hawaii. Bishop Museum Press. Honolulu.

EXHIBIT "I"

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE HISTORIC PRESERVATION DIVISION
KAUAI OFFICE, 5532 TAPA STREET
KOLOA, KAUAI



November 28, 2000

MEMORANDUM

TO: Greg Kamm, Project Manager
Marriott Waiohai

FROM: Nancy McMahon, Archaeologist for Kaua'i
State Historic Preservation Division *Nancy M McMahon*

SUBJECT: **Historic Preservation Concerns —
Poipu Beach Park Mauka Improvements and Landscaping
Poipu, Koloa, Kaua'i**

Although there has been only one archaeological survey for this mauka parcel of the park (Shun nd). The report has never been submitted. There has also been an archaeological survey for the makai area of the Park (Hammatt et. al.). Data recovery work has also been submitted for the makai area (CSH nd) but this report has also not been submitted. If these reports were available, we could clearly give a recommendation as to whether further archaeological work is needed.

Limited information was gathered during the archaeological survey (McMahon 1996) for the Sheraton Kauai and it was then recommended by this office that archaeological monitoring take place. Recently, during the seawall construction at Brennecke's, no archaeological survey was conducted instead our office recommended archaeological monitoring. Our office's concerns mainly lie in the shoreline area where a few inadvertent human remains and buried cultural deposits have been discovered. So based on what we know from available resources and from a field inspection of the project area, there are no physical archaeological sites on the property where the improvements are to be made. Significant historic sites and burials could be present subsurface.

Should landscaping or major subsurface construction work take place in this mauka area of Poipu Beach Park, then a qualified archaeologist should be retained to monitor the construction/landscaping work. Prior to construction, an acceptable archaeological monitoring plan should be submitted to our office. Once fieldwork is completed, an acceptable report on this monitoring work would be required.

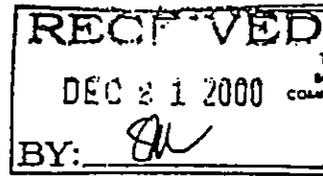
If these recommendations are followed, then we believe that the proposed project will have "no adverse effect" on significant historic sites.

If you have any questions, please call me at 742-7033.

EXHIBIT I

EXHIBIT "J"

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



TIMOTHY E. JOHNS, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DEPUTIES
JANET E. KAWILO
LINNELL NISHIOKA

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhikawa Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS
WATER RESOURCE MANAGEMENT

December 18, 2000

Mr. Greg Kamm, Project Manager
Marriott Ownership Resorts Inc.
P.O. Box 537
Koloa, Hawaii 96756

LOG NO: 26656 ✓
DOC NO: 0012NM05

Dear Mr. Kamm:

**SUBJECT: Historic Preservation Review –Archaeological Monitoring Plan
for the Mauka Addition to Poipu Beach Park (Marriott Ownership
Resorts Inc.), TMK: 2-8-17: 11, Poipu, Koloa, Kauai**

Thank you for the submitting this plan. This work is part of your County required improvements for Poipu Beach Park. We approve this plan. Any curation of recovered material shall be decided in consultation with the landowner (County of Kauai), Marriott and the State Historic Preservation Division.

If this plan is followed, then we believe that the proposed grading and improvements at the mauka addition of Poipu Beach Park will have "no adverse effect" on significant historic sites.

If you have any questions, please call Nancy McMahon at 742-7033.

Aloha,

A handwritten signature in black ink, appearing to read "Don Hibbard".

DON HIBBARD, Administrator
State Historic Preservation Division

NM:amk

c. Dee Crowell, County Planning Department

EXHIBIT "J"

**Archaeological Monitoring Plan
for the
Mauka Addition to the County of Kauai's
Poipu Beach Park**

TMK: (4) 2-08-17:11
Poipu, Koloa, Kaua'i

By

Marriott Ownership Resorts, Inc.
P. O. Box 537
Koloa, Kauai, HI 96756
(808) 742-8850

November 24, 2000

Scope of Work

GENERAL

At the request of Marriott Ownership Resorts Inc. (MORI), the archaeological contractor will be required to carry out archaeological monitoring in conjunction with the proposed land improvements for mauka addition to Popiu Beach Park which includes landscape, plantings, an irrigation system and parking. This plan is based on discussions with DLNR-State Historic Preservation Division (DLNR-SHPD) and has been prepared to comply with their concerns for mitigation of impacts on possible significant historic sites and human remains, should any be discovered.

RESEARCH AIMS

Previous archaeological work concerning the Koloa district has until recently been mostly surface surveys. Starting in 1979, excavations at the Kiahuna Golf Course began. Surveys and intensive excavations in Koloa, Weliweli and Pa'a ahupua'a have clearly indicated a widespread agricultural complex. The earliest occupation occurred on the west side of Keonelo Bay and predates A.D. 500. Evidence inland had indicated use of lava tubes for habitation and burial, starting around A.D. 1000. Development of irrigated agriculture, (known as the Koloa Field System) took place around A.D. 1400 with the development of inland fishponds. Any shoreline with sandy deposits along the south side of the island can be expected to contain burials, although the subject property appears to be inland of the sandy areas. Habitation sites also existed along the beachfronts. The monitoring of the area provides an opportunity to identify and investigate subsurface cultural deposits along the Koloa coast. Research questions that may be addressed by this monitoring include:

- 1) What types of subsurface structures, objects or remains are present in the project area?
- 2) Do cultural deposits reflect task specific activities or more generalized activities?
- 3) How do the identified cultural deposits compare to other archaeological sites in the vicinity?
- 4) What is the age of the identified deposits? How do the deposits compare in age to the known chronology of Koloa?

SERVICES TO BE PROVIDED

Under this plan for archaeological monitoring, the archaeological contractor will provide the following services: All work done and all products completed will meet the performance and content standards of DLNR-SHPD. The archaeological monitoring will include the following items:

1. Attend a pre-construction meeting to acquaint other subcontractors and government representatives with archaeological methods and procedures to be employed during the archaeological monitoring;
2. On-site monitoring of grading and removal of sand substrate within the project area, with the aim of identifying and evaluating the potential significance of any archaeological material uncovered during the work will be conducted by a qualified archaeologist;

The archaeological monitoring will be conducted in a manner so as to minimize impact to the on-going construction activities, which shall be suspended only if it appears that an entire cultural feature is to be destroyed or if human burial remains are identified. The archaeologist will exercise professional judgement and consult with SHPD as necessary.

3. On-call monitoring of grading and ground disturbance would occur within areas of the project which did not have a sand substrate. During the pre-construction meeting, contractors would be instructed about possibility of historic sites or human remains and what to do should they encounter them.
4. If any potentially significant subsurface cultural remains are encountered, all work in the immediate vicinity will stop to permit inspection and evaluation by the archaeological monitor. Such evaluation would include profile drawings and photographs of cultural layers and features and where there is a major sedimentary change or disconformity, notation on soil color and basic soil characteristics, sample collections of datable charcoal as well as other datable organic material to determine nature and age of the layers, and collection of artifacts found;

The fieldwork will be recorded in a daily log. This log will include data indicating time spent monitoring and recording, the amount of sediment removed and their location, the presence or absence of cultural remains and/or significant soil strata and all sampled areas.

Should significant archaeological materials or sites be encountered during construction, work in the immediate vicinity should stop and be redirected to other areas within the project area.

5. All cultural features may be fully excavated and the constituent deposit retained for laboratory work. The stratigraphic origin and associations of all features will be definitively ascertained. Particular emphasis will be placed on obtaining suitable archaeological datable samples such as charcoal, wood, volcanic glass, bone, etc., during excavation. A representative collection of Carbon-14 and Carbon-13/12 isotope dating samples is planned as well as samples for wood charcoal identification.
6. All of the excavated material will be screened through nested 1/4 inch and 1/8 inch screens. Of this material, at least 50% of the 1/4-inch and 25% of the 1/8-inch mess sample will be retained for laboratory analysis. Any non-retained portion will be visually scanned for general compositional characteristics, artifacts, and/or significant cultural remains. All observations will be recorded. Depth of excavations from datum, plan view or cultural features and location of in situ artifacts will be recorded.
7. If human remains are encountered, all work in the immediate vicinity will stop and the remains will be left in place until a course of action is determined by consultation with DLNR-State Historic Preservation Division in accordance with Chapter 6E, H.R.S. Confirmation of the presence of actual human burials will take place. Work will then progress as directed by DLNR-SHPD. Photography of human remains or their provenience shall not be permitted. If the remains are identified as Hawaiian, the property owner, DLNR-SHPD and the Kauai Island Burial Council will work out burial treatment that would be acceptable to and approved by the Kauai Island Burial Council (KIBC).

At the time of discovery every effort shall be made to ensure that the human remains any associated materials and their stratigraphic context are not disturbed. An interim preservation zone will be established around the burial site(s) requiring such protection and the buffer zone(s) marked with brightly colored tape. No construction or land modification will be allowed within the interim preservation zone(s).

In order to (a) establish consultation with DLNR-SHPD and KIBC and (b) determine the nature and extent of the burial for data recovery and/or preservation measures that might be warranted, these interim preservation measures should remain in place until DLNR-SHPD is notified:

1. The site(s) should be plotted accurately on grading and construction plans prior to re-initiation of the grading or construction activities;
2. A buffer zone of five meters should be identified and mapped around all site perimeters. The preservation buffer zones should be marked with brightly colored tape, and construction should not be allowed to occur within the buffer zones;
3. Explicit notification of construction supervisors will take place as to the nature and location of the sites(s) and the significance of the buffer zone(s).

If permitted to disinter intact human remains, they will be excavated as a distinct stratigraphic unit with individual documentation. Care will be taken to ensure that any associated artifacts or stratigraphic features are included within the provenience of the burial. Salient factors of the burial will be recorded in detail in the field and graphically documented; e.g. burial practice, orientation of interment. This is to aid in the ethnic identity.

If permitted, soils from the matrix surrounding the human remains shall be sifted through 1/8-inch mesh screening and the remainder in the screen retained for laboratory analysis.

If isolated bones or bone fragments are found, their location will be plotted accurately. These remains will be collected and placed in a brown paper bag and labeled by location. The ethnic identity will be determined to the extent possible. At the end of each day they will be placed in a secure on-site location in the MORI project area to await reinterment.

If ethnic identity cannot be determined, DLNR-SHPD shall decide if further analysis is needed. Human osteology will be conducted in a temporary lab on Kauai. Analysis will include detailed recordings of metric and non-metric variables. These data will be synthesized and used for determining ethnic identity.

The human remains will be reinterred on the MORI property, in a location that has been selected and agreed upon by KIBC and MORI.

8. If inadvertent archaeological sites are found their significance would be evaluated based on (a) National Register criteria contained in the Code of Federal Regulations (36 CFR Part 60), and (b) the evaluation of traditional cultural values provided by the national Advisory Council on Historic Preservation (ACHP).

Sites assessed as potentially significant for information content are assessed under criterion D, in the Code of Federal Regulations, which defines significant resources as those which "have yielded, or may be likely to yield, information important in prehistory or history" (36 CFR Sec 60.4). Sites assessed as potentially significant as excellent examples of site types are assessed under criterion C, which defines significant resources as those "which embody the distinctive characteristics of a type, period or method of construction or that represent a significant and distinguishable entity whose components may lack individual distinction."

Sites assessed as potentially culturally significant (Category C) are assessed under guidelines prepared by the ACHP, entitled "Guidelines for Consideration of Traditional Cultural Values in Historic Preservation Review" (ACHP 1985). Cultural Value is defined in the guidelines as "... the contribution made by an historic property to an ongoing society or cultural system. A traditional cultural value is a cultural value that has historic depth" (1985:1). The guidelines specify that, "A property need not have been in consistent use since antiquity by a cultural system in order to have traditional cultural value (1985:7). Both religious and non-religious cultural values are specified and examples include burial sites, loci of traditional economic activities, and loci that are symbolic of a group's identity or history (1985:11).

9. Disposition of Material. Archaeological remains collected during this program will be repositied with MORI for curation at their choice of facility. All field notes and forms will be filed in the archaeological contractor's office.
10. All field data will be analyzed and appropriate management recommendations will be made on the findings.

All retrieved artifact and midden samples will be thoroughly cleaned in the laboratory. Artifacts shall be photographically recorded, sketched and identified. All metric attributes and weights will be recorded. This data presented in coherent table form within the final report for the project. Midden samples will be minimally identified as to major "class" (e.g. bivalve or gastropod mollusk, crustacean, echinoderm, fish bird, mammal bone, etc.) All data will be clearly presented in coherent form within the final report.

Appropriate mathematic interpretative manipulations of the midden and artifactual data will be performed.

Dating samples will be adequately and appropriately prepared in the laboratory. Primary emphasis will be obtaining sufficiently large organic charcoal samples for Carbon 14 and Carbon 13/12 dating. Other types of dating (e.g. shell) shall not be discounted, but strong emphasis will be placed on radiocarbon dating.

11. A draft report on the findings of all work conducted under this archaeological monitoring plan will be submitted to DLNR-SHPD and other agencies as directed by MORI. The review will ensure that all necessary project information is include and completely presented. A final report shall then be produced, incorporating any recommended revisions in 75 days. Included in this report will be:

- Background information about the project area from available literature;

- A map showing location of archaeological sites and/or human remains and all recovered cultural material;

- Stratigraphic/cross-sectional drawings and descriptions (size: width, Height and munsell soil characteristics);

- Catalog of artifacts and midden collected;

- Results of radiocarbon dating (if submitted); and

- Evaluation of significance based on a summary statement of findings.

The field monitoring shall be performed in accordance with current standards for monitoring outlined by the DLNR-SHPD as contained within Title 13, Subtitle 6, and Chapter 150. The significance of all archaeological remains identified within the project area will be assessed in terms of (a) the National Register criteria contained in the Code of Federal Regulations (36 CFR Part 60), and (b) the criteria for evaluation of traditional cultural values prepared by the national ACHP.

EXHIBIT "K"

BENJAMIN J. CAYETANO
GOVERNOR



GENEVIEVE SALMONSON
DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
236 SOUTH BERETANIA STREET
SUITE 702
HONOLULU, HAWAII 96813
TELEPHONE (808) 586-4186
FACSIMILE (808) 586-4188

April 19, 2001

RECEIVED
MAY 2 2001
BELLES GRAHAM
PROUDFOOT & WILSON

Mr. Cesar C. Portugal
County Engineer
County of Kauai
Department of Public Works
4444 Rice Street, Suite 275
Lihue, Hawai'i 96766

Dear Mr. Portugal:

Subject: Poipu Beach Park Parking Lot Improvements

Thank you for the opportunity to review and comment on the subject project. We have the following comment.

1. Parking lots tend to contain accumulated spillage of oils, grease, and other automotive fluids such as gasoline and antifreeze. Please discuss possible mitigative measures to prevent non-point source release of these substances downgradient from the parking lot area.
2. Please describe whether other development will be occurring in the vicinity of the project site during the same time frame and disclose the cumulative impact of all nearby projects in the environmental assessment.

Should you have any questions, please call Jeyan Thirugnanam at 586-4185.

Sincerely,


Genevieve Salmonson
Director

c: Marriot
Max Graham

EXHIBIT K

April 26, 2001

Date: 4/26/01	no. of pages: 1
To: GREG K.	From: COLIN
MVCI	Shimokawa Architects, Inc.
	Phone #: (808) 955-3373
	Fax #: (808) 955-3374

VIA FAX
(808) 742-6368

Mr. Greg Kamm
Project Manager
MARRIOTT VACATION CLUB INTERNATIONAL
P.O. Box 537
Koloa, Hawaii 96756

Re: Marriott's Waiohai Beach Club - Poipu Park Improvements - Office of Environmental Quality Control

Dear Greg:

This is in response to the State of Hawaii Office of Environmental Quality Control's letter to Mr. Ceasar C. Portugal dated April 19, 2001 regarding the Poipu Beach Park Parking Lot Improvements that you faxed to me.

Today, I called Mr. Jeyan Thirugnanam at the Office of Environmental Quality Control. I informed him that the proposed parking lot will be replacing an unpaved parking lot and the run-off from the parking lot will be directed to an existing adjacent retention pond. I clarified that the parking lot is not on the ocean front and the drainage does not go directly to the ocean.

Mr. Thirugnanam stated that if the run-off from the parking lot does not go to the ocean, the proposed design is acceptable as is.

He did state that the County should maintain the parking lot to minimize the run-off of pollutants.

Please call me if you have any questions regarding this.

Sincerely,

SHIMOKAWA ARCHITECTS, INC.


Colin H. Shimokawa, AIA
President

cc: Ken Nagai
Shelli McCelvey

Shimokawa
Architects, Inc.
1580
Makaloa St.
Suite 1050
Honolulu, HI
96814
808-955-3373
808-955-3374 fax

**BELLES GRAHAM
PROUDFOOT & WILSON**

ATTORNEYS AT LAW

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MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DAVID W. PROUDFOOT
DONALD H. WILSON
Federal I.D. No. 99-0317663

April 10, 2002

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
235 South Beretania Street
State Office Tower, Suite 702
Honolulu, Hawaii 96813

Re: **Draft Environmental Assessment for County of Kauai
Poipu Park Improvements**
Action: **Special Management Area Use Permit SMA(U)-2001-16;
Use Permit (U)-2001-25; Class IV Zoning Permit ZA-IV-2001-29**
EA Approving Agency: **Department of Public Works, County of Kauai**
Property: **Lot 220, Land Court Application No. 956
Poipu, Koloa, Kauai, Hawaii
Kauai TMK No.: (4) 2-8-17:11 (8.27 acres)**
Owner: **County of Kauai**

Dear Ms. Salmonson:

Thank you for your comments on the subject Draft Environmental Assessment ("EA"). I will restate your comments related to the EA together with our responses:

1. Comment.

Parking lots tend to contain accumulated spillage of oils, grease, and other automotive fluids such as gasoline and antifreeze. Please discuss possible mitigative measures to prevent non-point source release of these substances downgradient from the parking lot area.

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
April 10, 2002
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Response.

I have enclosed a letter dated April 26, 2001, from Colin H. Shimokawa, AIA, who is the project architect for the Applicant's adjacent Marriott's Waiohai Beach Club project. As noted by Mr. Shimokawa, the proposed landscaped, paved parking lot will be developed on an unimproved parcel which is presently being used by the general public for parking purposes. The run-off from the new parking lot will be directed into an existing retention pond located adjacent to the new parking lot. As a result, run-off from the parking lot (together with any automotive fluids) will be retained on site. As noted by Mr. Shimokawa, the new parking lot is located on a portion of County of Kauai's Poipu Park which is itself located on the mauka side of Hoone Road. Located on the makai side of Hoone Road is the County of Kauai's Poipu Beach Park. As a result, the parking lot on the Subject Property is not located directly adjacent to the shoreline, and as discussed above, run-off will be directed away from the shoreline and retained on site.

2. Comment.

Please describe whether other development will be occurring in the vicinity of the project site during the same time frame and disclose the cumulative impact of all nearby projects in the environmental assessment.

Response.

As noted in Paragraph 6 (Page 4) of the EA, the Applicant owns the adjacent Waiohai Hotel property located to the west of the subject property. The Planning Commission of the County of Kauai ("Planning Commission") has approved permits allowing the Applicant to develop a timeshare apartment-hotel on the Waiohai property. I have enclosed a copy of these permits, which are identified as Special Management Area Use Permit SMA(U)-2000-3, Project Development Use Permit PD(U)-2000-16, Shoreline Setback Variance SSV-2000-2 and Class IV Zoning Permit ZA-IV-2000-21 ("Waiohai Permits"). As a condition of the grant by the Planning Commission of the Waiohai Permits, the Applicant was required to undertake the proposed improvements to the Poipu Park on the Subject Property.

The demolition of the existing Waiohai Hotel structure and the construction of the new Waiohai Apartment-Hotel will take place during the same time frame as the construction of the improvements to the Poipu Park on the Subject Property. Construction activities on both the Waiohai Property and the Subject Property are being

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
April 10, 2002
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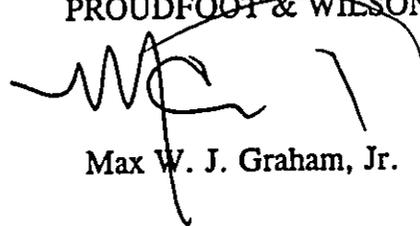
coordinated so as to minimize impacts to surrounding properties. The measures taken to mitigate such impacts include: the limitation of construction activities during regular working hours on Monday through Friday; erection of dust screens as necessary; the watering of roads used by construction vehicles as necessary; compliance with Department of Health ("DOH") Administrative Rules, Chapter 11-46, ("Community Noise Control"); compliance with DOH Administrative Rules, Chapter 11-60.1, ("Air Pollution Control"); compliance with DOH Administrative Rules, Chapter 11-55, ("Water Pollution Control"); and compliance with DOH Administrative Rules, Chapter 11-58.1, ("Solid Waste Management").

The long-term impacts of the development of an improved parking area and park on the Subject Property will be consistent with the State's environmental policies to preserve and maintain open space and to provide recreational activities, particularly in coastal areas. In addition, the proposed improvements to the Subject Property will minimize erosion and reduce dust emissions which are presently being generated by the use of this unimproved property for parking purposes.

I hope the above responses have satisfactorily addressed your concerns. If you have any further questions, please be sure to contact me.

Sincerely yours,

BELLES GRAHAM
PROUDFOOT & WILSON



Max W. J. Graham, Jr.

MWJG:jgm
Enclosures

cc: Mr. Cesar C. Portugal, County Engineer (via fax/mail)
Mr. Greg Kamm, Planning & Management (via fax/mail)
Mr. Rob Centra, MORI (via fax/mail)

RYANNE W. KUSAKA
MAYOR



PLANNING DEPARTMENT

DEE M. CROWELL
PLANNING DIRECTOR
SHEILAH N. MIYAKE
DEPUTY PLANNING DIRECTOR
TELEPHONE (808) 241-6677
FAX (808) 241-6699

June 29, 2000

RECEIVED
JUN 29 2000

BELLES GRAHAM
PROUDFOOT & WILSON

Mr. Max W.J. Graham, Jr.
Attorney at Law
Belles Graham Proudfoot & Wilson
Watamull 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

Mr. Maxwell W.J. Graham

June 29, 2000

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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

Mr. Maxwell W.J. Graham

June 29, 2000

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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.

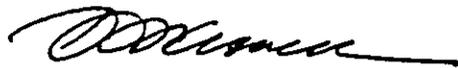
Unless certain exceptions to the CZO standards can be avoided or minimized by modifying the proposed 6-lot subdivision, the Project Development Use Permit acknowledges approval of the following exceptions as discussed in staff's evaluation:

- 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
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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