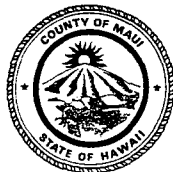


JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
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October 28, 2002

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OFFICE OF THE
COUNTY COUNSEL

MEMO TO: The Honorable Alan M. Arakawa
Chair, Land Use Committee

F R O M: Edward S. Kushi, Jr.
Deputy Corporation Counsel

SUBJECT: Maui Nui Park (LU-21)

This memorandum is made in response to your memorandum dated November 16, 2001. In your memorandum, you requested a legal opinion:

. . . indicating whether the Maui Planning Commission should re-open its deliberations for the following reasons:

- The SMA permit may not be consistent with the zoning for Maui Nui Park's dolphin-oriented components because the captivity of dolphins does not emphasize Maui's varied cultural heritage;
- The SMA permit may not be consistent with the zoning for Maui Nui Park's dolphin-oriented components because the Council specifically decided not to permit zoological parks; and/or
- The Department of Planning's assertion that Maui Nui Park's dolphin-oriented components are consistent with the subject property's zoning may not have been accurate.

BRIEF ANSWER:

Because the SMA permit is consistent with the zoning of the Maui Nui Park's zoning, the Maui Planning Commission need not reopen its deliberations regarding the park's Special Management Area ("SMA") permit.

ANALYSIS:

1. **The SMA permit is consistent with the zoning for Maui Nui Park's dolphin-oriented component because aquaria are principal explicitly permitted uses under the zoning ordinance, and the inclusion of aquaria in the theme park was specifically authorized by the Council in Ordinance No. 2671.**

The Land Use Committee Minutes of May 13, 1998 (attached as Exhibit "1") contain discussions relating to the deletion of "zoological parks" as a permitted use while retaining "aviaries, insect, botanical, fish, aquaria, cultural, and environmental displays and exhibits" as permitted uses. (LUC Tr 5/13/98 at 133 to 120.)

During the developer's presentation, it was noted that the initial concept for the theme park was a "zoofari" village which was in response to newspaper accounts that the County zoo was closing down. However, this concept didn't work for a lot of reasons (LUC Trans. at 29). The developer then considered a "rain forest village" theme that evolved into the "Maui Nui" theme which would emphasize Maui's varied cultural heritage. (LUC Committee Report No. 98-86 at 6.)

As a result of its deliberations, the Committee agreed to several specific amendments to the proposed project district standards ordinance to delete zoological parks and drive-in restaurants as permitted uses, to add "aviaries, insect, botanical, fish, aquaria, cultural and environmental displays and exhibits" as permitted uses and to require that retail uses and activities are "theme-related". (LUC Committee Report No. 98-86 at 9.)

Based upon this legislative history, the phrase "zoological parks", within the concept of the zoning bill, referred to the type of exhibits that was initially contemplated by the developer when it was considering a "zoofari village" as a replacement to the County's former zoo. As a result, we opine that the SMA permit issued for the Maui Nui Park project is consistent with the project district zoning which specifies aquaria as a principal permitted use.

2. **Relationship of the various venues with the cultural heritage theme.**

You have also raised concerns as to how the captivity of dolphins (particularly dolphins that are not indigenous to Hawaiian waters such as Atlantic dolphins) emphasize Maui's cultural heritage.

These concerns could also be applied to the "authenticity" of some of the other proposed exhibits and activities of this cultural theme park. For instance, the Volcanology Complex, which depicts the geological origins of the Hawaiian Islands, will include a "fake" volcano and could include lava samples that are imported from other islands. The agricultural venue could include "sandalwood" from other parts of the world to show visitors and residents samples of the type of wood and trees that once graced our Island.

Hawaiian canoe making exhibits may involve the carving and construction of koa canoes that do not reflect traditional designs but are based on the latest designs based on the more modern fiberglass canoes that meet the current Hawaiian Racing Canoe Association specifications.

While the Atlantic bottle nose dolphins are not indigenous to Hawaiian waters, these dolphins are close cousins to dolphins that are indigenous to Hawaii waters. Unfortunately, some of Hawaii's indigenous species are on the endangered list and it would be illegal to use them for public display under federal laws.

As an island state, our history and interaction with marine mammals can be traced back to, at least, the whaling industry that impacted West Maui and historic Lahaina Town. The Dolphin Institute represents part of our State's continuing role of interacting with marine mammals.

It should be noted that it is uncertain whether or not the Dolphin Institute will ever become a part of the Maui Nui Park. While construction of the park has commenced, the Dolphin Institute was deleted initially from Phase 1 of the project and has more recently been deleted from Phase 2 of the project.

3. The Maui Planning Commission's authority to approve an SMA permit that involved aquaria, including lagoons, view tanks and isolation pool.

As previously noted "aquaria and environmental displays and exhibits" are permitted principal uses under MCC 19.89.020(A)(1). Under this zoning ordinance, such uses shall be permitted, provided they are theme-related or support park operations and activities. Moreover, the Planning Commission was also specifically authorized to approve uses that are deemed by the Commission to be compatible, similar and beneficial to the principal uses in the district. MCC 19.89.020(B). (See Ordinance No. 2671, attached as Exhibit "2".)

We are of the view that the Maui Planning Commission acted within its authority, consistent with the applicable zoning provisions, in approving an SMA permit for the subject project,

The Honorable Alan M. Arakawa
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Page 4

including the approval of the dolphin component of the project, since such use was a principal permitted use which was theme related and/or which supported park operations and activities.

APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU
Corporation Counsel

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

May 13, 1998

Council Chamber

RECONVENE: 2:11 p.m.

PRESENT: Councilmember Sol P. Kaho`ohalahala, Chair
Councilmember J. Kalani English, Vice-Chair
Councilmember James "Kimo" Apana, Member (In 2:21 p.m.)
Councilmember Alan Arakawa, Member (In 2:18 p.m.)
Councilmember Patrick S. Kawano, Member (Out 4:00 p.m.)
Councilmember Alice L. Lee, Member
Councilmember Dennis Y. Nakamura, Member (In 2:12 p.m.)
Councilmember Wayne K. Nishiki, Member
Councilmember Charmaine M. Tavares, Member

STAFF: Michele N. Chouteau, Legislative Analyst
Camille Sakamoto, Committee Secretary

ADMIN.: Ann T. Cua, Planner, Department of Planning (In 2:34 p.m.)
Kelly A. Cairns, Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: Item 19: Bully Kapahulehua
Robert J. Jones
Jim Olson, Resident Manager, Association of Apartment
Owners of Kihei Kai
Kenneth L. Morin
Ryn Hughes
Robert Bear

Robert O. Siarot, Engineering Program Manager, Maui
District Office, Highways Division, Department of
Transportation, State of Hawai'i
John W. Rowe, Partner, Kihei Gateway Partners
Valentine Peroff, Partner, Kihei Gateway Partners
Michael T. Munekiyo, Munekiyo, Arakawa, and Hiraga, Inc.
(Applicant's Consultant)
Bert Toba, Sato and Associates, Inc. (Applicant's Consultant)
Alvin Yoshimori, GYA Architects, Inc. (Applicant's Consultant)
David H. Nakamura (Applicant's Attorney)

Gene Thompson
James and Joanne Johnson
Michelle Anderson, Executive Assistant to Councilmember
Wayne K. Nishiki

EXHIBIT " 1 "

LAND USE COMMITTEE MINUTES
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COUNCILMEMBER ARAKAWA: Main motion as approved.

CHAIR KAHO'OHALAHALA: --any other amendments?

COUNCILMEMBER APANA: You got it, Michele?

CHAIR KAHO'OHALAHALA: Okay--

?: ...*(inaudible)*...

COUNCILMEMBER TAVARES: Mr. Chair?

CHAIR KAHO'OHALAHALA: --then--

COUNCILMEMBER TAVARES: Didn't you have amendments?

CHAIR KAHO'OHALAHALA: Yes, and I'm--

COUNCILMEMBER TAVARES: Okay.

CHAIR KAHO'OHALAHALA: --gonna go through it. Then, the Chair would like to start with...the "LL" under...

... Permitted Uses, which would be on Page 3.

... I'd like to amend that we delete that zoological park.

NOTE: *Silence.*

COUNCILMEMBER ARAKAWA: ... So moved.

VICE-CHAIR ENGLISH: Second.

COUNCILMEMBER APANA: ... Discussion?

CHAIR KAHO'OHALAHALA: Okay, it's been moved and seconded that we amend it to delete zoological parks. Discussion? Councilmember. . .Apana.

COUNCILMEMBER APANA: Mr. Chairman, could I ask the Applicant a question?

... Did you guys in the, earlier today mention that you guys are building some type of. . .butterfly display or collection?

MR. MUNEKIYO: That's one aspect of the park, yes.

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COUNCILMEMBER APANA: It's still included?

MR. MUNEKIYO: Uh. . .at this point, yes.

COUNCILMEMBER APANA: I wanted to ask Corp. Counsel would--

COUNCILMEMBER LEE: What letter?

COUNCILMEMBER APANA: --would that--

COUNCILMEMBER TAVARES: "FF".

COUNCILMEMBER APANA: --by taking out zoological. . .prohibit them building their butterfly collection?

MS. CAIRNS: . . .(laughter). . .

COUNCILMEMBER TAVARES: No.

COUNCILMEMBER ARAKAWA: . . .(laughter). . .

NOTE: Silence.

COUNCILMEMBER LEE: . . . What?

VICE-CHAIR ENGLISH: . . .(inaudible). . .

COUNCILMEMBER TAVARES: Mr. Chair, it seems it still--

ALL: . . .(laughter). . .

COUNCILMEMBER TAVARES: --it's still included in "FF".

?: . . .(inaudible). . .

COUNCILMEMBER APANA: Oh, "FF".

COUNCILMEMBER LEE: Yeah.

COUNCILMEMBER APANA: But "FF" is deleted.

MS. CUA: "F" is deleted.

MS. CAIRNS: No, "FF" is just professional and financial . . .(inaudible). . .

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COUNCILMEMBER TAVARES: "FF" was deleted?

COUNCILMEMBER APANA: Yes.

MS. CUA: They're proposing.

MS. CAIRNS: I may--

COUNCILMEMBER TAVARES: We're proposing?

MS. CAIRNS: --have to ask the Applicant--

COUNCILMEMBER TAVARES: I thought we were proposing "LL"--

MS. CAIRNS: --for help on . . .

COUNCILMEMBER TAVARES: --to be deleted.

MS. CAIRNS: . . . the, the scope of "zoological".

?: . . . *(inaudible)* . . .

COUNCILMEMBER ARAKAWA: . . . Can't we just say "limited to butterfly collections"?

MR. NAKAMURA: Well, we had it in the Rainforest. What do we have? Insect
. . . *(inaudible)* . . .

NOTE: *Long silence while the Applicant's consultants conferred.*

MR. NAKAMURA: . . . Perhaps we could incorporate the language under rainforest exhibits--not the "rainforest exhibits and activities", but the . . . what follows. . . aviary. . . aviaries. . . insect, botanical, fish, aquaria. . . cultural and environmental displays.

COUNCILMEMBER TAVARES: Oh, oh . . .

COUNCILMEMBER ARAKAWA: . . . That's fine.

CHAIR KAHO'OHALAHALA: What, what are you suggesting?

MR. NAKAMURA: Well, see, Corporation Counsel asked for--

MS. CAIRNS: Okay--

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MR. NAKAMURA: --language so...that certain types of activities, not necessarily lo. . .zoological park, but butterfly exhibits, for example. And I'm looking at "FF", beginning with the word "aviaries" . . .

MS. CAIRNS: . . . Uh-huh.

MR. NAKAMURA: . . . striking "rainforest" from that list, but including the rest of that.

MS. CAIRNS: And put that as "LL". . .in place of zoological park?

CHAIR KAHO'OHALAHALA: Okay, you want to replace that, then. . .except take out "rainforest".

MR. MUNEKIYO: Yes.

MS. CAIRNS: So "LL"--

CHAIR KAHO'OHALAHALA: So--

MS. CAIRNS: --would read avia, aviaries and insect, botanical, fish, aquaria, cultural, and environmental displays?

COUNCILMEMBER LEE: Yeah.

MR. MUNEKIYO: Correct.

COUNCILMEMBER ARAKAWA: Right.

CHAIR KAHO'OHALAHALA: . . . Okay--

COUNCILMEMBER TAVARES: It would start with "activities", though, right? I mean, "exhibits and activities"?

COUNCILMEMBER APANA: Yeah.

CHAIR KAHO'OHALAHALA: . . . Yes.

. . . Okay--

MS. CAIRNS: Well, you already have . . .*(inaudible due to interruption)*--

CHAIR KAHO'OHALAHALA: --then I. . .further amend my motion--

COUNCILMEMBER APANA: No, no, we can do--

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CHAIR KAHO'OHALAHALA: Oh--

COUNCILMEMBER APANA: --one at a time.

CHAIR KAHO'OHALAHALA: --we can do it one at a time? Okay.

COUNCILMEMBER APANA: Yeah.

COUNCILMEMBER ARAKAWA: So . . .

CHAIR KAHO'OHALAHALA: Then. . .any further discussion on the deletion of
"zoological parks"?

COUNCILMEMBER LEE: No.

COUNCILMEMBER TAVARES: No.

CHAIR KAHO'OHALAHALA: If not, then all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR KAHO'OHALAHALA: Okay.

**VOTE: AYES: Councilmembers Apana, Arakawa, Lee, Nakamura, Tavares,
and Chair Kaho`ohalahala.**

NOES: None.

ABSTAIN: None

**EXC.: Councilmembers Kawano and Nishiki, and
Vice-Chair English.**

MOTION CARRIED.

**ACTION: APPROVE amendment (deleting zoological parks as a
permitted use) to the main motion.**

CHAIR KAHO'OHALAHALA: Go ahead, Councilmember Arakawa.

COUNCILMEMBER ARAKAWA: Mr. Chairman, to replace . . .

COUNCILMEMBER APANA: Just insert--

COUNCILMEMBER ARAKAWA: . . . "FF", I guess, and eliminate the words . . .

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COUNCILMEMBER APANA: "FF" no longer exists. . .they read it into the record.

?: It does.

CHAIR KAHO'OHALAHALA: No, no, "FF" still--

COUNCILMEMBER ARAKAWA: Put it--

CHAIR KAHO'OHALAHALA: --exists because--

COUNCILMEMBER ARAKAWA: It still exists.

CHAIR KAHO'OHALAHALA: --there's a portion of that--

COUNCILMEMBER ARAKAWA: We haven't taken it out.

CHAIR KAHO'OHALAHALA: --that remains. So we need to create a new item--

COUNCILMEMBER ARAKAWA: Okay.

CHAIR KAHO'OHALAHALA: --so if you would--

COUNCILMEMBER ARAKAWA: Re--

CHAIR KAHO'OHALAHALA: --just--

MS. CAIRNS: L--

CHAIR KAHO'OHALAHALA: --relabel it as "LL"--

COUNCILMEMBER ARAKAWA: Okay. Re, but removing. . ."rainforest" . . .

COUNCILMEMBER TAVARES: Rainforest.

COUNCILMEMBER ARAKAWA: . . . leaving the rest of it in.

COUNCILMEMBER APANA: Read it into the record.

COUNCILMEMBER ARAKAWA: Okay. It would read. . .exhibits and activities including, but not limited to: aviaries, and insect. . .insect. . .botanical fish. . .botanical, fish, aquaria, cultural, and environmental displays. . .profess . . .

CHAIR KAHO'OHALAHALA: No, it's already . . .(inaudible due to interruption)--

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MS. CAIRNS: No.

?: ...*(inaudible)*...

COUNCILMEMBER ARAKAWA: ...*(inaudible)*...

CHAIR KAHO'OHALAHALA: Um, just, just--

COUNCILMEMBER ARAKAWA: Adding that on.

CHAIR KAHO'OHALAHALA: --correction. . .does the "and" need to be there?

MS. CAIRNS: After "aviary" . . .

CHAIR KAHO'OHALAHALA: Yes.

MS. CAIRNS: . . . "aviaries"? No. And I would suggest taking out. . .the "including, but not limited to" and just start with "aviaries" and then just put "displays and exhibits".

COUNCILMEMBER APANA: Just . . .*(inaudible)* . . .

CHAIR KAHO'OHALAHALA: Okay.

MS. CAIRNS: . . . Because or else exhibits and activities is wide open.

COUNCILMEMBER ARAKAWA: . . . Okay.

CHAIR KAHO'OHALAHALA: Okay, can you. . .can you say that--

MS. CAIRNS: So aviaries, insect, botanical, fish, aquaria, cultural, and environmental displays and exhibits.

COUNCILMEMBER ARAKAWA: So moved.

COUNCILMEMBER APANA: . . . Second.

COUNCILMEMBER TAVARES: Second.

CHAIR KAHO'OHALAHALA: Okay. Moved and seconded that we amend the main motion by--

COUNCILMEMBER APANA: Yeah.

CHAIR KAHO'OHALAHALA: --including that language as Item "LL".

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COUNCILMEMBER APANA: Mr. Chairman?

CHAIR KAHO'OHALAHALA: Discussion on that motion?

COUNCILMEMBER APANA: Mr. Chairman, I'll be voting in favor of the motion because I believe butterflies should be free to fly.

ALL: ...*(laughter)*...

CHAIR KAHO'OHALAHALA: In a cage, you mean?

ALL: ...*(laughter)*...

CHAIR KAHO'OHALAHALA: ... Okay, any further discussion on the amendment?

... If not, then, all those--

COUNCILMEMBER ARAKAWA: ...*(laughter)*...

CHAIR KAHO'OHALAHALA: --all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR KAHO'OHALAHALA: Opposed, "nay".

VOTE: AYES: Councilmembers Apana, Arakawa, Lee, Nakamura, Tavares, and Chair Kaho`ohalahala.

NOES: None.

ABSTAIN: None

**EXC.: Councilmembers Kawano and Nishiki, and
 Vice-Chair English.**

MOTION CARRIED.

ACTION: APPROVE amendment (addition to permitted uses) to the main motion.

COUNCILMEMBER ARAKAWA: Mr. Chairman? I can't resist this comment ...*(laughter)*... as long as they're native.

COUNCILMEMBER APANA: ...*(laughter)*...

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CHAIR KAHO'OHALAHALA: . . . In a cage?

COUNCILMEMBER ARAKAWA: . . . As long as they're native--

CHAIR KAHO'OHALAHALA: Okay--

COUNCILMEMBER ARAKAWA: --butterflies.

CHAIR KAHO'OHALAHALA: --I would like to. . .propose that we, in "HH", delete the drive-ins.

COUNCILMEMBER APANA: So moved.

MR. ROWE: Uh--

COUNCILMEMBER ARAKAWA and COUNCILMEMBER TAVARES: Second.

MR. ROWE: --when we do Wailuku--

CHAIR KAHO'OHALAHALA: Okay, moved and seconded that we--

MR. ROWE: . . .(inaudible). . .

CHAIR KAHO'OHALAHALA: --delete drive-ins from "HH". Discussion on that?

MR. ROWE: . . .(inaudible). . .

CHAIR KAHO'OHALAHALA: . . . Okay? If not all--

MR. MUNEKIYO: Mr. Chairman? Uh. . .just a comment. Mr. Rowe just mentioned that in his Wailuku town. . .sub. . .theme. . .back in the 1950's there were drive-in types. . .of activities. And. . .that was the intent of that particular. . .use being specified.

COUNCILMEMBER APANA: . . .(inaudible). . .

?: Yeah.

MR. MUNEKIYO: Yeah.

COUNCILMEMBER APANA: . . .(inaudible). . . cars in--

MS. CAIRNS: Uh--

ORDINANCE NO. 2671

BILL NO. 42 (1998)

A BILL FOR AN ORDINANCE AMENDING TITLE 19 OF THE
MAUI COUNTY CODE TO ESTABLISH STANDARDS FOR
PROJECT DISTRICT 2 OF THE KIHEI-MAKENA COMMUNITY
PLAN REGION FOR PROPERTY SITUATED AT PULEHUNUI,
KIHEI, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 19 of the Maui County Code is hereby amended by adding a
new chapter to be designated and to read as follows:

"Chapter 19.89

**KIHEI-MAKENA PROJECT DISTRICT 2
(KIHEI GATEWAY PARK PROJECT)**

Sections:

- 19.89.010 Purpose and intent.**
- 19.89.020 PD-K/2.**
- 19.89.030 General standards of development.**

19.89.010 Purpose and intent. A. The purpose and intent of Kihei-Makena project district 2 at Pulehunui, Kihei, Maui, Hawaii, formerly known as the "Kihei Gateway Project", but now known and hereinafter referred to in this chapter as the "Kihei Gateway Park Project", is to establish permissible land uses and appropriate standards of development for a low-density, environmentally sensitive, and family-oriented theme park emphasizing Maui's varied cultural heritage, and for unrelated, subordinate commercial uses.

B. The objectives of the Kihei Gateway Park Project are as follows:

1. To provide a stimulating, entertaining and educational experience to residents of and visitors to Maui about Maui's varied cultural heritage;
2. To increase the employment opportunities for the residents of Maui; and
3. To operate a first-class theme park, with facilities, events, products and services responsive to customer demands.

C. This chapter shall apply to the area designated as project district 2 in the Kihei-Makena community plan, but excluding the 0.797-acre portion occupied by Suda Store situated in the southwest corner of project district 2. The Kihei Gateway Park Project shall consist of a single use district and shall include theme-related recreational, entertainment and educational facilities, landscaping, parking, drainageways and waterways intermixed and integrated with commercial facilities.

19.89.020 PD-K/2. A. Permitted uses.

1. The following principal uses shall be permitted, provided they are theme-related or support park operations and activities:

- a. Amphitheaters,
- b. Amusement parks and theme-related retail uses and activities,
- c. Antique shops,
- d. Apparel and shoe stores,
- e. Aviaries, insect, botanical, fish, aquaria, and environmental displays and exhibits,
- f. Art galleries,
- g. Auditoriums and theaters,
- h. Bakery goods stores,
- i. Book, stationery and gift stores,
- j. Botanical gardens,
- k. Candy stores,
- l. Classrooms,
- m. Cultural exhibits and activities,
- n. Day care centers and nurseries for park employees and visitors,
- o. Delicatessen stores,
- p. Drug stores,
- q. Ice cream and snack counters,
- r. Jewelry stores, craft, furniture and fine art shops,
- s. Miniature golf courses,
- t. Museums,

- u. News and magazine stands,
- v. Parking areas and structures,
- w. Photo studios,
- x. Picnicking areas,
- y. Restaurants, cafes, micro-breweries or bars,
- z. Utility and drainage structures and improvements, and

aa. Wedding facilities.

2. The following principal uses shall be permitted:

- a. Business offices and agencies,
- b. Charity relief organizations,
- c. Commercial retail establishments,
- d. Professional and financial buildings,
- e. Religious, benevolent, and philanthropic societies, and
- f. Restaurants, cafes, micro-breweries or bars, and catering establishments.

3. Accessory uses: uses that are incidental and customarily related to the principal uses including, without limitation, maintenance and storage facilities for any of the principal uses.

B. Special uses: uses that are deemed to be compatible, similar and beneficial to the principal uses in the district, which shall be permitted upon approval by the commission.

C. Development requirements for the district shall be:

1. Minimum lot size: ten thousand square feet;

2. Maximum building height: forty-five (45) feet, provided, however, artificial landscaping features, observation platforms, water-feature structures and artificial mountains shall not exceed fifty (50) feet in height;

3. Maximum floor area: fifty percent, including artificial mountains, provided that:

a. at least two-thirds of this area shall be limited to the following theme-related recreational, entertainment and educational uses as provided in subsection 19.89.020.A.1 herein: amphitheaters, amusement parks, aviaries and similar exhibits, auditoriums and theaters, botanical gardens, classrooms, cultural exhibits and activities, day care centers and nurseries, miniature golf courses, museums, picnicking areas and wedding facilities; and

b. not more than one-third of this area shall be used for theme-related commercial retail and food establishment uses as provided in subsection 19.89.020.A.1 herein and for the uses as provided in subsection 19.89.020.A.2 herein;

4. Minimum building setback: ten feet; and
5. Minimum landscaping requirement: not less than forty percent of the total lot area of the Kihei Gateway Park Project shall consist of natural and artificial landscape features, drainageways, waterways, roadways and parking.

19.89.030 General standards of development. Any tract of land or project site within the Kihei Gateway Park Project for which development is sought shall be subject to conditions imposed by the Maui county departments of planning, public works and waste management, and water supply, and by the State of Hawai'i departments of health, transportation, and land and natural resources, pursuant to any statute, ordinance, rule or regulation, and shall be further subject to the following standards:

A. Design.

1. Each building or structure shall be designed to conform to the intent of the Kihei Gateway Park Project; and
2. Any amphitheater shall be configured to minimize the acoustical impacts to adjacent residential areas located along Uwapo Road and South Kihei Road.

B. Landscaping.

1. Comprehensive planting of all common and public areas shall be provided;
2. A ten-foot landscape buffer shall be established along Piilani Highway, Mokulele Highway, South Kihei Road and Uwapo Road;
3. Landscaping shall be considered an integral element of the Kihei Gateway Park Project, and shall be utilized for visual screening, shade, definition and environmental control;
4. Environmentally-sound soil preparation, landscape planting, irrigation and landscape maintenance techniques shall be used;
5. Energy and water conservation and recycling techniques shall be used;
6. Waiakoa Stream shall remain in its natural state; however, if improvements are made to Waiakoa Stream, such improvements shall maintain an environmentally sensitive design, such as a grass-lined channel and not a concrete-lined channel, and shall facilitate, to the extent practicable, use as a multi-trail system; and
7. The visual and aesthetic impact of landscaping at the intersection of Piilani Highway and Mokulele Highway, as the gateway into the Kihei-Makena community plan region, shall be considered in the design of the Kihei Gateway Park Project.

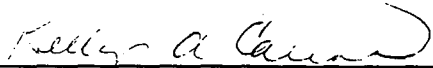
C. Signage. A comprehensive signage program shall be established and shall include, without limitation, the types, number, area, format, conceptual design, color scheme, building materials, lighting and installation of all signs in the Kihei Gateway Park Project.

D. Lighting. Lighting shall be designed and installed in a manner that does not adversely affect the surrounding area. Exterior lighting shall be properly shielded and directed away from existing residential areas. A comprehensive lighting plan shall be established for the Kihei Gateway Park Project.

E. Fences and walls. A comprehensive program shall be established for any fences and walls proposed along the perimeter of the Kihei Gateway Park Project, and shall include, without limitation, the types, dimensions, format, conceptual design, color, building materials, and installation of any such proposed fences and walls."

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

lu:misc:19bill04:mnc

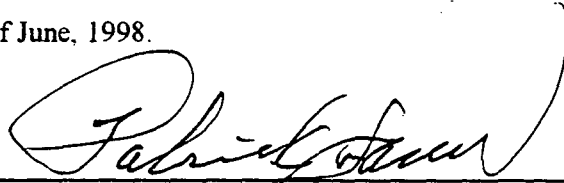
WE HEREBY CERTIFY that the foregoing BILL NO. 42 (1998)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 19th day of June, 1998, by the following votes:

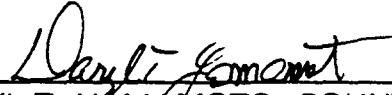
Patrick S KAWANO Chair	James "Kimo" APANA Vice-Chair	Alan ARAKAWA	J. Kalani ENGLISH	Sol P KAHO'OHALAHALA	Alice L LEE	Dennis Y NAKAMURA	Wayne H NISHIKI	Charmaine TAVARES
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 19th day of June, 1998.

DATED AT WAILUKU, MAUI, HAWAII, this 19th day of June, 1998.

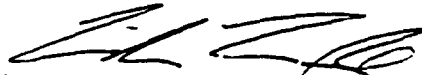


PATRICK S. KAWANO, CHAIR
Council of the County of Maui



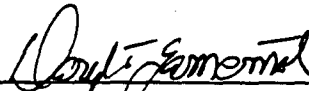
DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 22ND DAY OF JUNE, 1998.



LINDA LINGLE, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 2671 of the County of Maui, State of Hawaii.



DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

Passed First Reading on June 5, 1998.
Effective date of Ordinance June 22, 1998.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2671, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

RECORDED
JUN 23 1998