

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAII

In the Matter of the Petition)
of)
THE HILTON HEAD COMPANY)
for a Special Management Area)
(SMA) Use Permit for Property)
Situated at Lanihau, North)
Kona, Island of Hawaii)
_____)

DOCKET NO. 81-31

FINDINGS OF FACT, CONCLUSIONS OF LAW,

AND DECISION AND ORDER

(CERTIFICATE OF SERVICE ATTACHED)

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAII

In the Matter of the Petition)
of)
THE HILTON HEAD COMPANY) DOCKET NO. 81-31
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for a Special Management Area)
(SMA) Use Permit for Property)
Situated at Lanihau, North)
Kona, Island of Hawaii)
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

The Planning Commission, having duly considered the record and evidence in this proceeding, the parties' proposed findings of fact and conclusions of law, the hearing officer's report, and the parties' exceptions to the hearing officer's report, makes the following findings of fact, conclusions of law and decision and order.

Application

1. This matter arises from an application for a Special Management Area (SMA) Use Permit filed pursuant to Chapter 205-A of Hawaii Revised Statutes, as amended, and Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, by The Hilton Head Company, Inc. ("Petitioner"), to allow an installation of a waterline, electrical lines, communication lines (television and telephone), the improvement of roadway facilities, and construction of stone walls approximately four feet in height with landscape planters. The walls would run along the mauka boundary of the proposed project area and along both sides of two proposed beach accesses. Additionally, Petitioner proposes to fix the location of a shoreline trail and construct a low rock wall along the shoreline setback line, landscaping, and other

improvements. The property involved is located within Lanihau, North Kona, Island of Hawaii, more specifically identified by Tax Map Keys: 7-5-05: 01, 11, 14-51.

Pre-hearing Procedure

2. The SMA Use Permit application was received by the County of Hawaii Planning Commission on December 16, 1981. Notice of the hearing was duly published in the Honolulu Advertiser and Hawaii Tribune-Herald, Ltd. on April 8, 1982. The hearings on this matter were opened by the Planning Commission on April 28, 1982, in Keauhou, North Kona, Hawaii. During the proceedings the Office of Hawaiian Affairs, and the Native Hawaiian Legal Corporation on behalf of Kuka'SPOKA petitioned for contested case proceedings on the application and to be admitted as interested parties to the contested case proceedings.

3. On June 3, 1982, the Planning Commission heard further arguments on initiating contested case proceedings under Rule No. 4 of the Planning Commission, Rules Relating to Administrative Procedure. At that meeting, the Planning Commission voted to initiate the contested case procedure pursuant to Rule No. 4 and to publish notice that any other potential parties should file petitions within 20 days of the publication date.

4. The notice to potential parties was published in the Hawaii Tribune-Herald, Ltd. on June 8, 1982.

5. On July 1, 1982, the Planning Commission voted to proceed with a contested case hearing pursuant to Rule No. 4 and admitted the Office of Hawaiian Affairs, Kuka'SPOKA, and the Kona Conservation Group as parties to the proceedings. The Commission's Vice Chairman was subsequently appointed by the Planning Commission as a hearing officer to conduct the contested case hearings and to conclude the public hearings on this application.

6. A pre-hearing conference was held on July 12, 1982, in Hilo, Hawaii, which was attended by all parties, except the Office of Hawaiian Affairs which waived its appearance and agreed to any stipulations that may be entered into by the other parties. During the conference, certain stipulations were entered into between the parties regarding the scheduling of the hearing, procedures to be observed during the hearing, and the exchanging of some of the exhibits.

Public Testimony

7. Public testimony was received by Planning Commission on April 28, 1982, and by the hearings officer, Clyde Imada, on Tuesday, August 3, 1982, at Keauhou, Kona, Hawaii. Persons testifying in favor of the petition included John Michael White, Barbara Thurston, Lorrin Thurston, Phillip Parker, and Curt Tyler, Jr. Persons testifying in opposition to the petition included Kiyono Kunitaki, Patrick Dennison, Caroline Ainsworth and Herman K. Paakonia, Jerry Rothstein, and Craig Cornell. Mollie Kunewa Dunaway presented testimony concerning the history of the area under consideration.

Evidentiary Hearings

8. Evidence on the application was taken by the hearing officer in hearings held on August 3, 1982, August 4, 1982, and November 22, 1982, at Keauhou, North Kona, Island of Hawaii. Parties to the hearing were Petitioner, represented by Clifford H. F. Lum; Kuka'SPOKA, represented by Gary Pakele; Office of Hawaiian Affairs, represented by William Tagupa; and the Kona Conservation Group, represented by Colin L. Love.

9. The witnesses presented by the aforementioned parties were as follows:

Petitioner:

John Michael White - Petitioner's Representative
George J. Higa - Registered Land Surveyor,
employed by William Hee & Associates
Joseph Vierra - Civil Engineer,
employed by Belt, Collins & Associates
Paul Rosendahl - Archaeologist

Kuka'SPOKA

David Bills - Civil Engineer
employed by Gray, Hong & Associates
Virginia Isbell - State Representative,
3rd House District
Herman Paakonia

Kona Conservation Group:

Susumu Ono - Chairman of the Board of Land and
Natural Resources, State of Hawaii
Milton Hakoda - Director, Department of Parks and
Recreation, County of Hawaii

Exhibits Admitted

10. The following exhibits were admitted into evidence:

Petitioner:

HH-1	SMA Use Permit Application and attachments
HH-2	Letter: Ralston Nagata, DLNR, to Sidney Fuke, 1/5/82
HH-3	Letter: Herkes/Hodgman, Outdoor Circle, to George Ariyoshi 2/6/82
HH-4	Letter: George Ariyoshi to Herkes/ Hodgman, 3/8/82

HH-5 Letter: James M. Greenwell,
Lanihau Corp., to Planning
Commission, 4/8/82

HH-6 Letter: Petitioner to Susumu Ono,
DLNR, 4/26/82

HH-7 Statement to Planning Commission by
Petitioner, 4/28/82

HH-8 Vita: Paul Rosendahl, 8/82

HH-9 Preliminary Report, September 1982
by Paul Rosendahl

Kuka'SPOKA:

KS-1 Archeological Reconnaissance Report
of the Old Kona Airport Beach
Park by Earl Neller, 11/80

KS-2 Land Court Application No. 1319 by
Lorrin Potter Thurston

KS-3 Water Quality Management Plan for
the County of Hawaii, 12/80

KS-10 Land Court Map

KS-11 Tax Map

KS-12 Survey Map Kailua Bay by George
E.C. Jackson, June 1883

KS-13A Survey Field Book (extract) by
George E.C. Jackson, June 1883

KS-13B Survey Field Book (extract) by
George E.C. Jackson. June 1883

KS-17 Aerial photo print, 1975

KS-18 Photo

KS-19 Photo

KS-20 Photo

KS-21 Photo

KS-22	Photo
KS-23	Photo
KS-24	Photo
KS-25	Photo
KS-26	Photo
KS-27	Letter: Susumu Ono, DLNR, to Hideto Murakami, State Comptroller, 1/25/82
KS-28	Report: Hilton Head Subdivison by Brian L.Gray, Gray, Hong and Associates, Inc., 7/27/82
KS-29	Conceptual Sewer Layout at Hilton Head Subdivison
KS-30	Photo
KS-31	Photo
KS-32	Photo
KS-33	Photo
KS-34	Photo
KS-35	Photo
KS-36	Photo

Kona Conservation Group:

KCG-1	Section 342-41, Hawaii Revised Statutes
KCG-2	Letter: George Yuen, DOH, to Byron Baker, State House of Representatives
KCG-3	House Resolution No. 194, 11th Legislature, 1982

Position of the Parties

11. The positions of the various parties on the subject application are as follows:

Petitioner - Approval

Kuka'SPOKA - Opposed

Office of Hawaiian Affairs - Opposed

Kona Conservation Group - Opposed

Motions and Objections

12. The Kona Conservation Group moved during the course of the contested case hearing that the application be denied and the hearing suspended because the application did not address the effect that noise generation on adjacent, public property would have on the subject property. Further, it contended that the Department of Health can shut down the park if that noise is sufficient to affect the peaceful enjoyment of the private properties. The Kona Conservation Group concluded that the proposed project would be contrary to the Special Management Area Guideline 9.7(a)(2) which requires the authority or director, in the review of the proposed development, to seek to minimize any development that would reduce the area usable for public recreation. It further argued that Rule 9 of the Planning Commission requires that no development shall be approved unless it is found to be consistent with the objectives and policies as provided by Chapter 205-A and the Special Management Area Guidelines. This motion of the Kona Conservation Group was and is deemed to have been denied.

13. Kuka'SPOKA objected that the Planning Commission should be required to view exhibit KS-17 (aerial photo) since only one copy is provided. The hearings officer ruled that there will be one hearing officer's report and that KS-17 will be a part of it.

FINDINGS OF FACT

GENERAL FACTS

Proposed Development

14. The petition seeks approval of certain improvements to be made to property situated makai of the Old Kona Airport, Lanihau, North Kona, bearing Tax Map Keys: 7-5-5:1, 11, 14-51.

15. The property under consideration is a portion of an existing residential subdivision which was granted final subdivision approval by the County of Hawaii on April 23, 1951. The subject property consists of 40 lots and a 30-foot right-of-way for access purposes.

16. Petitioner's proposed improvements would entail the construction and installation of:

- (a) An 8-inch water line buried adjacent to and along the proposed roadway improvement. The water connects to the County water system now existing along Palani Road. Fire hydrants would also be installed and appropriately spaced according to County requirements. The Department of Water Supply has issued a water commitment for provision of adequate water for the project.
- (b) Underground electric, telephone, and cable television lines with transformer vaults as required along the proposed road. The proposed on-site system would be connected to the existing power/telephone lines from Kuakini Highway to parcel 13 of the project site. If connection to the overhead lines is not acceptable to the utility companies, Petitioner would install underground lines to connect with existing power/telephone lines along Kuakini Highway. The proposed lines measure 1,050 feet in length and follow

the alignment of Kaiwi Street extension (access road to the project site).

- (c) Roadway improvements within the 30 foot wide right-of-way (parcel 51) and through parcel 1 to the western boundary of the subdivision consist of a 22-foot wide, 2-inch thick asphaltic concrete pavement over a 6-inch gravel base course. The shoulder areas of the roadway would be a 2-foot wide, graded, and grassed or landscaped strip on the makai side and 6 feet wide on the mauka side of the street pavement. Street lighting will be provided as required by the County. A 4-foot high concrete block wall with rock facade and landscape planters on top would be constructed on the private lot side of the right-of-way. Driveway openings would be placed on the wall at appropriate locations.
- (d) A 4-foot high concrete block wall with rock facade and landscape planters on top. The wall would run along the side and mauka boundary lines of the residential subdivision and include a proposed entry gate near parcel 11. The entry gate would consist of a security station house and an electronically operated gate or gates. Two public access pedestrian corridors were proposed that would run mauka-makai along the western parcel line of parcels 1 and 18. These public access pedestrian corridors to the shoreline would be 10 feet wide and bordered on both sides with 4-foot high walls with planters on top similar to the proposed side and mauka walls. The pedestrian easement would be cleared for accessibility. At the entrance to these access corridors, 3-foot high concrete posts spaced about

2 feet apart are proposed to be installed to prevent access by vehicles to the shoreline. There is presently no mauka-makai public access available through the subject property.

- (e) Drainage improvements would consist of a shallow swale area on either side of the roadway pavement.
- (f) The shoreline trail (Easement "B" of Tax Map 7-5-05) is proposed to be fixed as a 5-foot wide easement, for pedestrian access purposes, parallel to the shoreline and within or adjacent to the shoreline setback area. A low 2-foot high rock wall is proposed mauka of the shoreline setback boundary and/or mauka of the shoreline trail. No improvements would be made within the trail easement or the shoreline setback area without prior approval by the County.
- (g) Standardized house number and name signs, mail boxes, signs identifying the project, public access signs, and other information and direction signs.
- (h) Three model homes may be located on lots 15, 16 and 17 or similar lots. These homes would be designed and built to assist in sales and in setting a character for the residential area.

17. Portions of the subject property are owned by Petitioner, the remaining lots within the subdivision are owned by other individuals. Petitioner, through its attorney, Clifford H. F. Lum, Esq., has been authorized to act on behalf of all the owners relating to the petition.

18. Petitioner has made all the required filings and submissions pursuant to law and rules of the Planning Commission relating to applications for Special Management Area (SMA) Use Permits.

Description of the Subject Property

19. The property is located makai of the Old Kona Airport, Lanihau, North Kona, Hawaii designated by Tax Map Keys: 7-5-05:1, 11, 14-51, containing an area of approximately 26 acres and is situated within the Special Management Area.

20. The project site is adjacent to the shoreline near Kailua Bay. The shoreline is rocky with some sandy areas and tide pools. Vegetation in the area includes: beach and morning glory, sea-shore rush grass, Haole Koa, and Heliotrope tree. Wildlife in the area includes: rats, field mice, mongoose and bats. Avifaunal species in the general area include: the Barred Dove, Cardinal, English Sparrow, Golden Plover, and Mynah. There are no rare or endangered species of vegetation, wildlife, or avifauna in the area. Due to the low rainfall in the vicinity of the subject property, erosion and sedimentation problems are not anticipated to be significant. The subject property has one existing home on one of the lots and is otherwise vacant of any structures. The surrounding land uses include the Old Kona Airport Park, a Coast Guard Reservation, and vacant lands.

County Zoning, General Plan, and Special Management Area Considerations

21. The proposed development is consistent with the County Single Family Residential-15,000 square foot (RS-15) zoning of the subject property. Within this zoned district single family dwellings, infrastructural improvements and property walls are permitted uses. Approval of the request will not increase the permissible density of the development in view of the existing lots in place.

22. The proposed development is also consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map designations of Resort and Open. Single family residential uses are

permitted within the General Plan Resort designation. The requirement and installation of suitable public access to and along the shoreline would be consistent with the designation.

23. Petitioner proposes to legally designate and improve mauka-makai public access, thus furthering the Special Management Area objective of providing "coastal recreational opportunities accessible to the public."

IMPACTS ON RESOURCES OF THE AREA

Natural Resources

24. The proposed action will have minimal impact on the vegetation, wildlife, and the avifauna environment. It is expected that most wildlife that are affected would find suitable habitats in adjacent undeveloped areas. There are no known endangered plant or animal species on the subject property.

25. Marine near-shore coastal waters will not be significantly affected by erosion or sedimentation resulting from the proposed action. It is expected that the relatively flat topographic condition of the site would minimize any erosion or sedimentation problems that may impact near shore marine waters.

Archaeological Resources

26. An archaeological reconnaissance of the site was conducted in 1979, by Paul H. Rosendahl, Ph.D., Consultant Archaeologist, and its findings are discussed in the report entitled "Archaeological Reconnaissance Survey of the Hilton Head Company Kona Property Site." An update of the survey was conducted in November 1981, and its findings are outlined in a letter from Paul H. Rosendahl, Ph.D. to Petitioner.

27. The archaeological reconnaissance survey of the subject site revealed relatively few features. The principal types found were bait cups and petroglyphs. Aside from the isolated individual

examples, the petroglyphs are found concentrated in two relatively small clusters (Features J, P). The figures comprising these clusters are generally in poor to fair condition. In neither case does there seem to be any really outstanding examples such as those to be seen in the extensive petroglyph fields further up the coast in the South Kohala District, at Anaehoomalu and Puako.

28. With the exception of the immediate shoreline portion, most of the survey area had been bulldozed or scraped prior to purchase by Petitioner. Also, it appears that the recent occupation of the southeast end of the survey area might well have involved the disturbance of any pre-existing stone structural remains in the process of constructing new platforms, low walls, and alignments.

29. The archaeological features encountered at the subject site, with the exception of the two petroglyph concentrations (Features J, P), are believed to have only minimal significance in terms of potential research, interpretive, or preservation value. At the same time, intensive archaeological survey should be conducted as a necessary part of any future development within the survey area. The scope of this intensive survey would include the following field work tasks:

- (1) Location and precise plotting of all features present on an appropriate scale topographic map;
- (2) Detailed archaeological recording of all individual features and feature concentrations - written descriptions, large-scale plan maps and profiles, and photographs;
- (3) Dismantling of specific surface structural remains (Features F, M, N, O);
- (4) Surface artifact and midden collection at areas with remnant disturbed cultural deposits (Features E, I); and

- (5) Clear field definition and delimitation of peripheries of petroglyph concentrations (Features J, P).

Shoreline Trail (Lateral Public Access)

30. There is a foot-trail easement shown on the tax map which runs approximately parallel to the shoreline through some of the 30 subject shoreline parcels. Portions of this trail are now makai of the certified shoreline while other portions are mauka of the recently surveyed shoreline. Petitioner proposes to relocate and fix the location of a single shoreline trail as a five-foot wide easement for pedestrian access purposes parallel to the shoreline and within or adjacent to the setback area. A low rock wall is proposed along the mauka side of the shoreline setback boundary or shoreline trail. Petitioner proposes that the trail would be cleared as necessary and would be maintained in the future to insure continued public lateral access along the shoreline.

31. A 5-foot wide lateral shoreline access situated within the shoreline setback area will be difficult to traverse as portions of the path would be over lands covered by large beach boulders. Clearing of a path through the shoreline setback area would require a shoreline setback variance from the Planning Commission.

32. A 5-foot wide lateral shoreline access situated on the mauka side of the shoreline setback line would provide direct access to the shoreline only in two places where the mauka-makai access is proposed. Additional accesses to the shoreline, if any, would then have to be over portions of the subject property within the shoreline setback area. Should these accesses to the shoreline be defined as confined paths by easement, the paths would be surrounded by private lawns or yard spaces.

33. Should people wander off these mauka-makai easements, they would be trespassing.

34. Physical improvements of mauka-makai paths within the shoreline setback area will require a shoreline setback variance.

35. There is a unique sandy tide pool beach area, portions of which are located makai of the subject property's certified shoreline.

36. People will want to walk along the shoreline to gain access to the sandy tide pool beach area and other coastal recreational resources.

Tsunami Inundation

37. Coastal hazards due to tsunami inundation and storm surf are a potential threat to development on the makai portion of the subject property. In order to manage development within these areas, the Federal Flood Insurance Maps and Regulations administered in building design review have been adopted by the County of Hawaii. Compliance with these regulations will mitigate potential hazards to the property resulting from tsunami inundation and storm surf conditions.

PUBLIC SERVICES AND FACILITIES

Sewage Treatment and Disposal

38. Mr. David Bills testified as an expert witness with respect to sewage issues. He is a registered civil engineer in the State of Hawaii, employed by the engineering firm of Gray, Hong & Associates located in Honolulu, Hawaii. Mr. Bills received an undergraduate degree, Bachelor of Science, in civil engineering from Purdue University and received his Master degree in Sanitary Engineering from the University of Hawaii at Manoa.

39. The firm of Gray, Hong & Associates has conducted numerous dye testing studies along the Kona Coast, including the Kona Village Resort.

40. The State Department of Health has granted a clearance for the use of cesspools on an interim basis until such time as sewer connection is available.

41. It is a generally recognized principle that ground-water in the coastal waters will migrate towards the coast and end up in the coastal waters.

42. There is a sandy bottom tide pool which is relatively enclosed and which is located makai of the subject property. This tide pool area is a unique feature. The amount of flushing which can occur in the tide pool is significantly reduced compared to the open ocean environment.

43. Cesspools could be located at a distance of 150 feet from the tide pool in lots 13-23.

44. If cesspools were to be installed in lots 13-23, it is probable that water quality degradation will occur in the form of nutrients, nitrogens, and phosphorous in the tide pool area, and there is a possibility that pathogens would get into the tide pool from cesspool seepage.

45. The cost of installation of a sewer system which would be hooked-up to the public sewage treatment plant is estimated to be from \$370,000 to \$500,000.

Water

46. An 8-inch underground water line along the proposed roadway improvement will connect to the County water system now existing along Palani Road.

Firefighting

47. Fire hydrants will also be installed and appropriately spaced according to County requirements.

Roadway Facilities

48. The relatively small size of the proposed development will not contribute significantly to existing traffic.

49. Street lighting will be provided as required by the County.

Acquisition by the State of the Subject Project

50. A State of Hawaii House of Representatives resolution has been adopted requesting the State administration to investigate the factors determinative of purchasing the subject premises. No evidence has been presented to indicate any commitment by the State of Hawaii to acquire the subject premises as part of the Old Kona Airport State Park or that funds for acquisition of the subject property have been appropriated.

RULINGS ON MOTIONS, OBJECTIONS, AND PROPOSED FINDINGS

Any proposed finding submitted by a party and not already ruled upon, in whole or in part, by the Planning Commission by adoption herein, or by rejection through clearly contrary findings of fact herein, is hereby rejected.

Any motion or objection raised by a party and not previously ruled upon, in whole or in part, is deemed to be denied.

CONCLUSIONS OF LAW

Based on the review of petition filed herein, the evidence and arguments presented at the hearings and the provisions of Chapter 205-A, Hawaii Revised Statutes, and Rule 9 "Special Management Area Rules and Regulations of the County of Hawaii," the Planning Commission concludes:

1. The subject improvements are consistent with the General Plan, Zoning Code and other applicable ordinances of Hawaii County.
2. The subject development will not have any significant or substantial adverse environmental or ecological effects.
3. The subject development is consistent with the objectives and policies as provided by Chapter 205-A, Hawaii

Revised Statutes and the Special Management Area guidelines.

4. The imposition of conditions of approval are sufficient to minimize or obviate any adverse effects relating to water quality, public access, recreation, and cultural resources.

DECISION AND ORDER

It is hereby ordered that the requested Special Management Area Use Permit application filed by The Hilton Head Company for the subject property consisting of approximately 26 acres, situated at Lanihau, North Kona, Hawaii, identified as Tax Map Keys: 7-5-05:1, 11, 14-51, being in compliance with Chapter 205-A, Hawaii Revised Statutes, and Rule 9, "Special Management Area Rules and Regulations of the County of Hawaii," shall be and is hereby granted, subject to the following conditions:

1. Petitioner or its authorized representative shall be responsible for complying with all conditions of approval.

2. The recommendations of the June 1979 archaeological reconnaissance survey report and the November 1981 update shall be implemented prior to the construction of infrastructural or related improvements. A report on the results of these activities shall be forwarded to the Planning Department and the State Department of Land and Natural Resources, Division of State Parks, Historic Sites Section, for review and approval. The Planning Director is empowered to require additional archaeological work and development adjustments as may be necessitated by the findings of the above mentioned archaeological work. Further, no grading, grubbing, excavation, or construction shall be undertaken on the subject property without the express written consent of the Planning Director.

3. Within one year from the final archaeological clearance issued by the Planning Director, plans for the construction of

the infrastructure and property wall improvements shall be submitted to and approved by the Planning Director.

4. A public shoreline access plan shall be submitted for the approval of the Planning Director in conjunction with the infrastructural and property wall improvement plans. This plan is exclusive of and does not prejudice any efforts by Petitioner to remove or relocate the old Hawaiian trail. The shoreline access plan shall include, but not necessarily be limited to:

- (a) Location and description of all public pedestrian access paths including: (1) two 10-foot wide mauka-makai access paths, one of which is to be located along the western boundary of lot 18 and the other along the western boundary of lot 36; (2) a lateral shoreline access which shall include all of the lands within the subject property which are within the shoreline setback area and an additional two or more feet immediately mauka of the shoreline setback line, as may be deemed necessary by the Planning Director to encompass the proposed two-foot wide rock wall top; (3) a 5-foot wide path along the mauka boundary of the subject property from its western end to the mauka-makai access within lot 18, provided that this path may be situated on the adjacent State-owned lands if approved by the Board of Land and Natural Resources.
- (b) Plans for any proposed improvements for the access paths, including but not limited to: (1) the provision of a rock wall mauka of the shoreline setback line of the various lots which would be designed to have a smooth walking surface of a

minimum 2-foot width and not exceeding 18-inches in height; (2) the clearing and improvement of the mauka-makai paths; and (3) the clearing of the 5-foot wide path that is located either along the mauka boundary of the subject property, or within the adjacent State-owned lands, if so approved by the Board of Land and Natural Resources.

(c) Proposed method of signage to identify the location of the public shoreline access paths.

5. All public access paths shall be described by metes and bounds and shall be recorded to provide a perpetual right of pedestrian access to the public.

6. All planning, construction, and recordation as required for public shoreline access shall be completed prior to the issuance of building permits for the subject property.

7. Petitioner or its successors or assigns shall be responsible for the maintenance of all shoreline access paths.

8. As part of the infrastructural improvement, each lot shall be serviced by a connection to the County sewage treatment plant in accordance with the County of Hawaii design standards as established by the Chief Engineer. Further, all dwellings to be constructed on the subject property shall be serviced by the County sewage system.

9. Construction of the infrastructure, property wall, and shoreline access improvements shall commence within one year from the date of final approval of the plans and shall be completed within two years thereafter.

10. That the subject property shall be re-platted for Land Court registration or for recordation at the Bureau of Conveyances, as appropriate, reflecting:

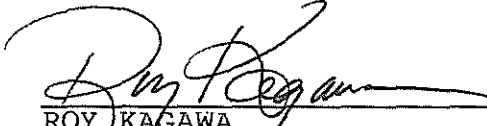
- (a) The existence of only 40 lots;
- (b) The shoreline as certified by the Chairman of the Board of Land and Natural Resources on November 24, 1981;
- (c) The shoreline access paths and all public easements of record. Said re-platting shall occur prior to the issuance of any construction approval or permits.

11. All other applicable rules, regulations, and requirements shall be complied with.

Should any of the foregoing conditions not be met, the Special Management Area Use Permit shall be automatically void.

Dated at Hilo, Hawaii on this 19th day of May, 1983.

COUNTY OF HAWAII
PLANNING COMMISSION



ROY KAGAWA
Chairman Pro Tem

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAII

In the Matter of the Petition)
 of)
 THE HILTON HEAD COMPANY)
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For Special Management Area)
(SMA) Use Permit for Property)
Situating at Lanihau, North Kona,)
Island of Hawaii)
_____)

DOCKET NO. 81-31


CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER was served upon the
following by either hand delivery or depositing the same in the
U. S. Postal Service by certified mail:

1. CLIFFORD H. F. LUM, ESQ.
192 Kapiolani Street
Hilo, Hawaii 96720
2. COLIN L. LOVE, ESQ.
Crittenden & Love
77-6400 Nalani Street
Kailua-Kona, Hawaii 96740
3. WILLIAM TAGUPA, ESQ.
Cultural Affairs Staff Officer
567 S. King Street
Suite 100
Honolulu, Hawaii 96813
4. GARY PAKELE, ESQ.
Native Hawaiian Legal Project
1164 Bishop Street
Suite 1102
Honolulu, Hawaii 96813
5. PLANNING COMMISSION
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Dated: Hilo, Hawaii, this 19th day of May, 1983.

COUNTY OF HAWAII
PLANNING COMMISSION


ROY KAGAWA
Chairman Pro Tem

May 5, 1983

Mr. Clifford Lum
192 Kapiolani Street
Hilo, Hawaii 96720

Mr. Colin L. Love
77-6400 Nalani Street
Kailua-Kona, HI 96740

Mr. Gary Pakele
Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1102
Honolulu, HI 96813

Mr. William Tagupa
Cultural Affairs Officer
Office of Hawaiian Affairs
State of Hawaii
567 South King Street, #100
Honolulu, HI 96813

Dear Messrs. Lum, Pakele, Love and Tagupa:

Special Management Area Use Permit Application (SMA 81-31)
Hilton Head Company, Inc.
Tax Map Key 7-5-5:1, 11, 14-51

The Planning Commission at its meeting held April 28, 1983, voted to approve the subject Special Management Area Use Permit application based on the findings contained in the hearing officer's report.

A copy of the decision and order will be forwarded to you as soon as it has been finalized.

Should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,


Clyde Inada
For Chairman, Planning Commission

cc: R. Ben Tsukazaki

MAY 4 1983