

CERTIFIED MAIL

February 2, 1988

Ms. Anne Mapes
Belt, Collins & Associates
606 Coral Street
Honolulu, HI 96813

Dear Ms. Mapes:

Shoreline Setback Variance Application
Petitioner: The Ritz-Carlton Hotel Company
TMK: 6-8-22:Portion of 11

The Planning Commission at its duly held public hearing on January 26, 1988, voted to approve the application, Shoreline Setback Variance No. 640, for the expansion of a shoreline beach as part of the development of the The Ritz-Carlton Mauna Lani Resort hotel at Kalahaipua'a, South Kohala, Hawaii.

Approval of this request is based on the following:

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of the improvements have disturbed the natural shoreline process and have caused erosion of the shoreline. To prevent unnecessary encroachment of structures and other improvements upon the shoreline, the legislature felt that it is in the best interest of the public to establish shoreline setbacks and to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be required to be done or constructed within the shoreline setback area for protection of certain shoreline properties. In recognizing this need, the various counties, in this case the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205-35(b) of

the Hawaii Revised Statutes, and Section 8.9 of the Planning Commission's Rule No. 8, relating to Shoreline Setback, the Planning Commission may grant variances within the shoreline setback area if it is found that:

1. Such structures, activities, or facilities are in the public interest; or
2. Hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline setback.

The proposed project as covered by the subject request involves the expansion of a shoreline beach within the scope of the Ritz-Carlton Hotel development. Improvements include beach cleanup, importation of sand and landscaping. When completed, the new beach area would be open to the public.

It has been determined that these improvements are in the public interest. The beach expansion for private as well as public use will markedly increase the recreational potential of Pauoa Bay for swimming, snorkeling, and sunbathing. Previously approved SMA Use Permit No. 262 and Shoreline Setback Variance 636 contained a condition which would assure public use of the beach in the same manner and treatment as any guest of the hotel. Further, lateral public access to the shoreline is presently available through an existing easement which would have to be amended because of its location in some parts makai of the certified shoreline. New descriptive easements for lateral access are already a condition of the previously described approvals. The beach cleanup effort will also be in the public interest for reasons of public safety.

Based upon the foregoing, it is therefore determined that the beach cleanup, landscaping and expansion efforts will be consistent with the Shoreline Setback Law pursuant to Chapter 205-31, HRS, and the criteria established in Rule No. 8 of the Planning Commission's Rules of Practice and Procedure.

Approval of this request is subject to the following conditions:

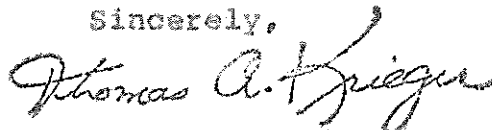
1. The applicant, its successors or assigns shall be responsible for complying with all conditions of approval.

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2. Comply with all conditions set forth in Special Management Area Use Permit No. 262 and Shoreline Setback Variance No. 636.
4. Comply with all other applicable rules, regulations, and requirements, including those of the U.S. Army Corps of Engineers, the Department of Health and the Department of Land and Natural Resources.
5. An extension of time for the performance of conditions within the variance approval may be granted by the planning director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the permit.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Thomas A. Krieger
Chairman, Planning Commission

cc: Doug McGarrity
Tom Yamamoto
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
DBED, CZM Program w/background

bcc: Plan Approval Section