# Planning Commission

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye
Mayor


CERTIFIED MAIL

October 23, 1991

Mr. Francis Morgan
Hamakua Sugar Company
P.O. Box 205
Paauilo, HI 96776

Dear Mr. Morgan:

Applications for State Land Use Boundary Amendment,
Change of Zone, Use Permit, and SMA Use Permit
Applicant: Hamakua Sugar Company
TMK: Various

The Planning Commission at its duly held public hearing on October 17, 1991, reviewed and acted on the above-referenced applications.

The Commission voted to recommend the approval of the State Land Use Boundary Amendments and the Change of Zone Applications to the County Council. The Change of Zone Applications are subject to the following conditions:

CHANGE OF ZONE CONDITIONS: HAMAKUA MAUKA

A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

B. The effective date of the rezoning shall be (1) when the applicant provides assurance satisfactory to the Departments of Water Supply and Planning, upon consultation with the State Department of Health and the Department of Land and Natural Resources that a water source(s) of sufficient quality and quantity has (have) been established within two years from the date of mayoral signature; provided that a maximum one-year extension may be granted by the Planning Director with reasonable and sufficient justification; and (2) an agreement, together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, is executed between the applicant and the County through its Departments of

Water Supply and Planning for the actual development of a proven source and its water transmission and distribution system within one year from the official date of compliance with Condition B(1); provided that a one-year extension may be granted by the Planning Director with reasonable and sufficient justification.

C. Plans for agricultural subdivision, plan approval review of the condominiums and hotel and golf course development, shall be submitted to the Planning Department within eighteen months from the effective date of the change of zone ordinance. Tentative or preliminary approvals shall be secured within one year thereafter. Final subdivision approval or plan approval of the various project components shall be secured within one year thereafter.

D. The connecting road ("Mud Lane Road" extension) from Highway 240 to the Hawaii Belt Road shall be constructed meeting with the approval of the Department of Public Works. The "Mud Lane Road" extension shall be constructed in its entirety prior to issuance of a certificate of occupancy for any portion of the development, opening of any golf course, or in conjunction with final subdivision approval of any portion of the development, whichever comes first.

E. Intersection improvements, which may include traffic signals and channelization, shall be provided at the new Mud Lane Connector Road-Hawaii Belt Road intersection and the new Mud Lane Connector Road-Highway 240 intersection as required by the Department of Transportation and the Department of Public Works.

F. A new primary access shall be constructed to the Hamakua Makai area between Kona Camp and the existing access to Kukuihaele in conjunction with any development occurring on the Hamakua Makai area. Additionally, a new by-pass intersection to the west (Waipio side) of Tiger Camp and a new access road (cul-de-sac) to the end of Tiger Camp shall be constructed in conjunction with any development occurring on the Hamakua Mauka or Makai areas. The new Kukuihaele by-pass intersection and improvements to the existing Kukuihaele Road (i.e. pavement widening) through the Village shall be completed prior to issuance of any

certificate of occupancy, final subdivision approval or opening of the golf course, whichever occurs first.

G. An internal traffic circulation plan of the project area (Hamakua Mauka) shall be submitted for review and approval by the Department of Public Works prior to submitting plans for plan approval, subdivison or grading. The internal traffic circulation plan shall indicate the conceptual roadway network to and through the various development areas.

H. An historic preservation mitigation plan of each development area shall be prepared and submitted for approval by the Planning Department, in consultation with the Department of Land and Natural Resources, prior to submitting plans for preliminary subdivision, plan approval review, or grading, whichever comes first. The plan shall consist of an archaeological data recovery plan and a preservation plan. Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations in the respective development areas.

I. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

J. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall work with the Office of Housing and Community Development and the Planning Department to formulate a housing plan for the development, which shall be consistent with the interim affordable housing policy of the County as contained in the Hawaii County Housing Agency Resolution No. 65. This housing plan shall be approved by the County Housing Agency prior to final subdivision or plan approval of any portion of the village commercial or multiple-family residential zoned area; provided that the applicant shall notify the County Housing Agency of any intent to sell, lease, assign, place in trust, or otherwise voluntarily

alter the ownership interest in the property prior to visible commencement of construction on the property; provided further that the applicant may transfer ownership in the property to an affiliate or in a manner consistent with prior representations to the County Housing Agency.

K. As agreed to by the applicant, restrictive covenants in the deeds of all agricultural zoned lots shall prohibit the construction of ohana dwelling units. A copy of the proposed covenant(s) shall be submitted to the Planning Department for review and approval prior to final subdivision approval of each agricultural subdivision. Written assurance for implementation of this condition, which has met with the approval of the Planning Department, shall be submitted to the Planning Department prior to final subdivision approval of each agricultural subdivision. A copy of a typically recorded covenant shall be filed with the Planning Department within one year from the date of final subdivision approval of each agricultural subdivision.

L. It shall be demonstrated to the satisfaction of the Planning Department that agricultural activity is being conducted on the subdivided agricultural-zoned lots within three years from the date of final subdivision approval. For the purpose of this condition, "agriculture" shall be defined as the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber; game propagation; raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use. This condition shall be incorporated in each of the deeds for the proposed agricultural-zoned lots and duly recorded with the State Bureau of Conveyances. A copy of the recorded deeds shall be filed with the Planning Department within one year from the date of final subdivision approval of the agricultural-zoned lots.

M. The applicant shall work with the State Department of Education and the Planning Department to provide its pro rata share for school facilities. The pro rata share determination and its implementation (i.e. dedication of land, construction of classrooms or funding) shall be approved by the Planning Department, in consultation with

the Department of Education, prior to final subdivision approval of any portion of the multiple-family residential or agricultural development.

N. Prior to development or land alterations of any portion of the Hamakua Mauka or Hamakua Makai areas, a comprehensive drainage study shall be conducted to determine the type of drainage improvements that would be required given the topography of the area; the stream and gulches which cross-cut the property; the geological composition of the area; and the amount of water to be generated by the proposed development. The study shall be reviewed and approved by the Department of Public Works and approved recommendations implemented as the development proceeds. Accordingly, a drainage system shall be installed meeting with the requirements of the Department of Public Works.

O. The applicant shall set aside a maximum of 6 acres of land for fire/police station expansion, or as otherwise agreed upon by the Fire and Police Chiefs and the Planning Director. The land area, its location and timing of dedication, shall be approved prior to submitting plans for subdivision or plan approval review of any portion of the development; provided that compliance with this condition may be satisfied with the same condition in the Hamakua Makai change of zone ordinance.

P. The applicant shall provide an additional transfer station and necessary improvements meeting with the approval of the Department of Public Works. The transfer station and required improvements shall be provided prior to issuance of a certificate of occupancy, establishment of the golf course or final subdivision approval for any portion of the development; provided that compliance with this condition may be satisfied with the same condition in the Hamakua Makai change of zone ordinance.

Q. The applicant shall identify a minimum of 6.1-acres of land for park and recreational use to be incorporated with the existing county park site; provided that compliance with this condition may be satisfied with the same condition in the Hamakua Makai change of zone ordinance. The land area, configuration, and type of improvements shall meet with the approval of the Departments of Parks and Recreation and

Planning prior to submitting plans for subdivision or plan approval review. The construction of a community center shall be included in the improvements to be provided on the park site. The phasing of park site development shall also meet with the approval of the Departments of Parks and Recreation and Planning. Until such time that the park is dedicated to and accepted by the County, there shall be adequate assurance, as determined by the Corporation Counsel, for the maintenance of the private park by recorded covenant running with the land which shall include the following: (1) obligate the subdividers to maintain the private park in perpetuity; and (2) empower the County, through the Department of Parks and Recreation, to enforce the covenants to maintain the private park, authorizing the performance of maintenance work by the County in the event of failure by the subdividers, purchasers, occupants, or association in the subdivision to perform such work and permit the subjecting of the land and properties in the subdivision to a lien until the cost of the work performed by the County has been reimbursed.

R. A minimum 300-foot wide buffer consisting of a minimum of 350 acres shall be set aside on the Waipio Valley rim to serve as a preservation buffer for Waipio Valley. The buffer shall be described as a perpetual easement for the purpose of protecting the land in its natural, scenic, and open-space condition and shall be maintained in perpetuity by the applicant, successors or assigns. The terms and conditions of the easement shall be reviewed and approved by the Planning Department, in consultation with the Department of Land and Natural Resources, prior to any final subdivision approval, final plan approval or land alterations of the Hamakua Mauka and Makai areas.

S. A new lookout, parking and related improvements shall be provided in conjunction with any development occurring on the Hamakua Mauka or Makai areas. These improvements, its location and design, shall be approved by the Planning Department prior to submitting plans for subdivision, plan approval or grading.

T. An interpretive cultural center shall be provided within the Kukuihaele Special Treatment area. The interpretive cultural center, its improvements (with possible phasing thereof) and management shall be approved by the Planning

Department prior to submitting plans for subdivision, plan approval or grading.

U. A job training program for the operating phase of the hotel shall be developed and submitted to the Planning Department for review and approval prior to receipt of Final Plan Approval for the hotel development. The on-going training program shall continue and will provide for an upgrading of skills and opportunities.

V. A regional infrastructural improvement program (RIIP) shall be formulated by the applicant and submitted for review and approval by the Planning Department, in consultation with appropriate affected agencies, prior to submittal of plans for any subdivision or plan approval review of any area of development. The RIIP shall include (1) the identification of existing regional off-site infrastructure, including but not limited to fire, police, emergency medical, health, education, wastewater, solid waste, and park facilities/services, and roads and highways; (2) identification of projected regional infrastructural improvements based upon current available information, plans and respective agency data; (3) estimated impact of project on regional infrastructure utilizing methodology and figures acceptable to the Planning Department; and (4) implementation program for alleviating regional public facility and public service impacts. Conditions within this ordinance or the Hamakua Makai ordinance which require infrastructural improvements may fully or partially satisfy the regional infrastructural improvement program, if determined by the Planning Department, in consultation with the affected agency(ies), to meet projected regional demands.

W. Comply with all other applicable laws, rules, regulations and requirements.

X. Should the council adopt a Unified Impact Fees ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein may, at the developer's election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance.

Y. An annual progress report shall be submitted to the Planning Department prior to the anniversary date of the approval of this change of zone. The report shall address in detail the status of the development of each area (including number of lots created, number of units constructed) and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Department acknowledges that further reports are not required.

Z. An extension of time for the performance of conditions set forth in this ordinance may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; 4) 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); and 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions of the respective development areas not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the applicable area to its original or more appropriate designation.

CHANGE OF ZONE CONDITIONS: HAMAKUA MAKAI

A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

B. The effective date of the rezoning shall be (1) when the applicant provides assurance satisfactory to the Departments of Water Supply and Planning, upon consultation with the State Department of Health and the Department of Land and Natural Resources that a water source(s) of

sufficient quality and quantity has (have) been established within two years from the date of mayoral signature; provided that a maximum one-year extension may be granted by the Planning Director with reasonable and sufficient justification; and (2) an agreement, together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, is executed between the applicant and the County through its Departments of Water Supply and Planning for the actual development of a proven source and its water transmission and distribution system within one year from the official date of compliance with Condition B(1); provided that a one-year extension may be granted by the Planning Director with reasonable and sufficient justification.

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contained in the Hawaii County Housing Agency Resolution No. 65. This housing plan shall be approved by the County Housing Agency prior to final subdivision or plan approval of any portion of the village commercial or multiple-family residential zoned area; provided that the applicant shall notify the County Housing Agency of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the property prior to visible commencement of construction on the property; provided further that the applicant may transfer ownership in the property to an affiliate or in a manner consistent with prior representations to the County Housing Agency.

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N. Prior to development or land alterations of any portion of the Hamakua Mauka or Hamakua Makai areas, a comprehensive drainage study shall be conducted to determine the type of drainage improvements that would be required given the topography of the area; the stream and gulches which cross-cut the property; the geological composition of the area; and the amount of water to be generated by the proposed development. The study shall be reviewed and approved by the Department of Public Works and approved recommendations implemented as the development proceeds. Accordingly, a drainage system shall be installed meeting with the requirements of the Department of Public Works.

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R. A minimum 300-foot wide buffer consisting of a minimum of 350 acres shall be set aside on the Waipio Valley rim to serve as a preservation buffer for Waipio Valley. The buffer shall be described as a perpetual easement for the purpose of protecting the land in its natural, scenic, and open-space condition and shall be maintained in perpetuity by the applicant, successors or assigns. The terms and conditions of the easement shall be reviewed and approved by the Planning Department, in consultation with the Department of Land and Natural Resources, prior to any final subdivision approval or final plan approval or land alterations of the Hamakua Mauka and Makai areas.

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on the Hamakua Mauka or Makai areas. These improvements, its location and design, shall be approved by the Planning Department prior to submitting plans for subdivision, plan approval or grading of the project areas.

T. An interpretive cultural center shall be provided within the Kukuihaele Special Treatment area. The interpretive cultural center, its improvements (with possible phasing thereof) and management shall be approved by the Planning Department prior to submitting plans for subdivision, plan approval or grading of the project areas.

U. A job training program for the operating phase of the hotel shall be developed and submitted to the Planning Department for review and approval prior to receipt of Final Plan Approval for the hotel development. The on-going training program shall continue and will provide for an upgrading of skills and opportunities.

V. A regional infrastructural improvement program (RIIP) shall be formulated by the applicant and submitted for review and approval by the Planning Department, in consultation with appropriate affected agencies, prior to submittal of plans for any subdivision or plan approval review of any area of development. The RIIP shall include (1) the identification of existing regional off-site infrastructure, including but not limited to fire, police, emergency medical, health, education, wastewater, solid waste, and park facilities/services, and roads and highways; (2) identification of projected regional infrastructural improvements based upon current available information, plans and respective agency data; (3) estimated impact of project on regional infrastructure utilizing methodology and figures acceptable to the Planning Department; and (4) implementation program for alleviating regional public facility and public service impacts. Conditions within this ordinance which require infrastructural improvements may fully or partially satisfy the regional infrastructural improvement program, if determined by the Planning Department, in consultation with the affected agency(ies), to meet projected regional demands.

W. Comply with all other applicable laws, rules, regulations and requirements.

X. Should the council adopt a Unified Impact Fees ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein may, at the developer's election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance.

Y. An annual progress report shall be submitted to the Planning Department prior to the anniversary date of the approval of this change of zone. The report shall address in detail the status of the development of each area (including number of lots created, number of units constructed) and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Department acknowledges that further reports are not required.

Z. An extension of time for the performance of conditions set forth in this ordinance may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; 4) 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); and 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions of the respective development areas not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the applicable area to its original or more appropriate designation.

The Commission also approved your applications, Use Permit No. 88, to allow for the establishment of two (mauka) golf courses (27-hole and 18-hole) and related improvements within the County's Agricultural zoned district; and Use Permit No. 89, to allow the

establishment of a golf course (makai) and related improvements within the County's Agricultural zoned district.

Approval of the two Use Permit requests are based on the following:

The establishment of three golf courses and related facilities within the Agricultural (A) zoned district will not be inconsistent with the general purpose of that zoned district, the intent and purpose of the Zoning Code, and the General Plan, provided adequate mitigating conditions are met.

The subject requests will also provide a form of perpetual open space, thus, maintaining the current open character of the surrounding area along with its natural and scenic qualities. The proposed development would, therefore, be consistent with the policies of the Recreation and Open Space Elements of the General Plan, which cite that recreational facilities in the County shall reflect the natural, historic, and cultural character of the area, and that the recreational use should be compatible with the adjacent areas. To further ensure that these General Plan Elements are implemented, further data recovery and interpretive preservation will be required.

The granting of this proposed development would further complement the goals of the General Plan's Recreation element which state to "Provide a diversity of environments for active and passive pursuits" and to "Provide a wide variety of recreational opportunities . . . ."

A condition of this approval would be the submittal of a community benefit assessment program to the Planning Director for approval prior to Final Plan Approval of the golf course. It is felt that this provision would be consistent with the policy of the Land Use Element that states "The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."

Golf courses are permitted uses within the State Land Use Agricultural District provided that the affected lands are not classified either A and B soils by the Land Study Bureau. The Land Study Bureau's Overall Master Productivity rating for agricultural use of the subject properties is Class C & D or fair and poor, therefore, consideration of a golf course within these State land use parameters is permissible.

The granting of the proposed use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties. The character of land use in the subject area is vacant open space.

The proposed project will continue to change the character of this portion of Kukuihaele. This pattern of transformation, however, is identified in the Hamakua Regional Plan, which recognizes golf course development as a focal point of land use in this area.

The granting of the proposed use will not adversely affect similar or related existing uses within the surrounding area, community, or region. Through this approval the area will be committed to agricultural, resort and condominium development, which would essentially be compatible with the proposed golf course use.

All essential utilities and services required for the development of the golf courses and related facilities are or will be made available. Conditions of approval relative to the provision of such services are being proposed. These include the provision for off-site roadway improvements as well as water. In addition, conditions of approval relative to a groundwater monitoring and a golf course maintenance (fertilizers, pesticides, biocides) plan are also being required.

Approval of the two Use Permit requests are subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.

2. Final Plan Approval for the golf course(s) and related improvements shall be secured from the Planning Department within 18 months from the effective date of this permit. To assure adequate time for Plan Approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five (45) days prior to the date by which plan approval must be secured. Plans would delineate structure(s), archaeological preservation areas, landscaping, parking and roadway alignments, at the minimum.

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3. Construction of the golf course(s) and related improvements shall commence within one year from the date of receipt of final plan approval and be completed within three (3) years thereafter.

4. To ensure that the goals and policies of the General Plan are implemented, the Planning Director shall formulate a community benefit assessment program for implementation by the applicant prior to receipt of Final Plan Approval of the golf course.

5. In the design of the golf course, the County of Hawaii Planning Department's Guidelines for Golf Course Design (November 1989, as amended) shall be utilized. The Planning Department shall determine appropriate setback requirements (i.e. building and property line) at the time of plan approval review. Easements for golf course purposes over and across abutting lots, either existing or proposed, shall not be permissible.

6. An archaeological data recovery plan and mitigation program shall be submitted for review and approval by the Planning Department, in consultation with the State Department of Land and Natural Resources, prior to receipt of Final Plan Approval and/or prior to the issuance of any grading or grubbing permit, whichever occurs first.

7. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. Work within the affected area shall not resume until clearance is obtained from the Planning Department.

8. The use of pesticides, biocides and herbicides in conjunction with all phases of the golf courses operation shall conform with the applicable regulations of appropriate governmental agencies.

9. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.

10. Prior to each golf course construction, the applicant shall demonstrate to the satisfaction of the Planning Department that all proposed off-site construction material such as topsoil or sand are being supplied from an approved quarry or resource site.

11. A groundwater monitoring plan and system shall be prepared, in consultation with the State Department of Health, and submitted to the Planning Department prior to issuance of a grading permit for the golf course(s) and/or prior to any land preparation activity being conducted on the properties.

12. Comply with all other applicable laws, rules, regulations and requirements, including those of the Departments of Health and Public Works.

13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

14. An initial extension of time for the performance of conditions within the permit 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) the 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 shall initiate procedures to revoke the permit.

The Commission also voted to approve your Special Management Area (SMA) Use Permit No. 323 to allow for the development of portions of a hotel, a 60-unit condominium, golf course, agricultural subdivision, and related improvements.

Approval of the Special Management Area (SMA) Use Permit is based on the following:

A Special Management Area has been designated along a 500-foot wide strip of the coastline inland from the certified shoreline. Portions of the development proposed for the Hamakua makai area are included within the area. These include, portions of the golf course, the hotel site, a condominium site and one-acre lot subdivisions.

An approval, with conditions is recommended as the goals and objectives with respect to coastal, recreational, scenic, historic and economic resources can be met.

The proposed development is located along the top of coastal cliffs away from shoreline areas. A public access along the cliff with makai access down to traditional fishing areas will provide opportunities for public coastal recreation. Thirteen archaeological sites have been identified in the makai area, of which, several have been recommended for preservation. Through conditions of approval of the change of zone, these will be set aside. A scenic view plane analysis was provided by the applicant which indicates that the hotel will not be visible from Waipio Valley, which lies approximately a mile to the southwest. While some concerns have been expressed with relation to potential degradation of ground and coastal water quality from the golf course use, these may be mitigated through conditions of approval attached with Use Permit for golf course use. The proposed development is not subject to coastal hazards such as tsunamis or storm waves as the lowest point of the development occurs at about the 200 foot elevation.

Approval of the Special Management Area (SMA) Use Permit is subject to the following conditions:

1. The applicant, successors or its assigns shall comply with all of the stated conditions of approval.

2. A 100-foot setback area from the certified shoreline shall be established in which the construction of structures

shall be prohibited, unless a lessor setback is approved by the Planning Director. The 100-foot setback line shall be delineated on plans for plan approval and building permit(s).

3. The minimum 40-foot shoreline setback line shall be staked by a registered surveyor, prior to any land alterations in the affected area. Written confirmation shall be submitted in conjunction with requested permit(s). No improvements shall be allowed within the 40-foot setback area unless a Shoreline Setback Variance has been applied for and granted by the Planning Commission.

4. An emergency preparedness and response plan shall be filed with the Planning Director and the Civil Defense Agency prior to issuance of a certificate of occupancy for any portion of the condominium or hotel development.

5. A comprehensive public access plan shall be submitted for review and approval by the Planning Department, in consultation with the Department of Land and Natural Resources, prior to submittal of plans for plan approval or subdivision approval, or land alterations, whichever comes first. The comprehensive public access plan shall include, but not be limited to, the delineation of a mauka-makai access; lateral shoreline access; location, time of construction and/or availability of public accesses and parking/drop-off areas; restrictions on use; signage; related improvements and a safety barrier program which secures all hazardous coastal cliff areas within the proposed development area.

6. A water quality and marine life monitoring and mitigation plan shall be submitted to and approved by the Planning Department, in consultation with the Department of Health, the Department of Land and Natural Resources and U.S. Fish and Wildlife, prior to the issuance of a grading permit and/or prior to any land preparation activity being conducted on the property.

7. All utility lines shall be underground.

8. A comprehensive mauka-makai view analysis of major condominium and hotel structures shall be prepared prior to submittal of plans for plan approval review. The view

analysis shall be accepted by the Planning Department to be utilized as a guide during plan approval review.

9. Comply with the requirements of the U.S. Coast Guard relating to the Kukuihaele Light House.

10. Comply with all other applicable laws, rules, regulations and requirements, including those of the Departments of Health and Public Works.

11. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

12. An initial extension of time for the performance of conditions within the permit 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) the 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 shall initiate procedures to revoke the permit.

For your information, the Planning Commission also approved the Planning Director's amendment to the General Plan Land Use Pattern Allocation Guide (LUPAG) map for the redesignation of approximately 90 (makai) and 110 (mauka) acres of land from an Intensive Agricultural and Extensive Agricultural designations to Urban Expansion designations at Puopaha, Keaa, Waikoekoe, Kanahonua, Kukuihaele and Lalakea, Hamakua District, Island of Hawaii,

TMK: Portions of 4-8-01, 4-8-02, 4-8-03, 4-8-04, 4-8-05 and 4-8-06. Also the amendment request to add Kukuihaele to the list of Urban and Rural Centers for the Hamakua District (Exhibit C-General Plan at page 81).

The Commission also approved the Planning Director's amendment to the Zoning Code for a change of zone of approximately 12,214± acres of land from an Agricultural-5 acres, 20 acres and 40 acres (A-5a/A-20a/A-40a) to an Agricultural-20,000 acres (A-20,000a) zoned district. The amendment would affect lands owned by Hamakua Sugar located at Ookala, North Hilo and from the ahupua'a of Humuula to Mooiki, Hamakua, TMK: 3-9-1:3; 3-9-2:9; 4-1-2:9, 10 & 11; 4-1-3:2, 7, 8, 9 & 22; 4-1-04:2, 9, 15, 21, 30, 32 & 34; 4-2-1:10, 12, 21 & 30; 4-2-2:2, 3, 6, 7 & 8; 4-2-03:3; 4-2-5:1 & 3; 4-2-6:1; 4-2-7:1 & 3; 4-2-8:6 & 11; 4-3-1:portion of 3; 4-3-3:8 & 11; 4-3-4:9; 4-3-5:2, 3 & 7; 4-3-7:4; 4-3-9:2; 4-3-11:1 & 2; 4-4-1:2 & 17; 4-4-2:1, 2, & 4; 4-4-3:2; 4-4-9:16; 4-4-10:7 & 16; 4-4-11:1; 4-5-1:1 & 2; 4-5-2:7, 12 & portion of 21; 4-6-3:3, 4, 7, 10, 12, 13 & 15; 4-6-4:4; 4-7-1:1, 17, 23 & 26; 4-7-3:1 & 8; 4-7-4:1; 4-7-5:1; 4-7-6:1, 18, 19 & 20; 4-8-2:3; 4-8-3:2 & 5 and 4-8-5:portion of 2.

The approval of the amendment to the Zoning Code is subject to the following conditions:

A. The applicant, successors or its assigns shall comply with all stated conditions of approval.

B. Consolidation plans for contiguous parcels of land shall be submitted to the Planning Department within six months from the effective date of this ordinance. Final consolidation shall be secured within one year thereafter.

C. Any dwelling to be constructed on the parcel(s) after consolidation shall comply with Chapter 205, HRS, relating to Land Use. Further, restrictive covenants shall prohibit the construction of ohana dwelling units on the consolidated parcels. Restrictive covenants in the deeds of all lots shall incorporate the list of permitted uses set forth in Chapter 205, HRS, and shall prohibit the construction of ohana dwelling units. A copy of the proposed covenant(s) shall be submitted to the Planning Department for review and approval prior to final consolidation approval. A copy of a typically recorded covenant shall be filed with the Planning Department within one year from the date of final subdivision approval of consolidation approval.

D. An annual progress report shall be submitted to the Planning Department prior to the anniversary date of the approval of this change of zone. The report shall address the status of the consolidation and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Department acknowledges that further reports are not required.

E. An extension of time for the performance of conditions set forth in this ordinance may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; 4) 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); and 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions of the respective development areas not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the applicable area to its original or more appropriate designation.

These recommendations and approvals do not, however, sanction the specific plans submitted with the applications as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,

Mike Luce

Mike Luce, Chairman
Planning Commission

6806d
jdk

xc: Tim Lui-Kwan, Esq.
Jim Bell
Mayor
Department of Public Works
Department of Water Supply
State Land Use Commission
Office of State Planning
Office of State Planning-CZM
State Department of Health
State Department of Transportation-Highways Division
State DLNR
State Department of Education
Office of Housing and Community Development
Fire Department
Police Department
Department of Parks and Recreation
Civil Defense
U. S. Coast Guard
West Hawaii Office
Subdivision Section
Plan Approval Section