

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of)

Mr. James H. Cockett on behalf of )  
the Sheraton Maui Kaanapali Beach )  
Resort )

) DOCKET NO. 91/ACC-009

) Mr. James H. Cockett

To Obtain a Special Accessory Use )  
Permit Amendment to condition #8 to )  
include a catamaran shoreline nexus )  
at Sheraton Maui Kaanapali Beach )  
Resort Maui Tax Map Key 4-4-08:05 )  
Kaanapali, Maui, Hawaii )

*Revised*

MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION  
TO THE MAUI PLANNING COMMISSION  
JUNE 14, 1994 MEETING

DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
250 S. HIGH STREET  
WAILUKU, MAUI, HI. 96793

(ACC Amend)

(91/ACC-009)

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of) )  
Mr. James H. Cockett on behalf of ) DOCKET NO. 91/ACC-009  
the Sheraton Maui Kaanapali Beach ) Mr. James H. Cockett  
Resort ) )  
To Obtain a Special Accessory Use ) )  
Permit Amendment to condition #8 to) )  
include a catamaran shoreline nexus) )  
at Sheraton Maui Kaanapali Beach ) )  
Resort Maui Tax Map Key 4-4-08:05 ) )  
Kaanapali, Maui, Hawaii ) )

**THE APPLICATION**

This matter arises from a request for a Special Accessory Use Permit amendment filed on March 3, 1994. The application was filed pursuant to Title 19 Zoning, Chapter 19.14 Hotel Districts, Section 19.14.020 Permitted uses; Maui County Code; by Mr. James H. Cockett on behalf of the Sheraton Maui Kaanapali Beach Resort, ("Applicant"); on approximately 24 acres of land in the Lahaina District, situate at Kaanapali, Island and County of Maui, identified as Maui Tax Map Key No. 4-4-08:05 ("Property"). (Exhibit 1)

**PURPOSE OF THE APPLICATION**

The Applicant is requesting an amendment to condition #8 to establish a shoreline nexus between Kaanapali Kai Charters, Inc. and the Sheraton Maui Kaanapali Beach Resort.

**APPLICABLE REGULATIONS**

An Accessory Use within the Hotel District is reviewed pursuant to Title 19 Zoning, Chapter 19.14 Hotel Districts, Section 19.14.020 Permitted uses; Maui County Code, 1980, as amended. Other accessory, business or service establishments which supply commodities or perform services primarily for the hotel guests may be permitted provided

approval is granted by the planning commission as conforming to the intent of this title.

The following restrictions apply to accessory uses:

(1) All such hotel and apartment-hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than twenty rooms, and such accessory uses shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other;

(2) All such personal service shops and businesses shall be operated primarily as a service to, and for the convenience of, the tenants and occupants of the buildings in which such service are located,

(3) Where the lot area is in excess of twenty thousand square feet, doors and entrances to such shops and businesses may be allowed to open to the public street, further, the shops and businesses may be constructed as separate buildings, provided the location of such shops and businesses shall have been approved by the planning commission.

#### **BRIEF HISTORY OF APPLICATION**

1. The applicant was granted a previous accessory use permit by the commission on October 26, 1989, which was extended to October 1990. The applicant failed to request a timely extension of said permit which expired on October 24, 1991. (Exhibit 2)

2. On November 7, 1991, the applicant filed a new application for an accessory use permit. On April 20, 1992 the Maui Planning Commission granted a new permit for three (3) years for the continued operation of the beach concession shacks at the Sheraton Maui Kaanapali Beach Resort. This permit is valid until April 19, 1995. (Exhibit 3)

3. The applicant applied for an amendment in letter dated March 6, 1994. (Exhibit 4)

#### **ANALYSIS**

The beach activities booths are operated primarily as a service to and for the convenience of the tenants and occupants of the Sheraton Maui Kaanapali Beach Resort.

Since catamaran activities are currently sold through the activity booth, the amendment to establish a shoreline

nexus between Kaanapali Kai Charters, Inc. and the Sheraton Maui Kaanapali Beach Resort would compliment an existing use and would not be detrimental to the welfare of the surrounding area.

The vessels and other equipment rented or operated through the beach concession booth are required to be registered for use in the Kaanapali Shore Water under Title 13, Subtitle 11, Part 3, Hawaii Administrative Rules. One of the primary requirements of Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) rules is that the owner or operator be in compliance with applicable County Rules.

It should be noted that the applicant has complied with the conditions of the original permit and subsequent time extension. No complaints or violations have been reported.

#### CONCLUSION OF LAW

Pursuant to Section 19.14.020 Permitted Uses, Hotel District; this business complies with Subsection H, which allows for other accessory, business or service establishments which supply commodities or perform services primarily for the hotel guests; and Subsection I, restrictions on accessory uses.

Essentially the previous Finding of Fact, Conclusions of Law, Decision and Order adopted by the Maui Planning Commission on April 20, 1992 is still applicable to the project with the inclusion of the Department's Report and Recommendation dated June 14, 1994.

#### RECOMMENDATION

Pursuant to the foregoing the Maui Planning Department recommends approval of the subject Special Accessory Use Permit Amendment to establish a shoreline nexus between Kaanapali Kai Charters, Inc. and the Sheraton Maui Kaanapali Beach Resort, subject to all conditions placed on the permit approved on April 20, 1992, provided that conditions #4 and #8 shall be amended and condition #13 be added to read as follows:

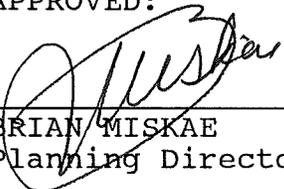
4. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Accessory Use Permit and shall defend, indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.

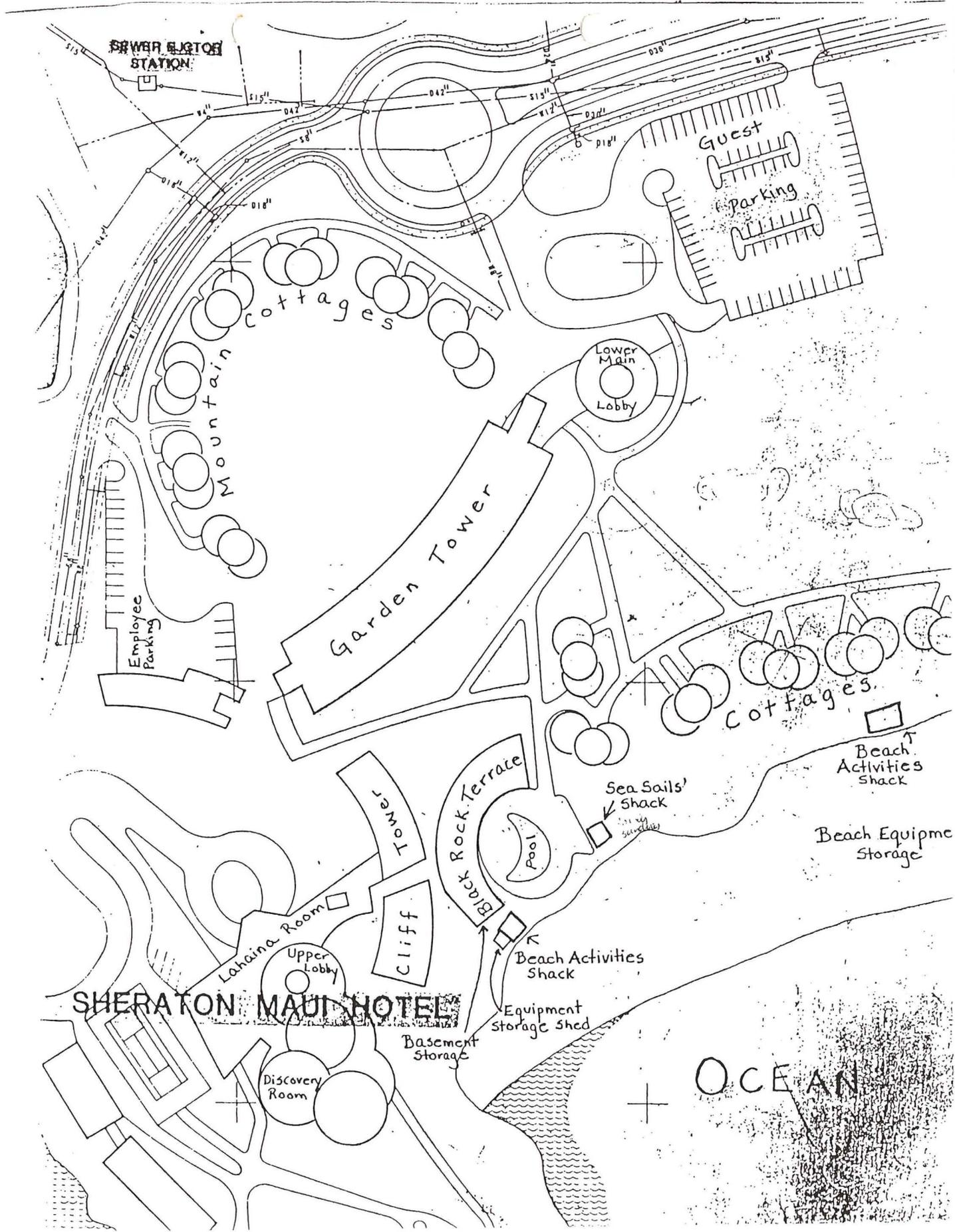
8. That the Special Accessory Use Permit shall be limited to the following activities:
- a. Boat charters for whale watching, picnic snorkel cruises and champagne sunset sails;
  - b. Rental of non-motorized equipment to include windsurfers, catamarans, water kayaks, wave skis, boogie boards, water mattresses, snorkel gear, beach chairs, and beach cabanas.
  - c. Instructions for windsurfing, catamaran sailing, scuba diving and snorkeling;
  - d. Sale of guided catamaran sails by Kaanapali Kai Charters, Inc.; and
  - e. Sale of sunglasses, sun protection products, cameras, still video pictures, resort and polo style shirts and tee shirts.

13. That full compliance with the Kaanapali Shore Water under Title 13, Subtitle 11, Part 3, Hawaii Administrative Rules shall be rendered.

Further, the Maui Planning Department recommends that the Maui Planning Commission adopt the Maui Planning Department's Report, Conclusions and Recommendations prepared for the June 14, 1994 Meeting, and authorize the Director of Planning to transmit said Findings of Fact, Conclusions of Law, and Decision and Order on behalf of the Commission.

APPROVED:

  
\_\_\_\_\_  
BRIAN MISKAE  
Planning Director



**EXHIBIT 1**



COUNTY OF MAUI  
PLANNING DEPARTMENT

200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

October 26, 1989

Mr. James Cockett  
Sheraton Maui Hotel  
2605 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Cockett:

RE: Special Accessory Use Permit to operate beach concessions shacks and storage sheds at the Sheraton Maui Hotel, TMK 4-4-8: 5, Kaanapali, Maui.

At its regular meeting on October 24, 1989, the Maui Planning Commission reviewed the above request and after due deliberation, voted unanimously to grant the subject Special Accessory Use approval, subject to the following conditions:

1. That the Special Accessory Use Permit in the H-2 Hotel District shall be valid for a period of one (1) year from the date of granting of this permit, however, further extensions may be granted upon a favorable review and approval by the Planning Commission.
2. That the Special Accessory Use Permit shall be limited to the following activities:
  - a. Boat charters for whale watching, picnic snorkel cruises and champagne sunset sails;
  - b. Rental of non-motorized equipment to include windsurfers, catamarans, water kayaks, wave skis, boogie boards, water mattresses, snorkel gear, beach chairs, and beach cabanas. (as amended)
  - c. Instructions for windsurfing, catamaran sailing, scuba diving and snorkeling;
  - d. Sale of guided catamaran sails and/or zodiac rides; and
  - e. Sale of sunglasses, sun protection products, cameras, still video pictures, resort and polo style shirts and tee shirts.

**EXHIBIT 2**

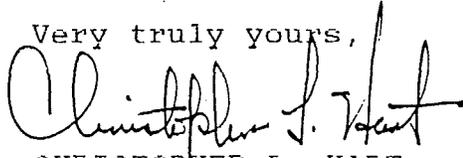
3. That full compliance with the comments of the Department of Public Works, shall be rendered.
4. That full compliance with the Kaanapali Shore Water Rules shall be rendered.
5. That public beach access parking and dedicated right-of-way shall not be utilized by employees and customers of Sea Sails, Inc., Beach Activities of Maui, and the respective hotels.
6. That all business transactions shall be accommodated at the appropriate beach shack and that no solicitation, advertisement, or transaction of business (except in the designated beach shacks) shall occur on the hotel grounds or in the vicinity of the public ocean shoreline and all available public accessways thereto.
7. The conditions of the Special Accessory Use Approval shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Planning Commission that there is prima facie evidence that a breach has occurred the permit shall automatically be suspended pending a hearing on the continuity of such Special Accessory Use Approval, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (10) day period, the Planning Commission may revoke said Special Accessory Use Approval.
8. The Special Accessory Use Approval shall not be transferred without the prior written approval of the Planning Commission.
9. The applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Special Accessory Use Approval and shall hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.
10. Full compliance with all applicable government requirements shall be rendered.
11. That full compliance with the comments of the Department of Land and Natural Resources shall be rendered.
12. That full compliance with the comments of the Department of Health shall be rendered.

Mr. James Cockett  
October 26, 1989  
Page 3

A copy of the Director's Report and Recommendations dated October 24, 1989 is enclosed for your reference.

Thank you for your cooperation. Should you have any questions, please contact Mr. Daren Suzuki of my staff.

Very truly yours,



CHRISTOPHER L. HART  
Planning Director

DS:ms

cc: LUCA

Mark Batchelor



COUNTY OF MAUI  
PLANNING DEPARTMENT

250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

December 19, 1990

Mr. James Cockett  
Sheraton Maui Hotel  
2605 Kaanapali Parkway  
Lahaina, Maui 96761

Dear Mr. Cockett:

Re: Special Accessory Use Permit amendment for a time extension to operate a beach activity shack at the Sheraton Maui Hotel, TMK:4-4-8:5 (89/ACC-4).

At its regular meeting on December 18, 1990, the Maui Planning Commission reviewed the above request and after due deliberation, voted unanimously to grant the subject Special Accessory Use Approval subject to all of the conditions placed upon the original permit dated October 26, 1989, provided that condition #1 be amended to read as follows:

1. That this permit shall be valid for a period of one (1) year, or until October 24, 1991, and shall be subject to extensions upon favorable review by the Planning Commission. Furthermore, the applicant is advised to file for an extension at least 45 days prior to the expiration of the Special Accessory Use Permit for timely review.

A copy of the Director's Report and Recommendations dated December 18, 1990 is enclosed for your reference.

Thank you for your cooperation. Should you have any questions, please contact Mr. Daren Suzuki of my staff.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christopher L. Hart".

CHRISTOPHER L. HART  
Planning Director

DS  
cc: Mark Batchelor  
LUCA  
Daren Suzuki

EXHIBIT 2a

LINDA CROCKETT LINGLE  
Mayor

BRIAN W. MISKAE  
Director

ROBERT K. KEKUNA, JR.  
Deputy Director



JOHN E. MIN  
Long Range Division

COLLEEN M. SUYAMA  
Current Planning Division

**COUNTY OF MAUI  
PLANNING DEPARTMENT**  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

April 29, 1992

Mr. James Cockett  
Vice President and General Manager  
Sheraton Maui Kaanapali Beach Resort  
2605 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1991

Dear Mr. Cockett:

RE: Special accessory Use Permit to operate beach concessions shops and storage shed at the Sheraton Maui Kaanapali Beach, TMK 4-4-8:05 (91/ACC-009).

At its regular meeting on April 20, 1992, the Maui County Planning Commission reviewed your request to amend the referenced permit and, after due deliberation, voted to grant approval of the application, subject to the following conditions:

1. That the Special Accessory Use permit shall be valid for a period of three (3) years, or until April 19, 1995, however, further extensions may be granted upon a favorable review and approval by the Planning Commission. Further, the applicant shall file a timely request for an extension at least 90 days prior to the expiration of the Special Accessory Use Permit.
2. That the conditions of the Special Accessory Use Approval shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Planning Commission that there is prima facie evidence that a breach has occurred, the permit shall automatically be suspended pending a hearing on the continuity of such Special accessory Use Approval, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (1) day period, the Planning Commission may revoke said Special Accessory Use Approval.
3. The Special Accessory Use Approval shall not be transferred without the prior written approval of the Planning Commission.

**EXHIBIT 3**

4. The applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Special Accessory Use Approval and shall hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.
5. That the applicant shall maintain the booths and perform needed repairs, subject to the review and approval of the Department of Public Works.
6. That the developer shall submit a solid waste management plan acceptable to the DPW to include waste reduction, re-use and recycling programs, composting of yard debris, alternative means of disposal of grubbed material other than disposal at the county landfills, and refuse collection by a private collector.
7. That equipment owned by the Sheraton or its concessionaires, or sold or rented through said permitted beach activity booths, shall not be stored on the beach. In the event that large equipment, such as kayaks and catamarans, which cannot be stored in the booths, is rented through the said activity booths said equipment shall be stored on the hotel lawn, landward of the certified shoreline as identified on the November 5, 1991 survey map.
8. That only beach and pool activity related items shall be sold or rented at the booths.
9. That no motorized water vehicles shall be rented, sold, loaned or maintained through the Sheraton beach activity booths.
10. That all business transactions shall be accommodated at the appropriate booth and that no solicitation, advertisement, or transaction of business shall occur in the vicinity of the public beach an all available public accessways thereto.
11. That full compliance with all applicable government requirements shall be rendered.
12. That the applicant shall apply for a Building Permit for repairs to the existing structures.

Enclosed for your information is a copy of the Department's report and recommendations dated April 20, 1992.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Elizabeth Anderson of my office.

Very truly yours,



---

BRIAN MISKAE  
Planning Director

EA:ea  
encl.

cc: LUCA  
DOH, Maui  
E. Anderson  
C. Suyama  
file



**Sheraton Maui**  
KAANAPALI BEACH  
RESORT

'94 MAR -3 P3:06

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

March 6, 1994

Mr. Brian Miskae  
Planning Director  
**COUNTY OF MAUI**  
Planning Department  
250 S. High Street  
Wailuku, HI 96793

RE: Special Accessory Use Permit to operate beach concessions  
shacks and storage shed at the Sheraton Maui Kaanapali Beach  
TMK 4-4-8:05 (91/ACC-009)

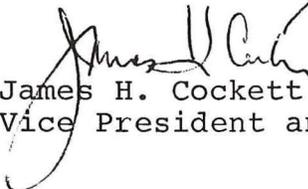
Dear Mr. Miskae:

We would like to amend the present use permit, paragraph 8, to  
include catamaran sails picking up and off-loading passengers on  
the beach fronting Sheraton Maui.

Beach Activities of Maui, Inc., our present operator, will also  
be owning and operating Kaanapali Kai Charters, Inc. They wish  
permission to service Sheraton Maui hotel guests. These rides  
will be sold from the authorized beach booth.

Please call me if there are any questions.

Sincerely,



James H. Cockett  
Vice President and General Manager

JHC:rg

cc: Mike Kelly, Beach Activities of Maui, Inc.



**Sheraton Maui**  
KAANAPALI BEACH  
RESORT

'94 MAR -3 P3:06

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

March 6, 1994

Mr. Brian Miskae  
Planning Director  
**COUNTY OF MAUI**  
Planning Department  
250 S. High Street  
Wailuku, HI 96793

RE: Special Accessory Use Permit to operate beach concessions  
shacks and storage shed at the Sheraton Maui Kaanapali Beach  
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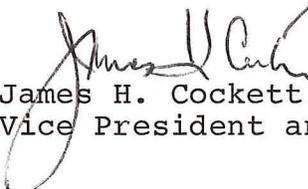
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permission to service Sheraton Maui hotel guests. These rides  
will be sold from the authorized beach booth.

Please call me if there are any questions.

Sincerely,

  
James H. Cockett  
Vice President and General Manager

JHC:rg

cc: Mike Kelly, Beach Activities of Maui, Inc.

**ITT Sheraton**  
WORLDWIDE HOTELS, INNS, RESORTS & ALL-SUITES

2605 KAAANAPALI PARKWAY, LAHAINA, MAUI, HAWAII 96761-1991  
PHONE: (808) 661-0031 FAX: (808) 661-0458

SHERATON MAUI IS OWNED BY KYO-YA COMPANY, LTD.-HOTEL DIVISION AND OPERATED BY ITT SHERATON CORPORATION

LINDA CROCKETT LINGLE  
Mayor



BRIAN W. MISKAE  
Director

GWEN Y. OHASHI  
Deputy Director

**COUNTY OF MAUI**  
**PLANNING DEPARTMENT**  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

March 15, 1994

Mr. Dennis Niles  
Paul Johnson Park & Niles  
203 H.G.E.A. Building  
2145 Kaohu Street  
Wailuku, Maui, Hawaii 96793

Dear Mr. Niles,

RE: Kaanapali Charters, Inc. - Beach Activities of Maui, Inc.

Please be advised that the request by Mr. James Cockett, Vice President and General Manager of the Sheraton Maui Kaanapali Beach Resort to amend the Special Accessory Use permit to include "BAMI" would provide the shoreside nexus required to establish a foundation in zoning for the beach activity operation.

The amendment application by Sheraton Maui is presently being processed by this Department. We are enclosing a copy of the Special Accessory Use Permit per your request.

If you have any questions or would like to discuss this further, please contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Miskae", is written over a circular stamp or seal.

BRIAN MISKAE  
Director of Planning

encl.

cc: Lynette Zakabi  
Colleen Suyama  
Ann Cua  
Project file

Ann

# PAUL JOHNSON PARK & NILES

ATTORNEYS AT LAW, A LAW CORPORATION

HONOLULU  
James T. Paul  
David A. Johnson  
Corey Y. S. Park  
Sheryl L. Nicholson  
Robyn B. Chun  
Elizabeth Kent  
Judy A. Tanaka  
Richard Kiefer  
Danielle K. Hart  
Michael A. Medeiros

MAUI  
Dennis Niles  
William M. McKeon  
Carla M. Nakata

VIA HAND DELIVERY

'94 MAR -9 AIO :26

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

March 8, 1994

Brian Miskae, Director  
Department of Planning  
County of Maui  
250 S. High Street  
Wailuku, Hawaii 96793

Re: Kaanapali Kai Charters, Inc. -- Beach Activities of Maui, Inc.

Dear Mr. Miskae:

Following our meeting last week, Mr. James Cockett wrote to you concerning the catamaran activity the above-entities propose to conduct under the purview of the Sheraton's Accessory Use Permit.

As you now know, Mike Kelley, owner of Beach Activities of Maui, Inc. ("BAMI"), has contracted to purchase all of the stock of Kaanapali Kai Charters ("KKC"). KKC is the holder of one of the limited few catamaran permits authorized for Kaanapali. Mr. Kelley proposes to operate KKC as an adjunct to BAMI.

The purpose of this letter is to request your formal confirmation that Mr. Cockett's letter provides the shoreside nexus which your department is requiring to establish a foundation in zoning with respect to such operations. I understand Mr. Penque will approve the proposed stock transfer upon receipt of confirmation that the County's requirements have been met.

Please review the form and content of Mr. Cockett's letter as soon as possible. Time is of the essence. We wish to conclude the underlying transaction so that KKC may commence catamaran operations without delay.

HONOLULU OFFICE Suite 1300, Pacific Tower 1001 Bishop Street Post Office Box 4438 Honolulu, Hawaii 96812-4438  
(808) 524-1212 FAX: (808) 528-1654 / (808) 523-0777

MAUI OFFICE 203 H.G.E.A. Building 2145 Kaohu Street Post Office Box 870 Wailuku, Hawaii 96793-0870  
(808) 242-6644 FAX: (808) 244-9775



'94 MAR -2 P4: **Sheraton Maui**  
**KAANAPALI BEACH**  
**RESORT**

PJP&N

March 6, 1994

Mr. Brian Miskae  
Planning Director  
COUNTY OF MAUI  
Planning Department  
250 S. High Street  
Wailuku, HI 96793

RE: Special Accessory Use Permit to operate beach concessions  
shacks and storage shed at the Sheraton Maui Kaanapali Beach  
TMK 4-4-8:05 (91/ACC-009)

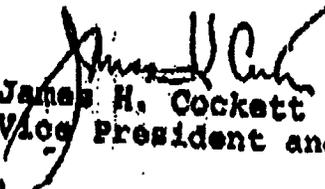
Dear Mr. Miskae:

We would like to amend the present use permit, paragraph 8, to include catamaran sails picking up and off-loading passengers on the beach fronting Sheraton Maui.

Beach Activities of Maui, Inc., our present operator, will also be owning and operating Kaanapali Kai Charters, Inc. They wish permission to service Sheraton Maui hotel guests. These rides will be sold from the authorized beach booth.

Please call me if there are any questions.

Sincerely,

  
James H. Cockett  
Vice President and General Manager

JHC:rg

cc: Mike Kelly, Beach Activities of Maui, Inc.

Mike Kelly  
661-5500

# PAUL JOHNSON PARK & NILES

ATTORNEYS AT LAW, A LAW CORPORATION

VIA HAND DELIVERY

March 8, 1994

Brian Miskae, Director  
Department of Planning  
County of Maui  
250 S. High Street  
Wailuku, Hawaii 96793

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Please review the form and content of Mr. Cockett's letter as soon as possible. Time is of the essence. We wish to conclude the underlying transaction so that KKC may commence catamaran operations without delay.

'94 1

DEPT  
COURT

| MAUI PLANNING DEPT | FYI                      | COMMENTS                 | ASSIGN                   | SEE ME                   | DATE                     | DRAFT RESPONSE                      |
|--------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|
| BRIAN              | <input type="checkbox"/>            |
| GWEN               | <input type="checkbox"/>            |
| COLLEEN            | <input type="checkbox"/>            |
| CLAYTON            | <input type="checkbox"/>            |
| JULIE              | <input type="checkbox"/>            |
| BILL               | <input type="checkbox"/>            |
| SECRETARY          | <input type="checkbox"/>            |
| <i>Ann</i>         | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ASSIGN TO          | <input type="checkbox"/>            |
| TODAY'S DATE       | <input type="checkbox"/>            |
| DATE DUE           | <input type="checkbox"/>            |
| By:                | <input type="checkbox"/>            |

3/9

HONOLULU  
James T. Paul  
David A. Johnson  
Corey Y. S. Park  
Sheryl L. Nicholson  
Robyn B. Chun  
Elizabeth Kent  
Judy A. Tanaka  
Richard Kiefer  
Danielle K. Hart  
Michael A. Medeiros

MAUI  
Dennis Niles  
William M. McKeon  
Carla M. Nakata

HONOLULU OFFICE Suite 1300, Pacific Tower 1001 Bishop Street Post Office Box 4438 Honolulu, Hawaii 96812-4438  
(808) 524-1212 FAX: (808) 528-1654 / (808) 523-0777

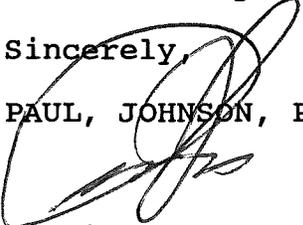
MAUI OFFICE 203 H.G.E.A. Building 2145 Kaohu Street Post Office Box 870 Wailuku, Hawaii 96793-0870  
(808) 242-6644 FAX: (808) 244-9775

Brian Miskae, Director  
Department of Planning  
Page 2  
March 8, 1994

Your courtesy and cooperation in this regard is appreciated.

Sincerely,

PAUL, JOHNSON, PARK & NILES



Dennis Niles  
Attorney at Law

DN:kjp  
#6846d

cc: Ann Cua (w/ltr dated 3/6/94 from James H. Cockett)  
Mike Kelley  
Dean Robb, Esq.  
Harry Engel  
Charles Penque (w/ltr dated 3/6/94 from James H. Cockett)

LINDA CROCKETT LINGLE  
Mayor

BRIAN W. MISKAE  
Director

ROBERT K. KEKUNA, JR.  
Deputy Director



JOHN E. MIN  
Long Range Division

COLLEEN M. SUYAMA  
Current Planning Division

**COUNTY OF MAUI  
PLANNING DEPARTMENT**  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

April 29, 1992

Mr. James Cockett  
Vice President and General Manager  
Sheraton Maui Kaanapali Beach Resort  
2605 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1991

Dear Mr. Cockett:

RE: Special accessory Use Permit to operate beach concessions shcks and storage shed at the Sheraton Maui Kaanapali Beach, TMK 4-4-8:05 (91/ACC-009).

At its regular meeting on April 20, 1992, the Maui County Planning Commission reviewed your request to amend the referenced permit and, after due deliberation, voted to grant approval of the application, subject to the following conditions:

1. That the Special Accessory Use permit shall be valid for a period of three (3) years, or until April 19, 1995, however, further extensions may be granted upon a favorable review and approval by the Planning Commission. Further, the applicant shall file a timely request for an extension at least 90 days prior to the expiration of the Special Accessory Use Permit.
2. That the conditions of the Special Accessory Use Approval shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Planning Commission that there is prima facie evidence that a breach has occurred, the permit shall automatically be suspended pending a hearing on the continuity of such Special accessory Use Approval, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (1) day period, the Planning Commission may revoke said Special Accessory Use Approval.
3. The Special Accessory Use Approval shall not be transferred without the prior written approval of the Planning Commission.



4. The applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Special Accessory Use Approval and shall hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.
5. That the applicant shall maintain the booths and perform needed repairs, subject to the review and approval of the Department of Public Works.
6. That the developer shall submit a solid waste management plan acceptable to the DPW to include waste reduction, re-use and recycling programs, composting of yard debris, alternative means of disposal of grubbed material other than disposal at the county landfills, and refuse collection by a private collector.
7. That equipment owned by the Sheraton or its concessionaires, or sold or rented through said permitted beach activity booths, shall not be stored on the beach. In the event that large equipment, such as kayaks and catamarans, which cannot be stored in the booths, is rented through the said activity booths said equipment shall be stored on the hotel lawn, landward of the certified shoreline as identified on the November 5, 1991 survey map.
8. That only beach and pool activity related items shall be sold or rented at the booths.
9. That no motorized water vehicles shall be rented, sold, loaned or maintained through the Sheraton beach activity booths.
10. That all business transactions shall be accommodated at the appropriate booth and that no solicitation, advertisement, or transaction of business shall occur in the vicinity of the public beach and all available public accessways thereto.
11. That full compliance with all applicable government requirements shall be rendered.
12. That the applicant shall apply for a Building Permit for repairs to the existing structures.

Enclosed for your information is a copy of the Department's report and recommendations dated April 20, 1992.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Elizabeth Anderson of my office.

Very truly yours,



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BRIAN MISKAE  
Planning Director

EA:ea  
encl.

cc: LUCA  
DOH, Maui  
E. Anderson  
C. Suyama  
file

BEFORE THE MAUI PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII

In the matter of the application of )  
 )  
Mr. James H. Cockett )  
 ) 91/ACC-009  
on behalf of Kyo Ya Co., Ltd. )  
 ) (EBA)  
requesting a Special Accessory Use )  
Permit to operate beach concessions )  
shack and storage shed at the Sheraton )  
Maui Kaanapali Beach, TMK 4-4-8:05 )

PLANNING DEPARTMENT REPORT

APRIL 20, 1992

Special Accessory Use Permit

Planning Department  
County of Maui  
250 S. High Street  
Wailuku, Maui, Hawai'i 96793

BEFORE THE MAUI PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII

In the matter of the application of )  
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Mr. James H. Cockett )  
 ) 91/ACC-009  
on behalf of Kyo Ya Co., Ltd. )  
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requesting a Special Accessory Use ) (EBA)  
Permit to operate beach concessions )  
shack and storage shed at the Sheraton )  
Maui Kaanapali Beach, TMK 4-4-8:05 )

PLANNING DEPARTMENT REPORT

APRIL 20, 1992

BACKGROUND TO THE APPLICATION

1. Location- The subject sites are located within the Kaanapali Resort Area in three locations between the Sheraton Hotel and the beach, stretching from the northern end of the Sheraton property, near Black Rock, to the southern end, bracketed by the southernmost hotel units. (Exhibit 1)

They range in distance inland from approximately 10 feet from the certified shoreline to approximately 60 feet from shoreline. Two are 12' x 12' wooden structures, one is only 7' x 7', also constructed of wood.

2. Land Use Designations - Zoning for the Hotel is Hotel District (H-2), the Community Plan designation is Hotel, and the entire Kaanapali Resort area is within the Special Management Area.

THE APPLICATION

The applicant was granted a previous accessory use permit by the commission on October 26, 1989, which was extended to October 24, 1990. The applicant failed to request a timely extension of said permit which expired on October 24, 1991. (Exhibit 2)

On November 7, 1991, the applicant filed a new application for an accessory use permit. The applicant seeks a minimum of three years if the permit is granted based on the completion of the conditions of the previous permit for a Shoreline survey which was certified on November 5, 1991, and previous approval for other kiosks.

## APPLICABLE REGULATIONS

An accessory use within the Hotel District is reviewed pursuant to Title 19 Zoning, Chapter 19.14 Hotel Districts, Section 19.14.020 Permitted uses; Maui County Code, 1980, as amended. Other accessory, business or service establishments which supply commodities or perform services primarily for the hotel guests may be permitted provided approval is granted by the planning commission as conforming to the intent of this title.

The following restrictions apply to accessory uses:

- (1) All such hotel and apartment-hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than twenty rooms, and such accessory uses shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other;
- (2) All such personal service shops and businesses shall be operated primarily as a service to, and for the convenience of, the tenants and occupants of the buildings in which such service are located,
- (3) Where the lot area is in excess of twenty thousand square feet, doors and entrances to such shops and businesses may be allowed to open to the public street, further, the shops and businesses may be constructed as separate buildings, provided the location of such shops and businesses shall have been approved by the planning commission.

## ANALYSIS

1. Comments from the Department of Public Works dated March 3, 1992, indicate that portions of the structures are in disrepair. Violations have been issued requiring the owner to repair the structures. Additional comments indicate that the developer shall submit a solid waste management plan acceptable to the Department of Public Works. (Exhibit 3)
2. On April 9, 1992, DPW, Land Use and Codes Administration verbally confirmed that the violations which were cited have since been corrected.
3. The proposed uses are to provide services related to beach activities to the hotel guests, an adjunct to the operations of the Sheraton, which is a hotel building

containing 516 rooms.

4. The beach activities booths are operated primarily as a service to and for the convenience of the tenants and occupants of the Sheraton.

5. The lot area is approximately 24 acres, which allows the shops to be constructed as separate buildings.

6. A site visit by Planning Department staff confirmed that the said structures are used for beach and pool related activities such as distribution of towels to hotel guests and sales of items such as sunscreen products and rentals of beach and pool equipment. Equipment seemed to be stored within the booths or on the hotel grounds, not on the beach. However, some boats were observed pulled up to the shoreline on the southern end of the beach fronting the Sheraton, a few of which may have been related to activities sold at the booths.

## CONCLUSIONS

The uses and structure of the booths meets the intent of Maui County Code, Title 19, Chapter 19.14 Hotel districts, Section 19.14.020 Permitted Uses.

## RECOMMENDATIONS

The Planning Department recommends approval of the Accessory Use Permit subject to the following conditions:

1. That the special Accessory Use permit shall be valid for a period of three (3) years, or until April 19, 1995, however, further extensions may be granted upon a favorable review and approval by the Planning Commission. Further, the applicant shall file a timely request for an extension at least 90 days prior to the expiration of the Special Accessory Use Permit.

2. That the conditions of the Special Accessory Use Approval shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Planning Commission that there is prima facie evidence that a breach has occurred, the permit shall automatically be suspended pending a hearing on the continuity of such Special accessory Use Approval, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (1) day period, the Planning Commission may revoke said Special Accessory Use Approval.

3. The Special Accessory Use Approval shall not be transferred without the prior written approval of the Planning Commission.

4. The applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Special Accessory Use Approval and shall hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.
5. That the applicant shall maintain the booths and perform needed repairs, subject to the review and approval of the Department of Public Works.
6. That the developer shall submit a solid waste management plan acceptable to the DPW to include waste reduction, re-use and recycling programs, composting of yard debris, alternative means of disposal of grubbed material other than disposal at the county landfills, and refuse collection by a private collector.
7. That equipment owned by the Sheraton or its concessionaires, or sold or rented through said permitted beach activity booths, shall not be stored on the beach. In the event that large equipment, such as kayaks and catamarans, which cannot be stored in the booths, is rented through the said activity booths said equipment shall be stored on the hotel lawn, landward of the certified shoreline as identified on the November 5, 1991 survey map.
8. That only beach and pool activity related items shall be sold or rented at the booths.
9. That no motorized water vehicles shall be rented, sold, loaned or maintained through the Sheraton beach activity booths.
10. That all business transactions shall be accommodated at the appropriate booth and that no solicitation, advertisement, or transaction of business shall occur in the vicinity of the public beach an all available public accessways thereto.
11. That full compliance with all applicable government requirements shall be rendered.

Further, the Planning Department recommends that the above be adopted as its findings of fact, conclusions of law, and decision and order.

Approved



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BRIAN MISKAE  
Planning Director

BEFORE THE MAUI PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII

In the matter of the application of )  
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Mr. James H. Cockett )  
 ) 91/ACC-009  
on behalf of Kyo Ya Co., Ltd. )  
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requesting a Special Accessory Use ) (EBA)  
Permit to operate beach concessions )  
shack and storage shed at the Sheraton )  
Maui Kaanapali Beach, TMK 4-4-8:05 )

PLANNING DEPARTMENT REPORT

APRIL 20, 1992

Special Accessory Use Permit

Planning Department  
County of Maui  
250 S. High Street  
Wailuku, Maui, Hawai'i 96793

BEFORE THE MAUI PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII

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PLANNING DEPARTMENT REPORT

APRIL 20, 1992

BACKGROUND TO THE APPLICATION

1. Location- The subject sites are located within the Kaanapali Resort Area in three locations between the Sheraton Hotel and the beach, stretching from the northern end of the Sheraton property, near Black Rock, to the southern end, bracketed by the southernmost hotel units. (Exhibit 1)

They range in distance inland from approximately 10 feet from the certified shoreline to approximately 60 feet from shoreline. Two are 12' x 12' wooden structures, one is only 7' x 7', also constructed of wood.

2. Land Use Designations - Zoning for the Hotel is Hotel District (H-2), the Community Plan designation is Hotel, and the entire Kaanapali Resort area is within the Special Management Area.

THE APPLICATION

The applicant was granted a previous accessory use permit by the commission on October 24, 1990. The applicant failed to request a timely extension of said permit which expired on October 24, 1991. (Exhibit 2)

On November 7, 1991, the applicant filed a new application for an accessory use permit. The applicant seeks a minimum of three years if the permit is granted based

on the completion of the conditions of the previous permit for a Shoreline survey which was certified on November 5, 1991, and previous approval for other kiosks.

## APPLICABLE REGULATIONS

An accessory use within the Hotel District is reviewed pursuant to Title 19 Zoning, Chapter 19.14 Hotel Districts, Section 19.14.020 Permitted uses; Maui County Code, 1980, as amended. Other accessory, business or service establishments which supply commodities or perform services primarily for the hotel guests may be permitted provided approval is granted by the planning commission as conforming to the intent of this title.

The following restrictions apply to accessory uses:

(1) All such hotel and apartment-hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than twenty rooms, and such accessory uses shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other;

(2) All such personal service shops and businesses shall be operated primarily as a service to, and for the convenience of, the tenants and occupants of the buildings in which such service are located,

(3) Where the lot area is in excess of twenty thousand square feet, doors and entrances to such shops and businesses may be allowed to open to the public street, further, the shops and businesses may be constructed as separate buildings, provided the location of such shops and businesses shall have been approved by the planning commission.

## ANALYSIS

1. Comments from the Department of Public Works dated March 3, 1992, indicate that portions of the structures are in disrepair. Violations have been issued requiring the owner to repair the structures. Additional comments indicate that the developer shall submit a solid waste management plan acceptable to the Department of Public Works. (Exhibit 3)

2. On April 9, 1992, DPW, Land Use and Codes Administration verbally confirmed that the violations which were cited have since been corrected.

3. The proposed uses are to provide services related to beach activities to the hotel guests, an adjunct to the operations of the Sheraton, which is a hotel building containing 493 rooms.

4. The beach activities booths are operated primarily as a service to and for the convenience of the tenants and occupants of the Sheraton.
5. The lot area is approximately 23 acres, which allows the shops to be constructed as separate buildings.
6. A site visit by Planning Department staff confirmed that the said structures are used for beach and pool related activities such as distribution of towels to hotel guests and sales of items such as sunscreen products and rentals of beach and pool equipment. Equipment seemed to be stored within the booths or on the hotel grounds, not on the beach. However, some boats were observed pulled up to the shoreline on the southern end of the beach fronting the Sheraton, a few of which may have been related to activities sold at the booths.

## CONCLUSIONS

The uses and structure of the booths meets the intent of Maui County Code, Title 19, Chapter 19.14 Hotel districts, Section 19.14.020 Permitted Uses.

## RECOMMENDATIONS

The Planning Department recommends approval of the Accessory Use Permit subject to the following conditions:

1. That the special Accessory Use permit shall be valid for a period of three (3) years, or until April 19, 1995, however, further extensions may be granted upon a favorable review and approval by the Planning Commission. Further, the applicant shall file a timely request for an extension at least 90 days prior to the expiration of the Special Accessory Use Permit.
2. That the conditions of the Special Accessory Use Approval shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Planning Commission that there is prima facie evidence that a breach has occurred, the permit shall automatically be suspended pending a hearing on the continuity of such Special accessory Use Approval, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (1) day period, the Planning Commission may revoke said Special Accessory Use Approval.
3. The Special Accessory Use Approval shall not be transferred without the prior written approval of the Planning Commission.
4. The applicant, its successors and permitted assigns shall exercise reasonable due

care as to third parties with respect to all areas affected by the subject Special Accessory Use Approval and shall hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.

5. That the applicant shall maintain the booths and perform needed repairs, subject to the review and approval of the Department of Public Works.

6. That the developer shall submit a solid waste management plan acceptable to the DPW to include waste reduction, re-use and recycling programs, composting of yard debris, alternative means of disposal of grubbed material other than disposal at the county landfills, and refuse collection by a private collector.

7. That equipment owned by the Sheraton or its concessionaires, or sold or rented through said permitted beach activity booths, shall not be stored on the beach. In the event that large equipment, such as kayaks and catamarans, which cannot be stored in the booths, is rented through the said activity booths said equipment shall be stored on the hotel lawn, landward of the certified shoreline as identified on the November 5, 1991 survey map.

8. That only beach and pool activity related items shall be sold or rented at the booths.

9. That no motorized water vehicles shall be rented, sold, loaned or maintained through the Sheraton beach activity booths.

10. That all business transactions shall be accommodated at the appropriate booth and that no solicitation, advertisement, or transaction of business shall occur in the vicinity of the public beach an all available public accessways thereto.

11. That full compliance with all applicable government requirements shall be rendered.

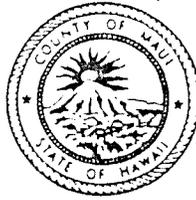
Approved



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BRIAN MISKAE  
Planning Director





COUNTY OF MAUI  
PLANNING DEPARTMENT

250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

December 19, 1990

Mr. James Cockett  
Sheraton Maui Hotel  
2605 Kaanapali Parkway  
Lahaina, Maui 96761

Dear Mr. Cockett:

Re: Special Accessory Use Permit amendment for a time extension to operate a beach activity shack at the Sheraton Maui Hotel, TMK:4-4-8:5 (89/ACC-4).

At its regular meeting on December 18, 1990, the Maui Planning Commission reviewed the above request and after due deliberation, voted unanimously to grant the subject Special Accessory Use Approval subject to all of the conditions placed upon the original permit dated October 26, 1989, provided that condition #1 be amended to read as follows:

1. That this permit shall be valid for a period of one (1) year, or until October 24, 1991, and shall be subject to extensions upon favorable review by the Planning Commission. Furthermore, the applicant is advised to file for an extension at least 45 days prior to the expiration of the Special Accessory Use Permit for timely review.

A copy of the Director's Report and Recommendations dated December 18, 1990 is enclosed for your reference.

Thank you for your cooperation. Should you have any questions, please contact Mr. Daren Suzuki of my staff.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christopher L. Hart".

CHRISTOPHER L. HART  
Planning Director

DS  
cc: Mark Batchelor  
LUCA  
Daren Suzuki

EXHIBIT 2

LINDA CROCKETT LINGLE  
Mayor

GEORGE N. KAYA  
Director

CHARLES JENCKS  
Deputy Director



'92 MAR -4 9:15  
COUNTY OF MAUI

DEPARTMENT OF PUBLIC WORKS

LAND USE AND CODES ADMINISTRATION

250 SOUTH HIGH STREET

WAILUKU, MAUI, HAWAII 96793

March 3, 1992

AARON SHINMOTO, P.E.  
Land Use and Codes Administration

EASSIE MILLER, P.E.  
Wastewater Reclamation Division

RALPH NAGAMINE, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Solid Waste Division

MELVIN HIPOLITO  
Highways Division

MEMO TO: Brian Miskae, Planning Director

F R O M: George N. Kaya, Director of Public Works

Handwritten signature of George N. Kaya in cursive.

SUBJECT: Special Accessory Use Permit Request for a Time Extension  
to Operate a Beach Activity Shack at Sheraton Maui Hotel,  
2605 Kaanapali Parkway, Lahaina, Maui, TMK:4-4-08:05  
91/ACC-009

We have reviewed the above request and offer the following comments:

1. That portions of the structures are in disrepair. Violations have been issued requiring the owner to repair the said structures. Since the project site is subject to possible tsunami and flood inundation, any improvements must conform to Ordinance No. 1145, pertaining to flood hazard districts.
2. That the developer shall submit a solid waste management plan acceptable to the Department of Public Works to include the following:
  - a. The owners and their contractors shall implement solid waste reduction, re-use and recycling programs to reduce the amount of solid waste to be disposed of at the County landfills.
  - b. All yard debris shall be composted and re-used on their landscape plantings.
  - c. Alternative means of disposal of grubbed material and rock shall be utilized other than disposed of at the County landfills.
  - d. Refuse collection shall be by a private collector.

For additional information, the developer is requested to contact the Solid Waste Division.

AS:mht

cc: Engineering Division  
Solid Waste Division  
Wastewater Reclamation Division

EXHIBIT 3

Printed on recycled paper

