

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

December 10, 2008

Mr. Jason Madema
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793

Dear Mr. Madema:

**SUBJECT: SPECIAL MANAGEMENT AREA (SMA) AND SHORELINE
SETBACK ASSESSMENTS - FOR EMERGENCY MITIGATION
MEASURES AT 11 HALE MALIA PLACE NAPILI, ISLAND OF
MAUI, HAWAII, TMK: (2) 4-3-003:096 (SMX 2008/0219)
(SM3 2008/0004) (SSA 2008/0020) (EAE 2008/0026)**

This following is a brief chronological synopsis regarding your SMA Emergency Use Permit application and approvals.

- A. The application was received on April 8, 2008;
- B. Site visits were conducted on February 28, 2008;
- C. A Special Management Area Emergency Permit was issued by the Director on May 30, 2008;
- D. The applicant requested a time extension in late summer of 2008;
- E. The Department of Planning (Department) revised condition no. 11 in light of the applicant's request for a time extension;
- F. The applicant requested that conditions no. 12 and no. 13 be revised to reflect a financial security rather than an environmental performance bond;
- G. The Department presented the application, approvals, time extension and language revisions to the Maui Planning Commission (Commission) during the Director's Report at their regular meeting on November 17, 2008; and
- H. The Commission adopted the Director's Report at the aforementioned meeting after receiving comments from Department Staff.

Based on the above, and in accordance with the SMA Rules for the Commission, Sections 12-202-12 and 12-202-14, a revised determination has been made relative to the above project that:

- A. The project is immediately necessary to stabilize an embankment which failed, in part, due to drainage at the site during inclement weather;
- B. The project is immediately necessary to protect a habitable structure which is located less than 20 feet from the shoreline from potential damage;
- C. The site consists of a 25 feet high bluff along 75 feet of ocean frontage, 40 feet of which has experienced a "slump" or failure of the soils and CRM seawall at it's base;
- D. The proposed action is to correct a slope failure, and is not clearly and explicitly related to shoreline and/or beach erosion;
- E. The project is a development with an estimated valuation of \$309,507.00, according to a November 3, 2008 memo;
- F. The project is located within the shoreline area and is subject to the Shoreline Rules of Maui County, 12-203; and
- G. The SMA Rules (12-202 et. seq.) and the Shoreline Rules (12-203 et. seq.) mandate that certain conditions are included and adhered to in any emergency permit for work within the Shoreline Setback and SMA.

In light of the above determinations, you are hereby granted a SMA Emergency Permit for "Alternative #2: Concrete Wall," as described on Page 5 of the SMA Emergency Permit application subject to the following conditions:

- 1. That Alternative #3 shall not be implemented in light of the signed Structural Observation Report's various recommendations.
- 2. That the five (5) "General" actions described on Page 7 of the application shall be fully implemented.
- 3. That the existing drainage in the overhang area shall be removed, redirected and that an appropriate diffuse drainage system be installed.
- 4. That such drainage system shall be reviewed by the Department, shall meet all government regulations, and shall also be approved by a licensed engineer.

5. That all requirements of the DLNR-OCCL be adhered to, including submission of a shoreline survey for certification, recognizing that a performance bond may be required to allow processing of the shoreline certification application as stated in the DLNR-OCCL letter of April 8, 2008.
6. That a building, grading and/or retaining wall permit be obtained, if required by County code, rules and/or ordinance.
7. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind, water and construction wastewater.
8. That a community noise permit will be obtained, if required.
9. That all sprinklers, irrigation lines, gas lines, tiki torches, and similar structures be removed and relocated outside the minimum shoreline setback area of 25 feet.
10. That the face of the repair structure shall be textured and colored to match and/or blend in with the natural surrounding environment so as to not create visual blight and reduce adverse visual impacts when viewed from the ocean and along the shoreline.
11. That all repairs and actions are temporary in nature and the applicant will obtain all necessary government approvals no later than **December 7, 2009**. Should approvals not be granted, the repairs shall be removed within 180 calendar days of the date of the decision at the applicant's expense.
12. That the applicant shall provide the County of Maui financial security in the amount of **\$309,507.24**, approved by the Department and payable to the County of Maui, guaranteeing completion of the proposed structures in accordance with the engineering/construction plans submitted to and reviewed by the Department of Public Works and the subsequent removal of said structures (if required by these conditions), together with the applicant's improvements bond in a form acceptable to the Department.
13. That should the temporary improvements at the site not be removed or permitted within a timely manner, the County of Maui may, at its sole discretion and/or upon recommendation of the Director of Planning, remove such improvements at the landowners expense and/or exercise the County's right to use the financial security described in condition no. 12 above.

14. That a complete application for a SMA Use Permit, Shoreline Setback Variance, and Environmental Assessment in support of the variance and SMA Major permit be submitted to the Department prior to the expiration of this permit. Said documents shall be competent and fully documented including all necessary studies such as a Soils Analysis and Report as recommended by the Structural Observation Report (Appendix A within the SMA Emergency application), a Drainage Report, and an Engineering Report for the proposed temporary and long-term structural repairs.
15. 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 SMA Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this SMA Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.
16. That the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards, storm runoff, and/or coastal erosion.
17. That the construction of all additional erosion-control or shoreline hardening structures or activities, with the exception of beach or dune nourishment activities, and landscape planting and hand irrigation, shall be prohibited throughout the life of the temporary structural repair until the final structural repair is fully permitted.
18. That the requirements above shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court prior to the date of approval of all structures or activities. A copy of the recorded unilateral agreement shall be filed with the Planning Director and the Director of Public Works.

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19. That full compliance with all applicable government requirements shall be rendered.
20. That the applicant shall submit to the Department a detailed report addressing its compliance with the conditions established with the subject SMA Use Permit.

Thank you for your cooperation. If additional clarification is required, please contact Coastal Resources Planner Thorne Abbott at thorne.abbott@mauicounty.gov or at 270-7520.

Sincerely,



JEFFREY S. HUNT, AICP
Planning Director

xc: Kathleen R. Aoki, Deputy Planning Director
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Thorne E. Abbott, Coastal Resources Planner
Sam Lemmo, DLNR-OCCL
Dolan Eversole, DLNR-OCCL
Daniel Ornellas, DLNR Land Division, Maui
Zoe Norcross-Nu'u, SeaGrant
08/SM3 File
General File

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