

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of the Application of)
)
Michael T. Munekiyo of Munekiyo &) DOCKET NO. SM1 2006/0018
Hiraga, Inc. on Behalf of SVO Pacific,) SVO Pacific, Inc.
Inc. to Obtain a Special Management) (PFF)
Area Use Permit to Build a 390-Unit Time)
Share Resort and Improvements on Lot)
3 of the Kaanapali North Beach Sub-)
Division on 26.7 Acres at TMK (2) 4-4-)
014:005, Lahaina, Hawaii)

MAUI PLANNING DEPARTMENT'S ADDENDUM REPORT AND
RECOMMENDATION TO THE MAUI PLANNING COMMISSION

February 26, 2008

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

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| <u>014:005, Lahaina, Hawaii</u> |) | |

APPLICATION UPDATE

At its regular meeting on January 22, 2008, the Maui Planning Commission moved and approved that the Lot 3 Net-Zero Traffic Implementation Plan ("Net-Zero TIP") meets the intent of Condition No. 7 of the 1988 SMA/SSV approval and Condition No. cc of the 1998 SMA approval for "other mitigation measures" for traffic related impacts.

On February 6, 2008, the Planning Department sent a letter to the Office of Environmental Quality Control (OEQC) to advise the OEQC of the Department's findings and conclusion, with regards to the SMA Application, that nothing contained therein triggers Chapter 343 of the Hawaii Revised Statutes or Subchapter 11-200-26 of the Hawaii Administrative Rules and to outline the reasons for the Department's conclusion that an EA or Supplemental EIS Statement is not warranted.

The Department's letter was acknowledged by the OEQC in the February 23, 2008 publication of The Environmental Notice.

During subsequent review of the SMA Use Permit application for the Lot 3 project, the Commission deferred the application pending additional information from the applicant on the Lot 3 project. These items are noted in a letter from the Department to the applicant, dated February 7, 2008, as follows:

- “1. Documentation that the STP injection wells combined with the proposed desalination wells, will not impact the coral reefs and ocean water quality.*
- 2. An occupancy analysis between timeshares, hotel units, and apartment units and their effect on traffic.*
- 3. Information on the impacts of views from the shoreline towards mauka of the highway.*
- 4. Any other proposed mitigation that may be necessary.”*

The applicant prepared and submitted a detailed written report in response to the Department's letter and the Commission's request. The applicant submitted the report to the Department on February 13, 2008. The Department distributed the report to commissioners for their review by mail on February 14, 2008. See Response Letter and Appendices in Support of the Response Letter to the Maui Planning Commission, dated February 12, 2008 (provided by the Department to the Commission under separate cover).

The following provides a summary of the Commission's requests, the Applicant's responses and conclusions contained in the report:

- 1. *“Documentation that the Sewage Treatment Plant (STP) injection wells, combined with the proposed desalination wells, will not impact the coral reefs and ocean water quality.”***

SVO Pacific, Inc. is proposing the use of three (3) systems:

- Heat Exchange,
- Cogeneration, and
- Desalination

These technologically advanced systems will provide energy efficiency, as well as reduce the project's impact on the environment and natural resources. During the January 22, 2008 Commission meeting, questions were raised as to whether or not the proximity of these systems to the County of Maui's Lahaina Wastewater Reclamation Facility (LWRF) treated-effluent injection wells would allow the potential for co-mingling with the return well for the proposed desalination system and thereby create an impact to the area's ocean water quality and/or coral reefs.

The written reports support the conclusion that there will be no interaction and, therefore, no impact of the return water from the desalination system with the

LWRF treated-effluent injection wells. This conclusion is based on the following facts:

- a. The bottom of the deepest of the four (4) existing LWRF injection wells is at a depth of 228 feet, which is at least 350 feet or more above the return wells for the desalination system. Further, treated-effluent water is mainly composed of fresh water, while the return wells return salt water to the ground. Since the density of fresh water is lower than that of salt water, fresh water will always float above salt water. Aside from the above mentioned depth differential, the difference in density does not allow the fresh and salt waters to mix. The lighter fresh water will rise and the heavier salt water will sink. (See Heat Exchange System, Appendix 1-A, Desalination System report, Appendix 1-B, and the Lahaina Wastewater Reclamation Facility Summary, Appendix 1-C.)
- b. The desalination system accounts for only 10 percent of the total water flow through the heat exchange system and, therefore, acts as a beneficial by-product of the heat exchange system. Further, the salt water will be drawn from the ground and be returned to the ground, and not the ocean.
- c. The State Department of Health and the Commission on Water Resource Management reviewed and approved the applications for the return wells and the source wells, respectively, for the desalination system.
- d. The return-water well for the desalination system will be 600 to 700 feet deep. Its casing will be poured in concrete which will not allow any seepage of the return water before it reaches the return depth. Periodic monitoring of the return well system will be performed to ensure proper maintenance of the system and the applicant will monitor the wells specifically for the reports required by the State.
- e. The depth of the return water wells are significantly deeper than the Au`au Channel and therefore will not affect the marine environment. (See Heat Exchange System, Appendix 1-A.)
- f. Since 2001, SVO Pacific, Inc. has monitored and will continue to regularly monitor the ocean water quality fronting the resort. Monitoring was required with the approval of the first project in the North Beach subdivision. Testing is done semi-annually and after significant rain events. To date, the monitoring and testing do not indicate any detrimental change in the quality of the water or the algae and coral growth fronting the North Beach Subdivision. The LWRF treated-effluent injection wells have been in operation throughout this period as well. The ongoing water quality monitoring program already includes testing parameters to address the measurement of salinity. (See Anthropogenic Impacts and Status of Coral Reefs, Appendix 1-F.)

- g. Dr. Richard Brock's report contained in Appendix 1-F of the written report summarizing the research and testing completed in the ocean waters off of the North Beach subdivision and throughout Hawai'i concluded that there are no anticipated impacts to the shoreline. Included in the report's findings were the following conclusions:
- i. All research to date indicates that treated sewage effluent injected into deep wells at the Lahaina Wastewater Treatment Facility does not affect nutrient concentrations in the nearshore zone.
 - ii. Recent studies and newspaper articles quote biological data collected at various locations in West Maui pointing to a decline in the coral cover on West Maui reefs. However, the biological data collected specifically in the North Beach monitoring program found (1) mean coverage in coral communities remaining approximately unchanged over a 21-year period, (2) the algal standing crops decreasing over last seven years and (3) herbivorous fish communities to be well-developed with high standing crops in the 2001 to 2007 period. Thus, the data does not support the contentions in other reports.
 - iii. If the ongoing development or discharges from the Lahaina Wastewater Treatment Facility were increasing local nutrient escapement to the sea and thus were responsible for increases in algae in the waters fronting the development, the standing crop or biomass should be increasing rather than decreasing as is the case in the waters fronting the North Beach Subdivision.
 - iv. Coral coverage at the North Beach Subdivision has been studied over a 7 year period (2001 to 2007). There is no statistically significant decline in coral coverage at the three (3) permanently marked sites monitored. All other biological measures in the study (e.g. number of coral species, number of diurnally exposed macroinvertebrate species, number of fish species and individuals as well as the estimated standing crop of fishes present) has not changed significantly over this seven (7) year period.
 - v. One of the Commissioners raised a concern about the use of R-1 water for irrigation and its potential impacts. The State of Hawai'i, Department of Health recognizes the use of R-1 water for irrigating food crops, parks and playgrounds, among other uses. Additionally, as referenced in the report in Appendix 1-F, studies on golf courses and other sites in Hawai'i have found that nitrogen removal via percolation through sand or soil ranges from 97.5 to 100 percent, while removal of phosphorus ranges from 99.7 to 100

percent. These studies, as well as those conducted in other climatic and ecological settings, have found that the use of treated wastewater effluent for irrigation of agriculture or recreational use to be acceptable.

- h. In addition, the Lot 3 project will employ Best Management Practices (BMPs) in its irrigation system, landscape design, and landscape maintenance practices for the resort property and the 150 foot shoreline setback area, as it is currently doing on its Lot 1 and Lot 2 projects. BMPs include: limited use of pesticides, use of Native Hawaiian plant groundcover in the 150 foot shoreline setback area, which are better adapted and have a lower irrigation requirement than non-native species, and appropriate weeding of landscape areas prior to weeds going to seed. (See R-1 Irrigation and Best Management Practices report, Appendix 1-E.)

2. "An occupancy analysis between timeshares, hotel units, and apartment unit and their effect on traffic."

At the January 22, 2007 meeting, one of the commissioners voiced concern as to whether the proposed Lot 3 development is consistent with the intent of the Maui Planning Commission in granting the 1988 SMA for the North Beach Subdivision, particularly whether the "units" were specifically approved as "hotel rooms" as distinct from "time share units". The commissioner was concerned that if, only "hotel" units had been contemplated, then the timeshare units proposed for Lot 3 would have different traffic impacts from those intended by the 1988 Maui Planning Commission.

In reviewing the records of the 1988 SMA approval for the overall North Beach Subdivision and the 1998 SMA approval for the Lot 1 project, the Commission in 1988 and 1998 clearly stated in the SMA approvals that they considered and expected units other than "hotel" units, including "condominium" and "timeshare with lock-offs", as follows:

- a. The 1988 SMA permit for the North Beach Subdivision (which was the subject of an accepted EIS) expressly considered that the projects in the subdivision would include hotel rooms and condominium units:

"The number of hotel rooms and condominium units within the North Beach Subdivision shall not exceed 3,200 for a period of ten (10) years after the start of operation of the initial project," (Condition No. 8).

The 1988 Settlement agreement, Section 8 is identical. In addition, the cap at 3,200 units was not permanent; it applied only for 10 years after the first project opened, and zoning would have allowed up to 4,900 total units. Hotel zoning at the time allowed any use permitted in apartment

and residential zoning districts, and the zoning ordinance has specifically allowed timeshares in Hotel zoning districts since 1981.

- b. In 1998, the Commission reduced the unit count for the Subdivision from 3,200 to 1,950. With Lot 3, the proposed overall total number of units in the subdivision is 1,628 -- which is 322 units less than what is currently allowed and only 51 percent of the original 3,200 units contemplated in 1988.
- c. The 1998 SMA application, the contested case proceeding, the Hearing Officer's Report Findings of Fact, the Settlement Agreement, and the SMA permit all expressly considered that there would be timeshare units in the North Beach Subdivision and not just "hotel" units.

Amfac Maui and Ka'anapali Development Corp. filed (March 12, 1997) an application for an SMA permit for a "vacation timeshare resort of 280 units" and other amenities. The 280 units included 55 one-bedroom and 225 two-bedroom units.

"The two-bedroom units will incorporate a lock-off design which will permit unit owner to utilize one of the bedrooms as a separate guest unit" (Findings of Fact, Conclusions of Law, Decision and Order, approved by the MPC December 14, 1998).

This expectation of unit types other than "hotel" is further supported by the Maui Planning Commission's approval of the first three (3) lots of the Subdivision as timeshare and resort-condominium units, and the approval of the traffic mitigation measures for those non-hotel projects.

- d. Based on the occupancy and travel behavior of timeshare owners compared to hotel guests and on the basic reduction of units from 3,200 to 1,950, the overall traffic impact of the Subdivision is anticipated to be lower than was originally proposed in the 1988 SMA permit for the Subdivision. Since the Subdivision was approved, the Planning Commission has individually considered the traffic impacts of each project based on its proposed timeshare or condo-hotel use, and has approved the proposed mitigative measures for each project, including the Planning Commission's approval of the Lot 3 mitigative measures at its meeting on January 22, 2008. (See Review of Timeshare, Hotel & Traffic Mitigation Measures, Appendix 2.)

3. "Information on the impact of views from the shoreline towards mauka of the Honoapi'ilani Highway."

The proposed Lot 3 project includes a 10-acre open space area to remain as an unobstructed open area for recreational and Hawaiian cultural practices use. The views from the shoreline facing mauka for the Lot 3 project are significant. This conclusion is based on the following facts:

- a. The overall Ka`anapali North Beach Subdivision was a Master-Planned project which included the clear designation of specific view corridors for the entire subdivision and designation of public recreational areas. As required by the Subdivision SMA permit, the original developer prepared a North Beach Design Manual ("Design Manual"), which the Planning Commission approved in December 1996. The Design Manual governs the design within the Subdivision and designates the Subdivision's view corridors through the Keka`a Open Space Area and through two (2) other parks created in the Subdivision: Kahekili Park and North Park. A fourth area set aside for public use is the 150-foot shoreline setback area as described below.
- b. The recorded Settlement Agreements for the overall North Beach Subdivision and for Lot 1 restricts the uses and structures that can be built in the Open Space area in perpetuity.
- c. The Lot 3 design includes a 500-foot-wide view corridor through the Keka`a Open Space Area portion of Lot 3. It provides an unobstructed view corridor from the shoreline to the mountains and vice versa. The Honoapi`ilani Highway sits at a higher elevation than the Keka`a Open Space Area and, therefore, allows for very clear views to the ocean.
- d. The 150-foot shoreline setback area requirements for the North Beach Subdivision provides for a lateral view corridor along the entire 3,400 foot shoreline and include public beach access improvements with an improved beach boardwalk and dune crossings. Landscaping is also included to support the health of the dune system along the entire length of the Subdivision. (See Assessment of Open Space Resources and View Corridors Within the North Beach Subdivision report, Appendix 3.)

4. "Any other proposed mitigation that may be necessary."

The proposed Westin Ka`anapali Ocean Resort Lot 3 project is providing for a number of additional measures for the project which are innovative, yet proven, environmentally-sensitive solutions that go far beyond those of previously proposed or recently approved Resort projects on Maui. Included in the mitigation package are:

- a. Net-Zero Traffic Implementation Plan, to zero out the traffic impacts of the project;

- b. Creation of a voluntary contribution fund for the future West Maui Medical Facility, thereby providing for a source of funding for this much-needed improvement in West Maui;
- c. Commitment to maximize the use of R-1 water for irrigation purposes on lots 1, 2, and 3 - the three (3) properties owned by SVO Pacific, Inc. at the North Beach Subdivision;
- d. A voluntary increase in the affordable housing contribution;
- e. Rather than using conventional water, electrical, and architectural systems that consume precious natural resources, this project is utilizing world-renowned experts to design and implement highly creative, environmentally sound and sustainable solutions to mitigate any potential impacts or concerns and to maximize efficiency in the use of precious water and energy resources. Not only is this project the first to propose a LEED-certified full-service resort in Hawai'i, but it has set the standard which others in Maui are already following. (See Other Proposed Mitigation, Appendix "4").
- f. As a result of year long negotiations during the KOR 3 Intervention proceedings, the subsequent Settlement Agreement requires numerous additional measures to be implemented including, but not limited to, the following:
 - i. Strict adherence to regulations preserving public access to the Keka`a Open Space.
 - ii. Preventative measures to ensure the public access and enjoyment of the beach in front of KOR 3.
 - iii. A Dune Management Program to monitor and, as required, replenish dunes.
- a. A Total Direct Contribution of \$49.64 Million over a period of 20 years, the vast majority of which is attributable to the Lot 3 project.

Additionally, the applicant has also proposed four (4) new project-specific conditions in response to potential impacts perceived by some commissioners at the January 22, 2008 meeting. Briefly, these four (4) new conditions (identified as Conditions 45 through 48 in the Recommendation section of this report) are as follows:

- Upon availability, the maximization of R-1 water use for irrigation across Lots 1, 2, and 3 respectively.

- An increase in the affordable housing contribution from the current 1:6 ratio (16.6%) to 1:4 (25%).
- Semi-annual water quality monitoring for the desalination system.
- Creation of an escrow fund for voluntary financial contribution of \$170,000.00 for three (3) years (\$510,000.00) and creation of an annual voluntary donation program for Lot 3 owners toward the development of a West Maui Medical Facility.

CONCLUSIONS OF LAW

The application complies with Condition No. 7 of the 1988 SMA/SSV approval and Condition No. cc of the 1997 SMA approval for "other mitigation measures" for traffic related impacts, as determined by the Commission at its January 22, 2008 meeting.

The application complies with the applicable standards for a Special Management Area Permit, as follows:

- (A) It does not involve an irrevocable commitment to loss or destruction of any natural or cultural resources;
- (B) It does not significantly curtail the range of beneficial uses of the environment;
- (C) It does not conflict with the County's or the State's long-term environmental policies or goals;
- (D) It does not substantially affect the economic or social welfare and activities of the community, County or State;
- (E) It does not involve substantial secondary impacts, such as population changes and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways;
- (F) In itself it has no significant adverse effect and does not cumulatively have an effect upon the environment or involve a commitment for larger actions.
- (G) It does not substantially affect a rare, threatened, or endangered species of animal or plant, or its habitat;
- (H) It is not contrary to the state plan, county's general plan, appropriate community plans, zoning and subdivision ordinances;
- (I) It does not detrimentally affect air or water quality or ambient noise levels;
- (J) It does not affect an environmentally sensitive area, such as a flood plain and tsunami zone;
- (K) It does not substantially alter natural land forms and existing public views to and along the shoreline; and

- (L) It is not contrary to the objectives and policies of chapter 205A, HRS.

The Planning Department, based on the facts presented in the Department Reports, finds that the proposed action will not have a significant adverse environmental nor ecological effect, provided mitigation measures are incorporated into the project; the proposed action meets the objectives, policies and guidelines of the SMA Rules and the proposed action is consistent with County zoning and the West Maui Community Plan.

RECOMMENDATION

The Maui Planning Department recommends approval of the Special Management Area Use Permit subject to the following conditions:

STANDARD CONDITIONS:

1. That construction of the proposed project shall be initiated by **February 28, 2011**. Initiation of construction shall be determined as construction of offsite improvements or issuance of a grading, foundation or building permit and construction of the improvements, whichever occurs first. Failure to comply within this three (3) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said three year period. The Planning Director shall review and approve a time extension request but may forward said request to the Planning Commission for review and approval.
2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. The Planning Director shall review and approve a time-extension request but may forward said request to the Planning Commission for review and approval.
3. The permit holder or any aggrieved person may appeal to the Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. That completion of the development shall be in accordance with the revised plans and provisions as stated therein received by the Planning

Department on July 25, 2006 and July 27, 2007.

5. That appropriate measures shall be taken during construction to mitigate the short term impacts of the project relative to soil erosion from wind and water, ambient noise levels, traffic disruptions, vector control, and construction waste.
6. That the subject Special Management Area Use Permit shall not be transferred to other than the applicant's subsidiaries and affiliated corporations and legal entities without prior written approval in accordance with 12-202-17(d) of the Special Management Area Rules of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
7. 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 Management Area Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Management Area 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. Proof 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.
8. That full compliance with all applicable governmental requirements shall be rendered.
9. That the Applicant shall submit plans regarding the location of any construction related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and

approval.

That a construction management site plan showing the location of construction related buildings and material storage areas shall be remitted to the Planning Department for review and approval. Said plans shall show measures taken to prevent materials, petroleum products, debris and storm runoff and eroded soils from blowing, flowing, leaching or other wise impacting the coastal ecosystem.

10. That the Applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the grading, building or foundation permit, whichever occurs first. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a Certificate of Occupancy for each phase of the development.
11. That the Applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to so develop the property may result in the revocation of the permit.
12. That all lighting shall be fully shielded, directed downward and comply with the County outdoor lighting Ordinance No. 3430. There shall be no uplighting installed.
13. That appropriate energy conservation measures shall be incorporated into the project, which may include but not be limited to, combined heat and power system (cogeneration) energy conserving building materials, solar water heaters, etc.
14. Appropriate filtration measures to separate petroleum products and other potential contaminants shall be incorporated into the project's drainage plan and shall be regularly maintained by the owner(s).

PROJECT SPECIFIC CONDITIONS:

15. That should a Noise permit be required by the Department of Health, a copy of said permits shall be remitted to the Planning Department to be kept on file.
16. That copy of the approved National Pollutant Discharge Elimination System (NPDES) permit shall be remitted to the Planning Department and

Department of Public Works prior to approval of the grading permit.

17. That an appropriate Best Management Practices (BMPs) plan shall be reviewed and approved by the Department of Public Works. Said Plan shall address impacts associated with erosion, contaminants, and construction waste. The approved plan shall be filed with the Maui Planning Department.
18. That the Applicant shall comply fully with the Department of Health standards regarding dust control and rodent control.
19. That non-potable water shall be utilized for dust control during grading and construction activities.
20. That the Applicant, its assigns or successors shall participate to the extent of its fair share in the construction of the reclaimed water system from the Lahaina Wastewater Reclamation Facility to North Beach and shall connect to and utilize the County's reclaimed water system, for irrigation purposes, once it becomes available.
21. That during all ground altering construction activity, archaeological monitoring shall be conducted in accordance with the approved archaeological monitoring plan reviewed and approved by the State Historic Preservation Division (SHPD).
22. That the Applicant shall comply with the Affordable Housing Agreement with the County, which was recorded with the Bureau of Conveyance on October 30, 2006.
23. That the Applicant shall comply with the provisions contained within the North Beach Subdivision Transportation Management Plan Update, as may be amended, pursuant to Condition No. 4 of the 1988 Special Management Area Use Permit and Shoreline Setback Variance for the Kaanapali North Beach Subdivision, Kaanapali, Maui, Hawaii (SM1 88/0023).
24. That the Applicant shall comply with all applicable shared conditions of SM1 88/0023, SM1 97/0006 and SSV88/0002 as required. These conditions are listed as "Exhibit 25" in the Department's Report to the Maui Planning Commission, dated October 23, 2007.
25. That the Applicant shall construct the beach walkway, dune crossings and landscape activities within the 150-foot shoreline setback area of the project site in accordance with the conditions set forth in SSA2006/0018.

26. As represented, the Applicant, its assigns or successors shall pay the equivalent of the traffic impact fees for the project in accordance with the proposed Chapter 14.62 of the Maui County Code, in lieu of payment of any future traffic impact fee. Based on the recommendations of the Maui Island Traffic Fee Report, the Applicant has voluntarily committed to contribute traffic impact fees amounting to approximately \$1.7 million or \$4,303.00 per timeshare unit. However, should traffic impact fees applicable to the project be adopted prior to the issuance of building permits, the applicant shall pay those fees instead of the above amount of a voluntary contribution.
27. That the Applicant, its assigns or successors shall implement a Traffic Demand Management (TDM) program, which shall include at a minimum, those elements described in the Applicant's Net-Zero Traffic Implementation Plan report dated, November 2007. A final Net-Zero Traffic Implementation Plan, is subject to review and modification by mutual consent of the Planning Department and the Applicant prior to approval of the Applicant's preliminary compliance report.
28. As agreed by the Applicant, it shall apply the TDM measures to its Lot 1 and Lot 2 projects, as well as its Lot 3 project, which is the subject of this SMA approval.
29. That the implementation of the Applicant's Net-Zero TIP program at its Lot 1, Lot 2 and Lot 3 projects shall result in no net increase in the afternoon peak hour of traffic for Lot 3. Thus, the percent increase in Lot 3's afternoon peak hour traffic shall be zero (0) percent or a net-zero increase in vehicle trips attributed to the project.
30. That the Applicant, its assigns or successors shall be required to implement the methodologies for measuring the net-zero program compliance and effectiveness, as described in the final Net-Zero TIP approved by the Planning Department.
31. That the Applicant, its assigns or successors shall prepare an annual report which incorporates data and analysis to confirm the effectiveness of the implementation plan, with the specific objective of measuring net-zero traffic impact compliance. The annual report measuring program effectiveness shall be filed with the Department of Public Works for review and comment. The report shall be filed no later than February 15th of each calendar year following the year of the report. Copies of the report shall be provided to the County Department of Transportation and the County Planning Department for their files.

However, the first annual report shall be due on December 31st of the year

following the issuance of the final certificate of occupancy for the Lot 3 project.

32. As may be required by the Department of Public Works, an annual report shall be reviewed by an independent third party to be proposed by the Applicant, which shall be selected by the Department of Public Works. The third party review is intended to ensure objective interpretation and presentation of relevant information and data in the annual report. The cost of third party review shall be paid by the Applicant, its assigns and/or successors .
33. As identified in the Applicant's Net-Zero TIP, upon submittal of the annual report card, should the actual vehicle trip reduction fall short of the annual net-zero traffic generation goal, the Applicant, its assigns or successors will pay the County of Maui a financial penalty. The penalty amount will be the percentage of the shortfall of trips, multiplied by \$1.7 million (the amount of the currently proposed traffic impact fee). For example, based on the requirement that the program mitigate 194 vehicle trips at PM Peak Hour, if the program mitigates only 174 vehicle trips that would be approximately a 10% shortfall of trips which, if multiplied by \$1.7 million, would be a \$170,000.00 penalty. The penalty (if any) will be assessed annually from the second year of implementation.
34. That the Net-Zero TIP programs and monitoring shall be in effect until the Lahaina Bypass Highway is constructed and until the Applicant, its assigns or successors and the Department of Planning deem the programs and monitoring are no longer required, following reviews and recommendations by transportation related state and county departments and agencies.
35. To ensure the effectiveness of the Net-Zero TIP and payment of any penalties for Lot 3, the Applicant will deposit \$1.7 million in an Escrow Account (Penalty Account) upon issuance of the first building permit for the project. Should there be funds remaining in the Penalty Account following a possible future termination of the Net-Zero TIP for Lot 3, the monies will be refunded to the Applicant.
36. That a TDM program (Net-Zero TIP) and/or plan approved by the County pursuant to Condition No. 28 may be amended by the mutual consent of the Applicant, its assigns or successors and the Department of Planning in coordination with other County and State agencies as deemed appropriate, if the parties determine that said amendment is warranted within the context of the overall TDM program and/or plan's purpose to reduce the number of motor vehicle trips (principally at peak hour) to or below the level of trips associated with the Westin Kaanapali Ocean Resort prior to the construction or operation of the proposed development

on Lot 3.

37. That a unilateral agreement containing Condition Nos. 27 through 36 shall be executed and recorded with the State Bureau of Conveyances by the Applicant to ensure that the Lot 3 SMA TDM program and net-zero conditions run with the land.
38. That the Applicant shall comply with the recommendations of the State of Hawaii Department of Transportation (SDOT) letter dated June 28, 2007 which contained the following transportation improvement recommendations:
 - a. Contribute funds or design services directly to the Department of Transportation to expedite the Lahaina Bypass;
 - b. Design of the proposed T-intersection on Halawai Drive so that makai-bound/southbound traffic has the right-of-way and mauka-bound traffic from Lot 4 has the stop-sign controlled approach;
 - c. Extension of the deceleration/storage lane for left turns from northbound Honoapiilani Highway to westbound Halawai Drive at no cost to the State; and
 - d. Improvement and maintenance of the development's highway frontage.
39. That the Applicant, its assigns or successors shall be responsible for all required infrastructural improvements, as required by Maui County Code, and rules and regulations, including but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic related improvements, wastewater system improvements, and utility upgrades. Said improvements may be phased and constructed concurrently with each phase of development and shall be completed prior to issuance of a certificate of occupancy for each phase of construction, unless improvements are bonded by the developer.
40. That the final drainage plan shall be in accordance with the Drainage Master Plan for Kaanapali North Beach Subdivision, the County of Maui drainage standards and the West Maui Watershed Owner's Manual prepared by the West Maui Watershed Management Advisory Committee. The plan shall accommodate the overflow from Honokowai Stream which could send water through the Lahaina Highways Baseyard and Lahaina Wasterwater Reclamation Facility. Further, all onsite and offsite retention and detention basins shall be privately owned and maintained.
41. That a coastal management plan shall be developed for the dune areas with some discussion of the management of the dunes and coastal system. Said plan shall be developed in coordination with the Department

of Land and Natural Resources (DLNR) and the University of Hawaii Sea Grant Program (UH, HSGP). A copy of the management plan shall be filed with the Department of Planning, DLNR, and UH, HSGP.

42. That the Applicant, its assigns or successors shall participate with other North Beach Subdivision developers in the bi-annual water quality monitoring surveys for construction projects in the North Beach Subdivision. Said bi-annual surveys shall continue until 18 months after the completion of construction.
43. The Applicant, its assigns or successors shall participate in a Hawksbill and Green Turtle monitoring program for Kaanapali North Beach with the U.S. Fish and Wildlife Service.
44. That an annual report shall be filed with the Maui Planning Commission for its information on the disbursement of the funds in the Lot 3 Settlement Agreement by the applicant to the intervener and to the West Maui Community Benefit Fund.

The following supplementary conditions as represented by the applicant:

45. As represented by the Applicant, to minimize any Lot 3 impact on the Lahaina Wastewater Reclamation Facility, the Applicant, its assigns, or successors shall maximize the use of R-1 water from the County's reclaimed water system for irrigation purposes, once it becomes available, on Lots 1, 2 and 3 of the Ka'anapali North Beach subdivision, in accordance with State Department of Health regulations.
46. As represented by the Applicant, in accordance with the Maui Planning Commission's discussion (at its meeting of January 22, 2008) of an affordable housing participation level of 25%, the Applicant will voluntarily increase its contribution from the 1:6 ratio set forth in its existing Affordable Housing Agreement with the County of Maui, to a 1:4 ratio.
47. As represented by the Applicant, the Applicant, its assigns, or successors shall monitor water quality at the source well and the return well of its desalination system as required by all applicable rules and regulations.

The Applicant, its assigns, or successors shall monitor water quality along the coastal waters of Ka'anapali North Beach. Upon commencement of desalination system operation, the sampling shall be conducted semi-annually, and shall measure salinity in parts per million. A report listing the results of the data from each sampling shall be prepared and provided to the Department of Health. This coastal water monitoring program shall be conducted for as long as the desalination system is in operation.

48. As represented by the Applicant, the Applicant will create a West Maui Medical Facility Escrow Fund (Fund) for a West Maui Medical Facility. For 3 years following the first final certificate of occupancy of the Lot 3 project, the Applicant shall pay \$170,000 per year into the Fund. Commencing on the 4th year following the first final certificate of occupancy of the Lot 3 project, the Applicant will create an annual voluntary donation program for which Lot 3 unit owners can contribute money into the Fund. All donations will be released from the Fund to the West Maui Medical Facility upon receipt of building permits for the West Maui Medical Facility, whereupon at such time, all subsequent donations into the Fund shall be released to the West Maui Medical Facility on an annual basis.

The conditions of this Special Management Area Use Permit shall be enforced pursuant to §12-202-23 and §12-202-25 of the Special Management Area Rules for the Maui Planning Commission.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report prepared for the October 23, 2007 meeting, the Addendum Report prepared for the December 11, 2007 meeting, and the Addendum Report and Recommendation prepared for the February 26, 2008 meeting as its Findings of Fact, Conclusions of Law, Decision and Order and authorize the Director of Planning to transmit said Decision and Order on behalf of the Planning Commission.

Approved:


JEFFREY S. HUNT
PLANNING DIRECTOR

