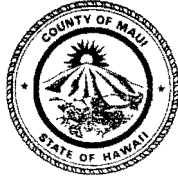


CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

COLLEEN M. SUYAMA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

March 6, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED - #7006 2760 0000 7127 4746

Mr. Michael T. Munekiyo, AICP  
Munekiyo & Hiraga, Inc.  
305 High Street, Suite 104  
Wailuku, Hawaii 96793

CERTIFIED MAIL - RETURN RECEIPT REQUESTED - #7006 2760 0000 7127 4739

Mr. Lance D. Collins  
2070 West Vineyard Street, Suite 5  
Wailuku, Hawaii 96793

Dear Mr. Munekiyo and Mr. Collins:

**SUBJECT: SPECIAL MANAGEMENT AREA USE PERMIT  
APPLICATION FOR THE WESTIN KAA NAPALI OCEAN  
RESORT VILLAS, LOT 3 PROJECT AND RELATED  
IMPROVEMENTS AT TMK: (2) 4-4-014:005 (POR.)  
KAA NAPALI, MAUI, HAWAII (SM1 2006/0018)**

At its regular meeting on January 22, 2008, the Maui Planning Commission (Commission) acknowledged approval and acceptance of the Applicant's "Net-Zero Traffic Mitigation Strategy" as satisfying the criteria of "other mitigative measures or terms" as fulfillment of Condition No. 7 of the 1988 SMA/SSV Approval and Condition No. cc of the 1996 SMA approval.

Further, at its regular meeting on February 26, 2008, the Commission reviewed the project and after due deliberation, granted approval of the 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 off-site 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

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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 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 Commission for review and approval.
3. The permit holder or any aggrieved person may appeal to the 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 Maui County Planning Department (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 Section 12-202-17(d) of the Special Management Area Rules of the 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.

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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 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 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 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 Department prior to issuance of the grading, building or foundation permit, whichever occurs first. A final compliance report shall be submitted to the Department for

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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 up-lighting 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 Department to be kept on file.
16. That copy of the approved National Pollutant Discharge Elimination System (NPDES) permit shall be remitted to the 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 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.

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20. That the Applicant, its assigns or successors shall contribute to the extent of its fair share in the construction of the reclaimed water system from the Lahaina Wastewater Reclamation Facility to North Beach prior to issuance of final certificate of occupancy. Further, the applicant, its assigns or successors 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 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 SSA 2006/0018.
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

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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 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 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 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 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. There shall be no cap on the penalty amount.
34. That the Net-Zero TIP programs, monitoring, and penalties shall be in effect until the Lahaina Bypass Highway is constructed and until the Applicant, its assigns or successors and the Department deem the programs, monitoring, and penalties 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 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 net-zero conditions run with the land.
38. That the Applicant 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.



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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 Wastewater Reclamation Facility. Further, all on-site and off-site 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, 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. Thereafter, the monitoring shall continue annually for two (2) years. After that time, the Department may determine whether there is any basis for the monitoring to continue. Further, the Applicant will take corrective measures, as necessary, to mitigate impacts it causes to ocean water quality along North Beach.
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 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.
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 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 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. Applicant will take corrective measures, as necessary, to mitigate impacts it causes to ocean water quality along North Beach.
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 Sections 12-202-23 and 12-202-25 of the Special Management Area Rules for the Maui Planning Commission.

Further, the Commission adopted the enclosed Department's Report and Recommendation prepared for the October 23, 2007 meeting, the Addendum Report prepared for the November 27, 2007 meeting, the Addendum Report prepared for the December 11, 2007 meeting, and the Addendum Report prepared for the February 26, 2008 meeting as its Findings of Fact, Conclusions of Law, Decision and Order. Parties to proceedings before the commission may obtain judicial review of decision and orders issued by the commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes.

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March 6, 2008  
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Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Paul Fasi at [paul.fasi@mauicounty.gov](mailto:paul.fasi@mauicounty.gov) or 270-7814.

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director

xc: Clayton I. Yoshida, A.I.C.P., Planning Program Administrator  
Aaron H. Shinmoto, PE, Planning Program Administrator (2)  
Paul F. Fasi, Staff Planner  
Development Services Administration

JSH:PFF:bv

SM1 Project File  
General File

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