ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PLANNING

February 9, 2015

CERTIFIED MAIL - #7013 1710 0002 3790 9701

Mr. Raymond Cabebe
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793

Dear Mr. Cabebe:

SUBJECT: MAUI PLANNING COMMISSION APPROVAL OF A SPECIAL MANAGEMENT AREA (SMA) USE PERMIT FOR PROPOSED RENOVATIONS OF AN EXISTING SUPPORT FACILITY TO A TWO (2) LEVEL SUPPORT FACILITY STRUCTURE WITH FITNESS ROOM AND PARKING, LOCATED AT 45 KAI ALA PLACE, KAANAPALI, ISLAND OF MAUI, HAWAII; TMK: (2) 4-4-006:011 (SM1 2010/0003)

At the regular meeting on January 27, 2015, the Maui Planning Commission (Commission) reviewed the above application, accepted testimony and exhibits, and after due deliberation, hereby orders approval of said application subject to the following conditions:

STANDARD CONDITIONS:

1. That to the satisfaction of the Department of Planning (Department), construction of the proposed project shall be initiated by **February 28, 2018**. Initiation of construction shall be determined as construction of onsite and/or offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Evidence of the initiation of construction shall be submitted to the Department prior to the date listed immediately above. Failure to comply by that date will automatically terminate this SMA Use Permit unless a time extension is requested no later than ninety (90) days prior to said date. A time extension shall be processed in accordance with the provisions of Section 12-202-17 of the Special Management Area Rules for the Maui Planning Commission (SMA Rules).

2. That to the satisfaction of the Department, the construction of the project shall be completed within five (5) years after the date of its initiation. Evidence of the date of the completion of construction shall be submitted to the Department. Any

request for a time extension shall be submitted no later than ninety (90) days prior to the completion deadline. A time extension shall be processed in accordance with the provisions of Section 12-202-17 of the SMA Rules. Failure to complete construction of this project within this time period will require unfinished portions of the project to obtain a new SMA Use Permit.

3. That 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 permit and shall obtain, pay for, and keep in force throughout the term of the permit, comprehensive liability insurance issued: (1) by an insurance company authorized to do business in the State of Hawaii "admitted carrier," or (2) through a general insurance agent or broker licensed in the State of Hawaii, if the company is not authorized to do business in the State of Hawaii "non-admitted carrier." The insurance carrier shall be rated no less than "A-" as established by "AM Best" or "Standard & Poor" ratings. The insurance policy, as evidenced by issuance of a policy endorsement, shall name the County, its officers, employees, and agents, as an additional insured. The insurance policy shall contain the following minimum requirements:

   a. No less than a combined single limit (CSL) of liability coverage of $1,000,000.00;

   b. No erosion of limit by payment of defense costs;

   c. Annual aggregate limit of not less than $1,000,000.00;

   d. A duty to defend, indemnify and hold harmless the County, its officers, employees, and agents, against any loss, liability, claims, and demands for injury or damage, including, but not limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with, in whole or in part, the permitted uses, the County's permit review and approval process, or any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights;

   e Name the County, its officers, employees, and agents, as additional insureds; and

   f. Written or endorsed to state that the coverage to the additional insureds is primary and non-contributing with respect to any other insurance available to the County.

The Applicant shall furnish the Department with a copy of the insurance policy certificate and the required endorsements verifying such insurance coverage within ninety (90) days of the issuance of the subject permit. Thereafter, the Applicant shall instruct the insurance company to directly provide the Department with a copy of the insurance policy certificate and required endorsements as it is renewed on an annual basis. The proof of insurance and all subsequent certifications of insurance coverage shall include the applicable Tax Map Key (TMK) and permit numbers. If the scheduled expiration date of a current insurance policy is earlier than the expiration of the subject permit, the Applicant shall, upon renewal of the insurance policy, provide the Department with a copy of the renewed insurance policy certificate and required endorsements. The insurance policy shall expressly state that the coverage provided under such policy shall not be canceled or terminated, unless the carrier has first given the Department at least thirty (30) calendar days prior written notice of the intended cancellation or termination.

The insurance policy shall remain in full force and effect until the permitted work has been completed and accepted by the County.

4. That to the satisfaction of the Commission or the Department, the Applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the SMA Use Permit. Failure to so develop the property may result in the revocation of the permit and/or other enforcement.

5. That the Applicant shall submit to the Department two (2) copies of a detailed report addressing its compliance with the conditions established with the subject SMA Use Permit. A Preliminary Compliance Report (Report) shall be reviewed and approved by the Department prior to issuance of a building permit and initiation of building construction. 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 shall be submitted to the Department for review and approval prior to or along with the Report. The Report shall also include evidence that final construction plans are in substantial compliance with preliminary architectural plans dated June 2013 and Landscape Planting Plans dated October 25, 2013. A Final Compliance Report shall be submitted to the Department for review and approval prior to issuance of a final building permit approval and occupancy/use of the structures.

PROJECT SPECIFIC CONDITIONS:

6. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to dust and soil erosion from wind and water, ambient noise levels, and traffic disruptions.

7. That full compliance with all applicable governmental requirements shall be rendered.

8. That all exterior illumination shall consist of fully shielded downward lighting throughout the project.

9. That to the satisfaction of the Department, Best Management Practices (BMPs) shall be implemented to ensure water quality and marine resources are protected. No construction materials shall be stockpiled in the aquatic environment. All construction-related materials shall be free of pollutants and placed or stored in ways to avoid or minimize disturbance. No debris, petroleum products, or deleterious materials shall be allowed to fall, flow, leach, or otherwise enter near shore waters. Any turbidity and siltation generated from activities proposed at the site should be minimized and contained in the immediate vicinity of construction through the use of effective silt containment devices. Construction during adverse weather conditions shall be curtailed to minimize the potential for adverse water quality impacts. A BMP plan shall be prepared and reviewed by the Department, and the Department of Environmental Management. Said plan shall address impacts associated with erosion, contaminants, and construction waste.

10. That the Applicant shall implement the Archaeological Monitoring Plan that was reviewed and accepted by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) by letters dated December 15, 2014 and December 17, 2014. Evidence of compliance with this condition shall be submitted as part of the Final Compliance Report.

11. That in the event historic resources, including human skeletal remains, are identified during routine construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and DLNR-SHPD, Maui Section, shall be contacted immediately at (808) 243-5169.

12. That a copy of the approved National Pollutant Discharge Elimination System (NPDES) permit by the Clean Water Branch of the Department of Health, if applicable, shall be filed with the Department and the Department of Health prior to approval of any grading permit.

13. That the Applicant continue to pursue efforts towards a beach lateral access boardwalk makai of the existing buildings, of which construction of said boardwalk shall be timed to occur in conjunction with construction of the Royal Lahaina Resort beach boardwalk, and evidence of compliance with this condition shall be provided in the Preliminary and Final Compliance Reports.

Further, the Commission adopted the Report and Revised Recommendation prepared by the Department, for the January 27, 2015 meeting, as the Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and made a part hereof. 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 (HRS).

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Candace Thackerson via email at candace.thackerson@mauicounty.gov or by phone at (808) 270-7180.

Sincerely,

WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Candace R. Thackerson, Staff Planner (PDF)
Development Services Administration
CZM File (SM1)
Project File
General File

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