



**CHRIS  
HART**  
& PARTNERS, INC.

Landscape Architecture  
City & Regional Planning  
November 2, 2016

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OFFICE OF THE  
COUNTY CLERK

Mr. Robert Carroll, Chairman  
Council Land Use Committee  
200 South High Street  
Wailuku, Maui, HI 96793

Dear Chairman Carroll, and Land Use Committee Members:

**Regarding:** LU-25 Status of Settlement Agreement and Land Use Entitlement for the Maui Oceanfront Inn and Sarento's Restaurant (MOSR), located at 2980 South Kihei Road, Kihei, Maui, Hawaii; TMK Nos.: (2) 3-9-004:029 and 149. (EA 2006/0015) (CPA 2006/0005) (CP 2006/0012) (SM1 2006/0017) (SSV 2006/0004) (OSP 2006/0002)

This letter is an update on LU-25 and a response to your letter dated November 9, 2015 (**See Attached:** "Letter from Council Land Use Committee Chair dated November 9, 2015").

Since our meeting with the County Council Land Use Committee on August 4, 2010, regarding the above referenced Settlement Agreement and Land Use Entitlement Applications, the Applicant has been working on the resolution of issues identified by the previous Council Land Use Committee Chair, and outlined in the attached letter (**See Attached:** "Letter from Council Land Use Committee Chair dated August 6, 2010").

As you are aware, both parcels are State owned, and Leased to a private operator who is the Applicant (Ruby & Sons Hospitality, LLC). In the time since our original meeting with the Land Use Committee in 2010, the Applicants predecessor as State Leaseholder (Western Apartment Supply & Maintenance Co.) declared Chapter 11 bankruptcy. The Project's State Lease and Revocable Permit, with facilities (the Property) was assigned to a Trustee for sale, and was subsequently was acquired by the current Applicant Ruby & Sons Hospitality, LLC.

Since acquiring the Property, the Applicant has been working with the State Department of Land & Natural Resources, Land Division (DLNR) to address outstanding issues of concern which carried over from Western Apartment Supply & Maintenance Co.. This included but was not limited to, improving the onsite stormwater and public beach

shower water retention system, executing a Memorandum of Agreement for the treatment of existing infrastructure and pursuing a request for Lease Extension.

At this time the Applicant is progressing with the request for Lease extension with DLNR and the Board of Land & Natural Resources (BLNR). We are also respectfully requesting the opportunity to proceed with LU-25 in order to conclude the obligations of the November 2005 Settlement Agreement between the Applicant, the County of Maui and Interested Parties.

Pursuant to the continuation of processing of LU-25, the Applicant provides the following updated progress on the issues identified in the letter from Council Land Use Committee Chair dated August 6, 2010:

#1. Letter of Authorization:

The Applicant has obtained a Letter of Authorization from the Land Owner for the processing of LU-25 as requested by the Land Use Committee (**See Attached:** "Letter of Authorization from BLNR Chair dated May 27, 2016").

#2. Area of Revocable Permit and Area of Parcel 149:

The Applicant has requested a Conditional Use Permit for a portion of the parking lot Parcel 149. The Applicant proposes to use an area of 0.694 acres for the purpose of parking, consistent with the existing Revocable Permit for use of the parcel.

#2.a Area of Conditional Permit and area of Parcel 149:

The Applicant has been in negotiation with the State DLNR for some time for Lease extension, and conversion of the Revocable Permit into a formal Lease. As proposed above, the Conditional Use Permit will not conflict with the area that is currently covered by a Revocable Permit because the size of the existing Revocable Permit area is equal to the size of the Conditional Use Permit request.

In the event that a Lease for a different land area is obtained from DLNR, the Applicant will seek an amendment to any existing County permits, as may be necessary at that time.

#2.b. Status of Updated Lease for Parcel 149:

The Applicant has been in negotiation with the State DLNR, and is anticipating that an updated Lease will be forthcoming. Review of the pending Lease extension request for Parcel 029 is anticipated to be on the November 10, 2016 BLNR Agenda.

#3. Status of Mitigation Measures:

**Section 2.5.2:** The Applicant has received the Right of Entry Permit (ROE) for Naupaka trimming from DLNR, and trimming was completed to the satisfaction of the DLNR Land Division.

**Section 2.5.3:** The Applicant has posted and maintained beach reserve signage as required by the Settlement Agreement. Evidence of the signage can be verified as early as the submittal of the Project's Draft Environmental Assessment (EA) in January of 2007 where the existing signage can be seen in the site photos of the Draft EA.

On September 19, 2010 the prior Applicant's attorney, Mr. Thomas R. Cole requested written comment from the Interested Parties, and has followed up via telephone. To date there is no written reply or documentation of an agreement or of any negative comment on the particular words used for beach signage has been received from the Interested Parties.

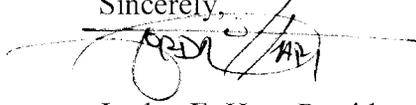
**Section 2.5.4:** The Applicant has posted and maintained public parking signage as required by the Settlement Agreement. Evidence of the signage can be verified as early as the submittal of the Project's Draft Environmental Assessment in January of 2007 where the existing signage can be seen in the site photos of the Draft EA.

On September 19, 2010 the prior Applicant's attorney, Mr. Thomas R. Cole requested written comment from the Interested Parties, and has followed up via telephone. To date there is no written reply or documentation of an agreement or of any negative comment on the particular words used for parking signage has been received from the Interested Parties.

**Section 2.5.5:** The Applicant has completed portions of 2.5.3 & 4 of the Settlement Agreement and has initiated completion of all other mitigation measures. The Applicant has been granted the referenced variances, which are being held in abeyance, contingent on completion of the Settlement Agreement. The Applicant will continue to pursue the completion of all portions of the Settlement Agreement.

Thank you for your consideration. Please contact Jordan Hart at 242-1955 or [Jhart@chpmaui.com](mailto:Jhart@chpmaui.com) for further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jordan E. Hart', is written over a horizontal line. The signature is stylized and includes a date '11/2' at the end.

Jordan E. Hart, President  
Land Planner

Enclosures (3):

- Letter from Council Land Use Committee Chair dated November 9, 2015
- Letter from Council Land Use Committee Chair dated August 6, 2010
- Letter of Authorization from BLNR Chair dated May 27, 2016

Cc: Ruby & Sons Hospitality LLC.  
Mr. William Spence, Director of Planning, County of Maui  
CH&P File (13-021)

Council Chair  
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Vice-Chair  
Don S. Guzman

Presiding Officer Pro Tempore  
Michael P. Victorino

Councilmembers  
Gladys C. Baisa  
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Elle Cochran  
Don Couch  
Stacy Crivello  
Riki Hokama



Director of Council Services  
David M. Raatz, Jr., Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

November 9, 2015

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NOV 12 2015

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

*W. Jordan*

05/112

Mr. Jordan Hart  
Chris Hart & Partners, Inc.  
115 N. Market Street  
Wailuku, Hawaii 96793

Dear Mr. Hart:

**SUBJECT: COMMUNITY PLAN AMENDMENT AND  
CONDITIONAL PERMIT FOR MAUI OCEANFRONT  
INN AND SARENTO'S ON THE BEACH  
RESTAURANT (KIHEI) (LU-25)**

May I please request your written response to the attached correspondence dated September 23, 2015, so that the Land Use Committee may proceed with its deliberations on this matter.

May I further request your written response to this request no later than **Monday, November 30, 2015**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Scott Jensen at 270-7662, or Raynette Yap at 270-8007).

Sincerely,

A handwritten signature in cursive script that reads "Robert Carroll".

ROBERT CARROLL, Chair  
Land Use Committee

lu:ltr:025a06:scj

Attachment

cc: Jay Jayyusi, General Manager, Ruby & Sons Hospitality LLC  
William Spence, Planning Director

Council Chair  
Mike White

Vice-Chair  
Don S. Guzman

Presiding Officer Pro Tempore  
Michael P. Victorino

Councilmembers  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Don Couch  
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Riki Hokama



Director of Council Services  
David M. Raatz, Jr., Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

September 23, 2015

Mr. Jordan Hart  
Chris Hart & Partners, Inc.  
115 N. Market Street  
Wailuku, Hawaii 96793

Dear Mr. Hart:

**SUBJECT: COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHEI) (LU-25)**

Thank you for your correspondence dated February 20, 2014, informing the Committee of the status of this application. The correspondence referenced the anticipated receipt during the first quarter of 2014 of a letter of authorization from the Board of Land and Natural Resources.

May I please request your written response regarding this matter, providing a status update and a copy of the letter of authorization if it was received.

To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Scott Jensen at 270-7662, or Raynette Yap at 270-8007).

Sincerely,

  
ROBERT CARROLL, Chair  
Land Use Committee

lu:ltr:025a05:scj

cc: Jay Jayyusi, General Manager, Ruby & Sons Hospitality LLC  
William Spence, Planning Director

Council Chair  
Danny A. Mateo

Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Baisa  
Jo Anne Johnson  
Sol P. Kaho'ohalahala  
Bill Kauakea Medeiros  
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Joseph Pontanilla  
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**COUNTY COUNCIL**  
COUNTY OF MAUI  
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Director of Council Services  
Ken Fukunaka

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AUG 10 2010

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

*Cl. Jordan*  
*05/112*

August 6, 2010

Mr. Christopher Hart  
Chris Hart and Partners, Inc.  
115 N. Market Street  
Wailuku, Hawaii 96793

Dear Mr. Hart:

**SUBJECT: COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHEI) (LU-25)**

May I please request your response to the following:

1. Provide a copy of the letter of authorization and any approvals required by Sections 19.40.030 and 19.510.010(D)(1), Maui County Code, and Section 2.4.1 of the Settlement Agreement,<sup>1</sup> which would allow Western Apartment Supply & Maintenance Co. ("Western") to proceed with the Conditional Permit and Community Plan Amendment applications.
2. Revocable Permit No. 7235, dated December 1, 2000, permits Western to occupy a portion of TMK: (2) 3-9-04:001, consisting of "0.694 acres, more or less". The acreage converts to 30,230.64 square feet. The parcel was subsequently subdivided and the property that is referenced in connection with the Conditional Permit application is now designated TMK: (2) 3-9-04:149, and consists of approximately 35,932 square feet.
  - a. Since the Revocable Permit is for an area that is approximately 5,700 square feet less than Parcel 149, should the proposed Conditional Permit be for a 30,231-square-foot portion of Parcel 149 only, or is Western seeking authorization to occupy the whole of Parcel 149? Please explain the discrepancy and how it is being resolved.

<sup>1</sup> The Settlement Agreement is attached as Exhibit "6" to the "Maui Planning Department's Report to the Maui Planning Commission November 25, 2008 Meeting".

Mr. Christopher Hart  
Chris Hart and Partners, Inc.  
August 6, 2010  
Page 2

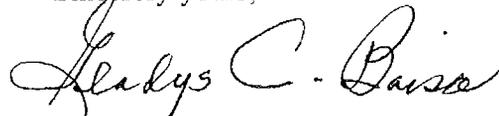
- b. The Settlement Agreement refers to Western's intent to seek a lease of Parcel 149 from the State, through its Board of Land and Natural Resources (see page 3, first full paragraph), and of certain terms that must be contained in that lease (see Section 2.5.1). What is the status of the contemplated lease?
3. What is the status of each of the mitigation measures set forth in Sections 2.5.2 through 2.5.5 of the Settlement Agreement?

I would appreciate receiving your response **by Monday, September 13, 2010.**

To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Thank you for your attention to this matter. Should you have any questions, please contact me or the Committee staff (Carla Nakata at 270-7659, or Pauline Martins at 270-8039).

Sincerely yours,



GLADYS C. BAISA, Chair  
Land Use Committee

lu:ltr:025a03:cmn

cc: Ann Cua, Deputy Planning Director  
Joseph Prutch, Planner, Department of Planning  
Western Apartment Supply & Maintenance Co.

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 27, 2016

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

GL S-4212

Mr. William Spence, Director  
Planning Department  
County of Maui  
2200 Main Street  
One Main Plaza, Suite 315  
Wailuku, HI 96793

Dear Mr. Spence,

SUBJECT: Letter of Authorization in Connection with Land Use Applications; General Lease No. S-4212, Ruby & Sons Hospitality, LLC, a.k.a. Maui Days Inn Oceanfront, 2980 S. Kihei Road, Tax Map Key (2) 3-9-004-029 & 149, Kamaole, Maui

The Department of Land and Natural Resources (DLNR) is in receipt of a request for authorization, dated May 10, 2016 by our tenant in regards to application for County of Maui land use entitlements for the subject property. Please be advised that this letter serves to authorize the lessee, Ruby & Sons Hospitality, LLC, to make applications to the County of Maui for and to obtain land use and construction permits for the use, maintenance and or expansion of a hotel, restaurant and parking at the above referenced locations, consistent with the provisions of the lease and/or license agreements for the properties, specifically including, but not limited to:

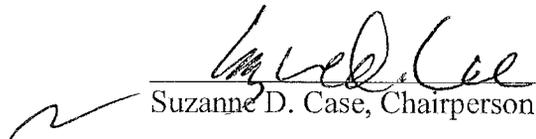
- Community Plan Amendment from single family to hotel;
- Conditional Use Permit (CUP) to allow commercial parking on parcel 149;
- After the Fact Special Management Area "Major" Use Permit for all work done on the hotel parcel 029 since the Community Plan Re-Designation from hotel to single family;
- Shoreline Setback Variance to address improvements at the existing restaurant, and;

- Off-Site Parking Approval (OSP) for use of parcel 149 to serve as hotel and restaurant parking.

This letter is intended to apply to future permit applications for the use, maintenance and or expansion of a hotel and restaurant & parking at the above referenced locations, consistent with the provisions of the lease agreements for the properties.

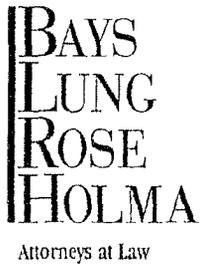
Furthermore, this letter serves to certify that DLNR is the owner of the subject properties for which the above referenced permits are to be issued. If you have any questions, please call Daniel Ornellas, District Land Agent, at the DLNR Maui District Land Office at (808) 984-8103.

Sincerely,

  
Suzanne D. Case, Chairperson

Enc. (2)

Cc: Ruby and Sons, Hospitality, LLC  
Bays, Lung Rose, Holma  
Central / District Files



Topa Financial Center  
700 Bishop Street, Suite 900  
Honolulu, Hawai'i 96813

P.O. Box 1760  
Honolulu, Hawai'i 96806

Tel: (808) 523-9000  
Fax: (808) 533-4184  
E-mail: [mail@legalthawaii.com](mailto:mail@legalthawaii.com)  
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Sarah M. Love  
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Matthew C. Shannon

A Partnership of  
Law Corporations

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David R. Major  
Krislin A. Shinkawa  
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John D. Ferry III  
Leimaula L. Ley  
Michael R. Kirgan  
Grant E. Allison

Of Counsel:  
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Phillip L. Deaver  
Jean K. Campbell

Jason N. Baba  
(1957-2001)

May 10, 2016

Daniel L. Ornellas, Land Agent  
Department of Land and Natural Resources  
Land Division  
54 High Street, Room 101  
Wailuku, HI 96793

Re: Request for Consent Letter of Authorization in Connection with Land Use Applications;  
General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Maui Days Inn Oceanfront,  
2980 S. Kihei Road, Kihei, Hawaii 96753 Tax Map Key (2) 3-9-004-029 & 149

Dear Mr. Ornellas:

As you are aware, we have been working for some time on completing various land use approvals in order to allow the County of Maui to issue a Certificate of Occupancy for the property, among other approvals and permits. We are writing to request the issuance of a Letter of Authorization in the enclosed form to permit Ruby & Sons to make applications to the County of Maui for and to obtain land use and construction permits for the use, maintenance and or expansion of a hotel and restaurant at the above referenced location, consistent with the provisions of the lease agreement for the property. To assist with the processing of this request, we have enclosed an executed Indemnification Letter from Ruby & Sons Hospitality, LLC.

We look forward to working with you on this matter. Please contact us with any questions.

Kind regards,

  
Jean K. Campbell  
Bays Lung Rose & Holma

cc: Eric Liao  
Jordan Hart

May 6, 2016

Suzanne D. Case, Chairperson  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Ms. Case:

Subject:       General Lease No. D-4212, Ruby & Sons Hospitality, LLC, Lessee  
                  Land Use Applications to County of Maui

Lessee is the operator of the Maui Oceanfront Days Inn at Kihei pursuant to the General Lease noted above. In connection with Lessee's work at the properties, Lessee has requested a Letter of Authorization from the Department of Land and Natural Resources to make applications to the County of Maui for and to obtain land use and construction permits for the use, maintenance and or expansion of a hotel, restaurant and parking at the above referenced locations, consistent with the provisions of the lease and/or license agreements for the properties.

In connection with the DLNR's issuance of said Letter of Authorization, Lessee agrees to assume and be responsible and liable for all of the duties and obligations of the landowner under the application and shall indemnify, hold harmless, and defend the State of Hawaii from and against all claims, injuries and damages arising out of those duties and obligations. Lessee understands and agrees that by issuing the Letter of Authorization as requested, the State of Hawaii does not waive or release any of its rights and privileges, and expressly reserves all such rights and privileges under the General Lease referenced above.

Sincerely,

Ruby & Sons Hospitality, LLC

By:   
Name: Jie Jun "Eric" Liao  
Its: *Vice President*