

HOKULI'A

1250 Oceanside, LLC

April 8, 2020

Michael Yee
Director
Planning Department
101 Pauahi Street, Suite 3
Hilo Hawaii 96720

PLANNING DEPT
APR 16 2020 AM 11:11

REC'D BY MAIL

**SUBJECT: UPDATE Hokulia Shoreline Park – Special Management Area Use Permit No. 401 (SMA No. 401) Compliance with Timing of Completion of Proposed Trail and Park Improvements within Phase 3 of the Park. Kanaeue and Haleli'i and Ke'eke'e Ahupua'a, North and South Kona District, Island of Hawai'i
TMK: (3) 8-1-004:003**

Aloha Director Yee,

1250 Oceanside LLC (Oceanside) is reaching out to the County of Hawaii Planning Department to provide an update on the timing and of completion of the proposed trail and park improvements within phase 3 of the Hokuli'a Shoreline Park in light of the unprecedented conditions unfolding as a result of the worldwide SARS-CoV-2 (coronavirus)/COVID-19 pandemic (pandemic). Special Management Area Use Permit No. 401 (SMA No. 401), which pertains to the creation of the 140 acre Hokuli'a Shoreline Park, was issued by the Planning Commission on May 5, 2000. This approval established the following timing of improvements:

<u>Timing of Improvements</u>	<u>General Location</u>	<u>Timing</u>
Phase 1 - Park improvements	Nenu to Kainaliu	5 years
Phase 2 - Park improvements	Nenu to Pu'u Ohau	3 years
Phase 3 - Park improvements	Pu'u Ohau to Nawawa	3 years
Phase 4 - Park improvements	Nawawa to Kalukalu	2 years
Phase 5 - Park improvements	Kalukalu to Keawekaheka	2 years

A letter from the Planning Department dated April 20, 2007 determined a new effective date for the permits to be September 4, 2005. Subsequently, the Hokuli'a project was shut down due to litigation and bankruptcy proceedings from December 31, 2007 through June 30, 2014. On July 15, 2015 the Planning Department issued another letter tolling the time for completion of Shoreline park infrastructure. This letter indicated that a new effective date would be March 4, 2012, and granted a time extension until March 4, 2018 for the completion of phase 2. The letter determined that all future phases of construction would be benchmarked off of the March 4, 2018 date.

The construction of phase 2 shoreline park improvements was completed by the required deadline of March 4, 2018. Oceanside contacted the Planning Department to request inspection of the

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Shoreline Park improvements and was notified that a written request should be submitted. A letter documenting the completion of Phase 2 was submitted on behalf of Oceanside on April 18, 2018. To date, we have not had a response from the Planning Department so we assume that everything is completed with phase 2.

According to the established benchmarks, the date of completion for phase 3 of the shoreline park is March 4, 2021. Phase 3 required the preparation of a new archaeological site preservation plan. This was prepared and submitted to SHPD in October, 2018 and accepted on August 15, 2019. Despite this lengthy review period we were on track to complete the required improvements by March of 2020 in compliance with the tolled SMA No. 401. A contractor was selected, and notice to proceed was given on February 26, 2020 to begin the removal of invasive vegetation within the park improvement corridor. According to project schedules, the completion of shoreline park improvements was targeted for February 2021.

In light of the ongoing COVID-19 pandemic our contractor has decided to cease operations over concerns of the safety of their employees. Although construction is considered exempted under the Governor's stay-at-home order we recognize and appreciate the contractor's decision to be proactive in order to protect their employees from the spread of COVID-19, even though that decision has consequences for the construction schedule of park improvements. Sub Item A. of condition 17 of SMA No. 401 provides language indicating that an extension may be granted by the Planning Director if:

- A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.**

We believe that the ongoing COVID-19 pandemic and related economic consequences constitutes a force majeure identified in condition 17 (A). At this time none of us know what the full extent of the impacts will be.

I am sure your office is facing its own set of unique challenges relating to the COVID-19 pandemic. At this point we not asking for an extension from the Planning Department, we are hopeful that the pandemic will be resolved quickly, our contractors will feel safe enough to come back to work, and we can complete this project by March 2021. However, we do want to provide this update to you in the event that the pandemic drags on and we are not able to complete this project in the required time frame. **We are requesting confirmation** from the planning department that the COVID-19 pandemic meets the definition of an unforeseeable circumstance that may prevent 1250 Oceanside LLC from completing the Shoreline Park by the established March 4, 2020 deadline.

Good luck to you and your staff in this difficult time. If you have any questions, please contact me at (808) 936-4674 or by email at mvitousek@hokulia.com.

Sincerely,



Michael K. Vitousek
Manager- Land and Development
1250 Oceanside, LLC