

HOKULIA

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PLANNING DEPARTMENT
COUNTY OF HAWAII

January 14, 2004

Mr. Christopher J. Yuen, Planning Director
County of Hawaii Planning Department
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

ATTENTION: NORMAN HAYASHI

**Subject: 2004 Annual Reports
Development Agreement No. 1
Change of Zone Ordinance No. 96-7 (REV 812)
Change of Zone Ordinance No. 96-8 (REV 765)
Special Management Area Use Permit No. 356**

Dear Mr. Yuen:

I am pleased to submit the following annual reports for Development Agreement No. 1 ("Agreement") by and between the County of Hawaii ("County") and Oceanside 1250 ("Oceanside"), in accordance with Item 24 of said Agreement, Condition No. R of Change of Zone Ordinance No. 96-7, Condition No. V of Change of Zone Ordinance No. 96-8 and Condition No. 13 of Special Management Area Use Permit No. 356. This letter is intended to supplement the prior annual reports. To that extent we will attempt not to simply repeat the issues addressed in our prior reports regarding the legal status of the project. However, if there are any issues which you believe are not covered within the attachments, please do not hesitate to contact me so that we can fill in any perceived gaps with this report. It is intended to comply with the requirements under the Development Agreement.

As you are aware, in April of 1998, Oceanside 1250 and the Hawaii County entered a Development Agreement to specifically identify the obligations of Oceanside, to provide a mechanism to give assurance to the County and public that these obligations are being met in a timely manner, to provide assurances to Oceanside that it may complete full development of the Hokukano Project ("Project") and the Mamalahoa Highway Bypass ("Bypass"), to allow Oceanside and the County to enter a reimbursement agreement for costs associated with the Bypass and to reduce or eliminate uncertainty in the responsibilities of Oceanside and the County relating to the development of the Project and the Bypass. The scope and purpose of the Development Agreement is consistent with Ordinance 93-37, the Development Agreement Code and Rule 1, which implements procedures for the application, preparation and administration of

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development agreements as provided by Ordinance 93-37. The Development Agreement was executed and approved by the Mayor on April 20, 1998.

Golf Course:

The Golf Course was opened in July of 2002. Detailed compliance with the conditions of approval of Use Permit No. 115 and SMA Permit No. 345 for the golf course will be provided in the 2003 annual reports for these permits October of 2003. In the recent litigation in the Third Circuit the Court confirmed that the golf course was a permitted use in the agricultural district and has allowed the golf course to remain open, as such we will continue to monitor the golf course.

Mamalahoa Highway Bypass:

The Mamalahoa Highway Bypass was in part, designed to address existing traffic conditions in the area and to provide an alternative route for interregional traffic between North and South Kona in support of the County's long-range traffic plan. The Draft Environmental Impact Statement Final Environmental Impact Statement (DEI and FEIS) were both approved and accepted by Department of Public Works. Construction of the Bypass Highway was commenced in January 2001 and continued during the past year. However, the Third Circuit Court in September, 2003, ruled that the entire project did not conform to the requirements contained in Chapter 205 of the Hawaii Revised Statutes and all construction of the Bypass Highway has been halted, pending the resolution of the land use litigation.

Coastline Park:

Oceanside obtained approval of the Public Access and Shoreline Management Plan on January 29, 1999. This plan addresses the public access areas, perpetual access covenants, archaeology, marine resources and related improvement measures. Details of the provisions for historical sites were developed and will be implemented as part of the comprehensive archaeological mitigation plan that was approved by SHPD on September 7, 1999 and September 15, 1999. We are in the process of completing an Archaeology Inventory Survey for the State Parcel at Hokukano Village.

In addition, Oceanside obtained approval of both the CDUA HA-2977 and SMA Permit No. 401 that outline the proposed facilities to be developed in the Coastline Park. We are in the process of preparing the necessary documents as required and anticipate the preparation of construction plans as required by the conditions of approval of both permits to ensure that they are complied with. The first phase of the coastline park with the required public parking stalls was opened on August 1, 2002. The Court in the Third Circuit litigation has allowed continued development of

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the coastline park, but has ruled that the entire project require Land Commission approval. To that extent no new construction will be conducted on the Coastline Park pending the resolution of the land use litigation.

Members' Lodge:

1250 Oceanside has conducted various architectural and planning studies for the lodge facilities, its development, phasing and scheduling. SMA Permit No. 403 for the facility was approved by the Planning Commission on May 5th, 2000. In December of 2001, we submitted an application for Final Plan Approval to the Planning Department. An administrative time extension was granted by the Planning Director on February 18, 2002, to comply with all conditions of approval of Change of Zone Ordinance No. 97-36 by March 13, 2007. However, the Member's Lodge is the subject of on-going litigation. At this time, the Circuit Court has ruled that the zoning is invalid as "spot zoning" and has invalidated the underlying Ordinance. Oceanside does not agree with the court's ruling and intends to appeal to the Hawaii Supreme Court at the appropriate time.

Archaeology:

Oceanside obtained approval from SHPD on September 7, 1999 and September 15, 1999 of the Archaeological Mitigation Plan that includes a data recovery plan, an interim protection/preservation plan, interpretive plan and a monitoring plan. We are currently in the process of preparing the final Preservation Plan in consultation with DLNR and Hawaiian community organizations. As required by the terms of the land use entitlements for the Project, approved mitigation measures are being implemented prior to or in conjunction with land alteration activities on the property. In addition, the Circuit Court ordered Oceanside to submit another Burial Treatment Plan to the Hawaii Island Burial Council relating to a number of "inadvertent" burial sites discovered during archaeological monitoring "sweeps" of the property. While Oceanside does not agree with the court's ruling and intends to appeal, on January 16, 2003 Oceanside submitted the new Burial Treatment Plan as ordered.

Subdivision:

Phase 1 subdivision improvements are currently under construction including all of the underground utilities and roadway improvements. On December 1, 2000, the County issued Final Subdivision approval for Phase 2 that includes 98 lots plus roadways and easements for the second increment of residential/agricultural lots in the project. In September, 2003, the Third Circuit ruled that the entire project as it was then constituted required land use commission approval. The subdivision ordinances were not deemed to be void by the Court and presumably are still in full force and effect. To the extent that the Court's ruling on the land use creates an

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ambiguity as to the current status of the subdivision and the subdivided lots, Oceanside disagrees and intends to appeal.

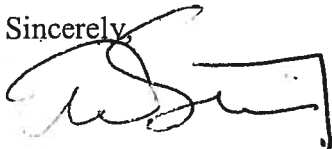
Other Items:

There are no other items to report that affect the status of the Project or the Bypass as it relates to the terms of the ordinances. However, as you are aware the Third Circuit Court has ruled that the project does not now and must in the future comply with Chapter 205 of the Hawaii Revised Statutes. Oceanside 1250 intends to meet all of the terms and comply with all of the conditions that are specified within each ordinance and the Agreement. However, with the current status of the Court rulings resulting from the orders and judgments issued in the land use litigation in the Third Circuit, there is a limited ability on the part of Oceanside 1250 to ensure that all of the conditions set forth in the ordinances and Agreement are met in a timely manner. Oceanside 1250 will attempt to use all of its energies and resources to meet any and all of the requirements set forth in the ordinances and the Agreement with the County. If Oceanside 1250 recognizes, from time to time, that certain challenges exist to prevent the full satisfaction of any of the terms and conditions of the ordinances or Agreement, we will notify you in advance so we can come to a mutual resolution of any such potential challenges. To date however, we believe that this letter and the actions described herein constitute full compliance with all of the terms and conditions contained in the ordinances and Agreement and that Oceanside 1250 is in good standing under its obligations.

For your reference, we have attached matrix charts for Development Agreement No. 1, Change of Zone Ordinance No. 96-7, Change of Zone Ordinance 96-8 and Special Management Area Use Permit No. 356 that indicate the status and compliance for each condition for the Development Agreement, the two change of zone ordinances and the SMA permit.

I trust the above provides a useful description of the status of development and compliance with the conditions of approval for the ordinances. Should you have any questions regarding this report, or if you require further information regarding the Project, please contact me at (808) 324-4212.

Sincerely,



Robert A. Stuit
Vice President of Development

Attachments

Cc: County of Hawaii Planning Department, Kailua-Kona Branch

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Permit No.	Condition	Status	Comments
SMA 356 1.	The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.	On-Going	Hokuli'a agrees that it will comply with all stated conditions of approval.
SMA 356 2.	The applicant shall indemnify and hold the County harmless and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees arising under this permit.	Complied	Indemnification has been incorporated into project CC&R's.
SMA 356 3.	The effective date of this Special Management Area Use Permit shall be the effective date of the Change of zone.	Complied	Effective date of Ord. 96-7 is January 15, 1996.
SMA 356 4	<p>An Archaeological Mitigation and Interpretation Plan shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division and Hawaiian community organizations, prior to submitting plans for plan approval review. The plan shall consist of three subplans:</p> <p>(A) An archaeological data recovery plan for the sites to undergo data recovery,</p> <p>(B) A detailed interim protection/preservation plan for the sites to under preservation, and</p> <p>(C) An interpretation plan which shall include buffer zones, signage, and long-range preservation concerns which may be submitted at a later date. Approved mitigation measures shall be implemented prior to or in conjunction with any land alteration activity within the</p>	<p>Complied</p> <p>Complied</p> <p>In Process</p>	<p>Letters dated 9/7/99 and 9/15/99 from SHPD approved the Data Recovery Plan and the Preservation and Interpretive and Monitoring Plans, respectively.</p> <p>Hokuli'a will comply with the requirements of the approved mitigation plan prior to or in conjunction with any land alternation.</p>

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Permit No.	Condition	Status	Comments
	<p>project area. The Plan shall also include a detailed map of known lava tube/cave systems located within the project site and mitigative measures to ensure that the proposed development does not impact these cave systems.</p>	In Process	
SMA 356 6.	<p>A Natural Resource Management Plan shall be submitted for review and approval by the Planning Director, in consultation with the Department of Land and Natural Resources, prior to securing Final Subdivision Approval.</p>	Complied	<p>NRM was approved by the County on July 9, 1999.</p>
SMA 356 7.	<p>A detailed drainage study shall be prepared by the Applicant for review and approval by the Department of Public Works prior to submittal of plans for Subdivision Approval review of the agricultural subdivision. A drainage system shall be installed meeting with the approval of the Department of Public Works, prior to securing Final Subdivision Approval.</p>	In Process	<p>Flood and Drainage Study for Phase 1 and 2 areas were submitted August 4, 1999. Hokuli'a will comply with this requirement.</p>
SMA 356 8.	<p>Use of pesticides and herbicides in conjunction with all phases of operation shall conform with the applicable regulations of the appropriate government agencies.</p>	On-Going	<p>Hokuli'a agrees to comply with this condition.</p>
SMA 356 11.	<p>All electrical and communication utilities and systems within the Project site shall be placed underground, with the exception of the main 69 KV transmission line from the Mamalahoa Highway to the proposed electrical substation site.</p>	In Process	<p>Hokuli'a will comply with this requirement. Utility improvements for Phase 1 and 2 were bonded and Phase I is currently under construction.</p>

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SMA 356 12.	A wastewater disposal system shall be constructed in a manner meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable.	In Process	Hokuli`a will comply with this requirement. Wastewater disposal system was bonded as part of subdivision improvements for Phase 1 and 2 of Hokuli`a and is currently under construction.
SMA 356 13.	An annual progress report shall be submitted to the Planning Director prior to each anniversary date of the approval of this permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.	On-Going	Hokuli`a will provide annual reports to the County in accordance with this requirement.
SMA 356 14.	An extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances: (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; (B) granting of the time extension would not be contrary to the General Plan or Zoning Code; (C) granting of the time extension would not be contrary to the original reasons for the granting of this permit; (D) the time extension granted shall not be for period not to exceed the period originally granted for performance (i.e., a condition to be	On-Going	Hokuli`a acknowledges that a time extension for compliance with the conditions of approval may be granted by the Director

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Permit No.	Condition	Status	Comments
	performed within one year may be extended for up to one additional year). Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke this permit.		