

HŌKULĪĀ

May 3, 2004

2004 MAY 5 PM 2 40

PLANNING
COMMISSION

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

Subject: Hokuli'a 2004 Annual Reports

✓ **SMA Permit 401 - Shoreline Park
Condition No. 16 – Annual Report**

**Tax Map Key: 7-9-012: portion of 003, TMK: 8-1-004: portion of 3,
TMK:8-1-004: portion of 65**

**SMA Permit 402 - Mamalahoa Highway Bypass
Condition No. 8 – Annual Report**

Tax Map Key: 7-8-010: portion of 030

**SMA Permit 403 - Members' Lodge
Condition No. 11 – Annual Report**

Tax Map Key: 8-1-004: portion of 68

**SMA Permit 404 - Wastewater Treatment Plan
Condition No. 10 – Annual Report**

TMK: 8-1-004: portion of 3

**Special Permit No. 1056 - Wastewater Treatment Plant
Condition No. 10 – Annual Report**

TMK: 8-1-004: portion of 3

Dear Mr. Yuen:

This letter is sent to fulfill the annual report requirement as required by each of the above referenced Special Management Area Major Use Permits (SMA) and Special Permit conditions of approval that were approved by the Planning Commission on May 5, 2000. Since these permits have conditions that are common across each permit, the report addresses those conditions that are similar in bulk, while those individual conditions that are unique to separate permits are addressed separately in the attached matrix for each of the above-referenced permits.

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Archaeology

Oceanside obtained approval from SHPD on September 7, 1999 and September 15, 1999 for the Integrated 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 Plans 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 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 the archaeological "sweeps" of the property. While Oceanside does not agree with the court's ruling, it submitted the new Burial Treatment Plan as ordered on January 16, 2003. Oceanside also submitted Burial Preservation Plans in September 2003.

Separately for the Bypass, an Archaeological Inventory Survey and Data Recovery Plan have been approved by DLNR-SHPD.

Shoreline Park

In regard to the Shoreline Park, the Board of Land and Natural Resources approved a Conservation District Use Application in November 17, 2000 (CDUA No. HA-2977). A detailed site plan for improvements on the park is currently in preparation and will be submitted in conjunction with the final archaeological preservation plan for the shoreline area. The park improvements are designed to comply with and implement the measures from the Comprehensive Public Access Plan, the SMA, and the CDUA, including measures for access, parking, signage, emergency response, use restrictions, recreational improvements, restroom facilities, trails and archaeological preservation and interpretive measures.

The first phase of the Shoreline 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 the Shoreline Park, but has ruled that the project requires Land Commission approval. To that extent, no new construction will be conducted on the Shoreline Park pending the resolution of the land use litigation.

Mamalaho Highway Bypass

The Mamalaho Highway Bypass is 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 Final Environmental Impact Statement was approved and accepted by Department of Public Works on November 15, 1999. SHPD approved the Archaeological Inventory Survey on

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November 21, 2001. Construction started in January 2002 and is nearly complete for that portion between Keauhou and the project. The last portion of the construction plans for the south end are in final preparation before submittal to the County for review and approval. However, the Third Circuit Court in September, 2003, ruled that the 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.

Member's Lodge

We have conducted various development, phasing and scheduling, architectural and planning studies for the lodge facilities. 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, all work is on hold as Member's Lodge is the subject of on-going litigation.

WWTP

In regard to the wastewater treatment plant (WWTP), Final Plan Approval was granted in July 2002 and construction of Phase I was started, but has been halted due to the September 2003 court ruling.

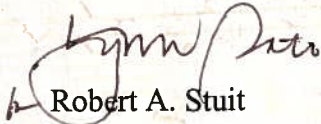
In view of the current status of the Court rulings there is a limited ability on the part of Oceanside 1250 to ensure that all of the conditions set forth in the various permits and ordinances are met in a timely manner. Oceanside 1250 will attempt to use all of its energies and resources to meet any and all of the requirements set forth in these permits and ordinances. 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 these permits and ordinances, 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 permits and that Oceanside 1250 is in good standing under its obligations.

I trust this report provides the information adequate for the annual report condition for the above-referenced permits. Again for your reference, please find attached, a separate matrix for each of the above-referenced permits that shows the status and compliance of each condition.

Mr. Christopher J. Yuen, Planning Director
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Should you have any questions regarding this information, please contact me at (808) 324-4212.

Sincerely yours,



Robert A. Stuit
Vice President of Development

Cc: John De Fries
Bob Rice
Malcolm Patten
Yutaka Takeda

Hokuli'a
Special Management Area Major Use Permit No. 401 (Effective Date: May 5, 2000)
Request: To Allow Development of a Shoreline Park and Related Uses
Tax Map Key: 7-9-012: portion of 003; 8-1-004: portion of 003
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Condition No.	Condition	Status	Date of Compliance
SMA 401-1	The applicant, successors, or assigns shall be responsible for complying with all stated Conditions of Approval	Ongoing	Hokuli'a agrees that it will comply with all stated conditions of approval.
SMA 401-2	A conservation district use permit shall be secured by the applicant from the Department of Land and Natural Resources.	Complied	1. CDUA No. HA-2977 approved November 17, 2000.
SMA 401-3	The Shoreline Park and related improvements shall comply with the Final Comprehensive Public Access Plan (FCPAP) approved by the Planning Director in consultation with the Department of Land and Natural Resources (DLNR). The plan includes measures for mauka-makai and lateral shoreline accesses, parking area(s), signage, emergency response considerations, restrictions on use, provision of recreational and restroom facilities and related improvements. The plan also integrates public accessways to the trail system and to appropriate historical and archaeological sites.	Complied	<ol style="list-style-type: none"> 1. Public Access and Shoreline Management Plan approved on January 29, 1999. 2. The first Phase of the coastline park with the required public parking stalls was opened on August 1, 2002.
SMA 401-4	An area comprising of twenty-five (25%) of the total park area shall be developed and improved by the applicant in phases within five (5) years from the date of final subdivision approval, September 18, 1999. The first phase shall be completed and open to the public within (30) days following the opening of the golf course.	Ongoing	1. The first Phase of the coastline park with the required public parking stalls was opened on August 1, 2002.
SMA 401-5	Upon opening the first phase of the park area, a minimum of twenty five (25) public parking stalls shall be provided in addition to parking stalls for residents, guests, and employees within the subject property and the applicant's adjacent lands at the principal shoreline access parking area(s). Signage relating to provisions for public access for night fishing and marine food gathering purposes over designated vehicular and pedestrian access routes subject to restrictions which limit said uses to recreation uses only, and other restrictions which provide for health and safety of the general public and residents alike shall also be posted upon opening. Additional parking stalls may be required with subsequent park development phases.	Ongoing	1. The first Phase of the coastline park with the required 25 public parking stalls was opened on August 1, 2002.
SMA 401-6	To provide for ongoing management of the coastal area and the shoreline	In Process	Hokuli'a agrees to comply with this condition.

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Condition No.	Condition	Status	Date of Compliance
SMA 401-7	<p>marine resources, a program for the long-term management of the coastal area and shoreline marine resources shall be implemented with the participation of an advisory committee consisting of representatives of community groups, the park owner, the park management entity, and other interested individuals.</p> <p>A Solid Waste Management Plan shall be prepared meeting with the approval of Department of Public Works, prior to submitting plans for Final Plan Approval. The plan shall include, but not be limited to, the management of construction solid waste as well as operating and domestic solid waste generated by the proposed development. Approval recommendations and mitigation measures shall be implemented meeting with the approval of the Department of Public Works.</p>	In Process	<ol style="list-style-type: none"> 1. A Solid Waste Management Plan was approved by the DPW on October 31, 2000. 2. Hokuli'a agrees to comply with this condition.
SMA 401-8	<p>During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.</p>	Ongoing	Hokuli'a agrees to comply with this condition.
SMA 401-9	<p>All electrical and communication utilities and systems within the project site shall be placed underground.</p>	In Process	<p>The utility improvements for Phase 1 and 2 were bonded in accordance with Section 23-81 of the Subdivision Code and Paragraph 13 of Development Agreement No. 1.</p> <p>Hokuli'a agrees to comply with this condition.</p>

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Condition No.	Condition	Status	Date of Compliance
SMA 401-10	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	<ol style="list-style-type: none"> The wastewater disposal system improvements for Phase 1 and 2 was bonded in accordance with Section 23-81 of the Subdivision Code and Paragraph 13 of Development Agreement No. 1. Hokuli'a agrees to comply with this condition.
SMA 401-11	Construction of improvements within the shoreline park shall be subject to the requirements of Chapter 27- Flood Control, of the Hawaii County Code. Campsites should not be located within the flood zones.	Ongoing	<ol style="list-style-type: none"> See FCPAP approved on January 29, 1999 The first Phase of the coastline park with the required public parking stalls was opened on August 1, 2002. Hokuli'a agrees to comply with this condition.
SMA 401-12	An interpretation plan shall be prepared and submitted to Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division and Hawaiian community organizations. Approved mitigation measures shall be implemented prior to or in conjunction with any land alteration activity within the project area. The Plan shall also include a map of known lava tube/cave systems located within the shoreline park site.	Ongoing	Hokuli'a agrees to comply with this condition.
SMA 401-13	Proposed mitigation treatment (preservation in place or disinterment/reinterment) for burial sites must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans area finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for any land alteration permits.	Ongoing	Hokuli'a agrees to comply with this condition.
SMA 401-14	Should any unrecorded remains of historic sites, such as lava tubes, walls, terraces, platforms, artifacts, marine shell concentrations, or human burials be encountered, work in the affected area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient	Ongoing	Hokuli'a agrees to comply with this condition.

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Condition No.	Condition	Status	Date of Compliance
	mitigative measures have been taken..		
SMA 401-15	The applicant shall comply with all applicable laws, rules, regulations and requirements.	Ongoing	Hokuli'a agrees to comply with this condition.
SMA 401-16	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	<ol style="list-style-type: none"> 1. 2001 Annual Report submitted on May 4, 2001. 2. 2002 Annual Report submitted on May 3, 2002. 3. 2003 Annual Report submitted on April 17, 2003. Hokuli'a agrees to comply with this condition.
SMA 401-17	An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances: <ol style="list-style-type: none"> 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 be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). This approval does not, however, sanction the specific plans submitted with the application s they may be subject to change given specific code and regulatory requirements of the affected agencies.	On-Going	Hokuli'a acknowledges that a time extension for compliance with the conditions of approval may be granted by the Planning Director.



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COUNTY OF HAWAII
PLANNING
DEPT.

July 25, 2003

James C. Paige
Deputy Attorney General
465 S. King Street, Room 300
Honolulu, Hawaii 96813

RE: Peter T. Young Letter dated July 18, 2003
Lifting Cease and Desist Order, Pu`u Ohau

Dear Mr. Paige:

On July 24, 2003, this office received a copy of BLNR Chairperson Peter T. Young's July 18, 2003 letter to John DeFries informing him and others that the cease and desist order for Pu`u Ohau had been lifted. This office is troubled by Mr. Young's clear misrepresentation of the facts as evidenced by the last sentence of the third paragraph on page one. By that sentence, your client claims "[t]he court ultimately determined that the letter [to Mr. DeFries from Mr. Young dated January 28, 2003 regarding the placement of the protective wall around Pu`u Ohau] complied with the terms of the settlement agreement."

As you well know, the court did no such thing. This statement is patently false. As counsel for Defendant DLNR, you attended hearings on each of Plaintiff PKO's motions to vacate. Therefore, you know first hand that while the court denied these motions, it did not rule on the merits because Plaintiffs still had the option of filing an independent cause of action for your client's breach of the settlement agreement. Furthermore, as an officer of the court and at the hearing on PKO's second motion, you in fact argued that the court need not consider the merits of Plaintiffs motion because Plaintiffs could file an independent action for enforcement of the settlement agreement. PKO and Plaintiff Kelly have done so and I understand that you have both received an unfiled copy of the complaint for specific performance and were recently served a filed copy.

Given your client's misrepresentation of the current state of affairs, PKO requests that you, as Chairperson Young's counsel, require that he set the record straight in writing to all concerned.

038528

James C. Paige, Esq.
RE: Pu`u Ohau
July 25, 2003
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In addition, my office has extremely credible genealogical evidence that the Keohokalole `ohana is not a lineal descendant, collateral or otherwise, to Kamae. As such, prior recognition of this `ohana as the "senior descendant line" to Kamae is erroneous. Your client has relied heavily on the opinion of this `ohana to make his decision dated January 28, 2003 regarding the placement of the 6-foot high wall around Pu`u Ohau. Given this revelation, which we invite your client's genealogist staff to verify, my client Protect Keopuka `Ohana, demands the immediate retraction of your client's January 23, 2003 decision.

Should you disagree with the above or wish to discuss this matter further please do not hesitate to contact me at 521-2302.

Sincerely,



Moses K. N. Haia III

cc: Peter T. Young
John DeFries
Chris Yuen
Jim Medeiros, Sr.
Walter John Kelly
Members of the Hawaii Island Burial Council