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PLANNING DEPARTMENT  
COUNTY OF HAWAII

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December 3, 2013

Duane Kanuha  
Planning Director  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720  
Attn: Daryn Arai

Re: Applicant: 1250 Oceanside Partners  
Satisfaction of Condition P (Agricultural Activity) of Ordinance No. 96-8 for the  
Hokuli'a Project  
TMK Nos. (3) 7-9-006:001 (por.), (3) 7-9-012:003, 004 and 005 (pors.)  
and (3) 8-1-004:003 (por.)

Dear Mr. Kanuha:

By this letter, 1250 Oceanside Partners ("Oceanside") requests that the Planning Department confirm that Oceanside, as the developer of the Hokuli'a project at North and South Kona under Ordinance No. 96-8 (the "Ordinance"), has satisfied the developer's obligations under Condition P (Agricultural Activity) under the Ordinance. As discussed below, Oceanside has satisfied Condition P of the Ordinance by including agricultural use requirements in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Hokuli'a (the "Amended Declaration") and by designating various areas, easements and portions of each lot within the Hokuli'a project (the "Project") for agricultural uses. The Hokuli'a Agriculture Plan requires that a minimum of 20% of each lot be designated for agricultural use.

At our last meeting on October 16, 2013, we informed you that Oceanside terminated its Class "B" Membership and the Class "B" Control Period in 2012 and is no longer in control of the Homeowners Community Association ("HCA"). Pursuant to the terms of an Umbrella Agreement entered into in 2012 by Oceanside, the HCA and Red Hill 1250, Inc., the HCA has assumed and is responsible for performing the developer's obligations under the Amended Declaration, to include the requirements of Condition P of the Ordinance. Therefore, Oceanside has satisfied Condition P to the fullest extent of its legal ability and authority, and the HCA and the individual lot owners are now responsible for implementing and complying with the remaining obligations of Condition P as they relate to the farm plans for the individual lots and the common areas within the Hokuli'a project.



A. **Condition P of Ordinance 96-8**

Condition P of Ordinance 96-8 states:

It shall be demonstrated to the satisfaction of the Planning Director that agricultural activity is being conducted on the subdivided lots within three years from the date of Final Subdivision Approval. For the purpose[s] of this condition, "agriculture" shall be defined as the cultivation of crops, including but not limited to flowers, vegetable, foliage, and fruits that are propagated for economic or personal use. An agricultural activity will be considered satisfactory:

- (1) if such activity is implementing a conservation program for the affected property(ies), as approved by the applicable soil and water conservation district directors and filed with the Soil Conservation Service;
- (2) if it provides a source of income to the person(s) who reside on the property; or
- (3) if the property is dedicated for agriculture uses in accordance with applicable Tax Department procedures and that such agriculture dedication shall be made a deed covenant and duly recorded with the State Bureau of Conveyances and a copy of the recorded deed shall be filed with the Planning Department within one year from the date of Final Subdivision Approval.

Each approved lot must comply with at least one of the above requirements to satisfy the conditions of approval of this ordinance.

(Emphasis added.)

B. **Oceanside Established Minimum Requirements for Agricultural Uses Within the Project.**

Oceanside, as the developer of the Project, recorded the Amended Declaration in 2006, which was within the extended time period for compliance from the date of Final Subdivision Approval". (The original three-year deadline from the date of Final Subdivision Approval was September 18, 2002. That deadline was extended to January 20, 2008 to account for the period

of the litigation in Civil No. 00-1-0192K and was further extended to January 20, 2011.) The Amended Declaration includes the following provisions regarding Agricultural Uses with the Project:

- Section 11.10 ("Easement for Agricultural Uses")
- Section 11.12 ("Easement for Maintenance of Lots")
- Section 11.16 ("Association Easements")
- Section 17.1 ("Acknowledgment of Agricultural Use")
- Section 17.2 ("Control of Agricultural Use")
- Section 17.3 ("Management of Agricultural Use")
- Section 17.4 ("Right of Access")
- Section 17.5 ("Distribution of Income from Agricultural Uses")
- Section 17.6 ("Declarant's Right to Designate Agricultural Use")
- Section 17.7 ("Agricultural Use Rules")
- Section 17.8 ("Termination of Agricultural Use")

Copies of the foregoing sections of the Amended Declaration are attached hereto as **Exhibit "A"**.

An "Addendum to the Hokuli'a Agriculture Plan, March 2008" (the "Hokuli'a Agriculture Plan") provides that "[a] minimum of 20% of each lot will be designated for agricultural use" and includes charts showing the "Gross Lot Area", "Ag. Area as 20% of Lot Area" and "Association Easement Area" for each lot in Phase 3 North and Phase 3 South of the Project. A copy of the Hokuli'a Agriculture Plan is attached hereto as **Exhibit "B"**.

**C. Income Generated by the Agricultural Uses Described in the Amended Declaration Will Provide a Source of Income to the Lot Owners,**

Condition P states that an agricultural activity will be considered satisfactory "if it provides a source of income to the person(s) who reside on the property". Oceanside has met this requirement by including the following provision in the Amended Declaration:

17.5 The Association, as agent for the Owners, shall collect all income generated from the Agricultural Use of the Property including, but not limited to, license fees and sales of Agricultural Products, except such income as generated by an Owner by his/her Agricultural Use of the Natural Area or Potential Improvement Area of the Owner's Lot, which income shall be the sole property of such Owner. The income so produced to the Association shall, to the extent not needed by the Association for conducting Agricultural Use, be distributed to the Owners.

**D. Oceanside Terminated Its Control of the Association of Hokuli'a Lot Owners in 2012 and the HCA and the Lot Owners Are Now Responsible for Implementing and Complying with the Specifics of Condition P.**

By a Termination of Class "B" Membership and Class "B" Control Period In Hokuli'a Community Association, Inc., dated March 30, 2012 and recorded in the Bureau as Document A-44820604, a copy of which is attached hereto as **Exhibit "C"**, Oceanside terminated the Class "B" Control Period and terminated its Class "B" Membership in the HCA effective as of March 30, 2012, and Oceanside has not been in control of the HCA since that time.

As provided in Section 17.1 ("Acknowledgment of Agricultural Use") of the Amended Declaration, the HCA is responsible for implementing and ensuring compliance with the Agricultural Use requirements. Section 17.1 states:

The Association shall have the authority to ensure that use of the Property, particularly the Lots, complies fully with the Agricultural Use requirements imposed by applicable land use regulations and zoning laws of the County and State of Hawaii, including Hawaii County Ordinances 96-7 and 96-8, SMA Permit No. 356, Hawaii Revised Statutes §§ 205-2(d) and 205-4.5 and Chapter 25 of the Hawaii County Code. . . .

Section 17.7 ("Agricultural Use Rule") of the Amended Declaration provides that the HCA Board "shall have the authority to adopt additional rules, restrictions, and regulations with regard to the Agricultural Use of the Property."

For the reasons set forth above, Oceanside requests that the Planning Department confirm that Oceanside, as the developer of the Hokuli'a project, has satisfied its responsibilities and obligations by recording the Amended Declaration and issuing the Hokuli'a Agriculture Plan. Oceanside terminated the Class "B" Control Period and its Class "B" Membership in the HCA in 2012 and the HCA assumed Oceanside's (developer) obligations under the Amended Declaration, and the Hokuli'a Agriculture Plan. Prior to relinquishing control of the HCA in 2012, Oceanside had satisfied Condition P of Ordinance 96-8 to the fullest extent of its legal authority. Since that time, the HCA and the individual lot owners have been responsible for implementing and ensuring compliance with the agricultural use requirements originally established by Oceanside in the Amended Declaration and the Hokuli'a Agriculture Plan.

Please feel free to contact me should you have any questions concerning this matter or require additional information.

Very truly yours,

  
STEVEN S.C. LIM

SSL:JOH

Attachments - Exhibits "A" - "C"