

SMA 306

Harry Kim
Mayor



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County of Hawaii

PLANNING DEPARTMENT

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June 1, 2007

Mr. Robert A. Stuit
Vice President of Development
1250 OCEANSIDE PARTNERS
78-6831 Alii Drive, Suite K-15
Kailua-Kona, HI 96740-2440

Dear Mr. Stuit:

**SUBJECT: HOKULI'A PROJECT, ORDINANCE NOS. 96-7 AND 96-8
SMA PERMIT NOS. 345, 356, 401-404, USE PERMIT NO. 115,
SPECIAL PERMIT NO. 1056**

This letter is in response to a request that the Planning Department issue a more general letter on the subject of time extensions due to the litigation involving this project. We wrote a letter to you dated April 20, 2007, stating that the litigation, Civ. No. 00-1-0192K, would have the effect of extending time for performance, from the filing of the complaint, October, 2000, to the approval of the Settlement Agreement and dismissal of the case, March 2, 2006. That letter referred only to SMA Permit Nos. 401-404.

There is legal precedent that litigation challenging the validity of land use approvals has the effect of tolling deadlines for performance contained in those approvals, when it would not be prudent for the defendant landowner to proceed with investments necessary to meet those time deadlines. We applied this general rule in our April 20, 2007 letter.

We will apply this same tolling of deadlines to other deadlines in the various other land use approvals for the Hokuli'a project. The operative land use approvals currently, other than SMA Permit Nos. 401-404, are Ord. 96-7 and 96-8, SMA Permit Nos. 345 and 356, Special Permit No. 1056, and Use Permit No. 115.

We were asked specifically about Condition (P) of Ord. 96-8, which requires that agricultural activity be demonstrated on the subdivided lots within three years of final

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subdivision approval, for P(1) and P(2). Final subdivision approval was September 18, 1999, with respect to the lots affected by Ord. 96-8. We had written a letter dated August 26, 2002, granting a three-year extension to perform under P(1) or P(2), at Oceanside's request. We believe that the time to perform was actually extended by the period of the litigation, hence the original three years will expire January 20, 2008, and the Planning Department can, thereafter, administratively extend time for another three years if you give us a written request containing information justifying this administrative time extension. On the other hand, Condition P(3) provided that the agricultural activity could be proven by dedicating the property for agricultural use and recording the appropriate covenants with the Bureau of Conveyances within one year of final subdivision approval. This one year had already passed by the time that the suit was filed, and even if administratively extended for the maximum one year allowed under the ordinance, that time would also have run out, even with tolling the period of the lawsuit. Hence, P(3) is no longer available as an option for satisfying the agricultural use requirement of Condition P.

We note the obligation to keep various bonds in effect, despite the tolling of deadlines.

We also note that the Development Agreement calls for the completion of the Bypass Highway within five years of the start of construction (paragraph 13(d)), subject to paragraph 39 (force majeure). The question of the applicability of this clause to the paragraph 13(d) deadline should be brought up with the Office of the Corporation Counsel; the Planning Department does not have the power to make this determination.

We ask that the various annual reports continue to be provided on their original anniversary dates, ignoring the tolling because of the litigation. We understand that this is different from what we said in our April 20, 2007 letter, but on further thought, it is much simpler this way and will result in a more consistent reporting period.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

CJY:pak
Wpwin60/Chris 07/Stuit - Hokulia Time Extension

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Vice President of Development
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cc: Mr. Bob Rice, 1250 OCEANSIDE PARTNERS
Corporation Counsel
Mr. Daryn Arai
Mr. Bennett Mark
Change of Zone Ordinance No. 96-7
Change of Zone Ordinance No. 9608
Special Management Area Use Permit Nos. 345, 356, 401-404
Use Permit No. 115
Special Permit No. 1056