



VIA EMAIL AND HAND DELIVERED

December 7, 2020

COH PLANNING DEP
DEC 7 2020 AM 11:4
REC'D HAND DELIVERED

Mr. Jeff Darrow, Planning Program Manager
Planning Department
COUNTY OF HAWAII
101 Pauahi Street
Hilo, HI 96720

Dear Mr. Darrow:

**Subject: SMA Permit No. ⁴⁰¹201 – Hokulia Phase I Shoreline Park
TMK: (3) 7-9-012: 003 and 8-1-004: 003**

As you are aware, the SMA Permit No. ⁴⁰¹201 was approved by the Planning Commission on May 23, 2000 for the development of a shoreline park and related improvements. In the attached letter, dated March 16, 2015, the developer's attorney (Mr. Steven Lim of Carlsmith Ball LLP informed your office that the then developer (1250 Oceanside LLC) had, among other activities, "*constructed 25 public parking stalls*" and "*installed portable restroom facilities*" which then became available for public use on August 1, 2002. The letter also acknowledged that the "*parking lot improvements were inadvertently located on Tax Map Key No.: (3) 8-1-034: 014 and 015.*"

In response to that letter and specifically in reference to the erroneous location of the public parking lot, in the attached letter, dated July 23, 2015, your office stated that "*this is a separate matter that must be dealt with independently as no compliance issues currently affect Phase I.*" (Emphasis added) It continued, however, that it be kept "*informed of plans that will accommodate the relocation and reconstruction of Phase I without compromising the availability of the park improvements for continual public use*"

Pursuant to the above and on behalf of the landowner (Lyle H. Anderson) of the inadvertently placed public parking area, we wish to inform you that the public parking area will be relocated to an adjoining property identified by TMK: 8-1-034: 013 (Lot 86). Please note that the relocated parking area is still "interim", as the permanent site is planned for TMK: 8-1-034: 027. A copy of the tax map showing the location of the existing and new "interim" parking and permanent parking areas is also attached.

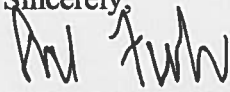
Further, this relocated "interim" parking lot will be a gravel lot that vehicles will be able to drive upon easily and safely. The portable restroom and corresponding signs will also be relocated to this site. Finally, until the relocation and the new "interim" parking lot is available for use, the existing "interim" parking area will continue to be used.

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Mr. Jeffrey Darrow, Planning Program Manager
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As you noted, its relocation "must be dealt with independently" of any County action, which the respective property owners have. Thus, our only obligation is to inform you of its relocation (which will begin immediately) and assurances that there be no break in parking usage. On the latter obligation, we will inform you of completion of this relocation.

Should you have questions on this matter, please feel free to contact me. Thank you very much!

Sincerely,

SIDNEY M. FUKÉ
Planning Consultant

Enclosures

Copy – Mr. Lyle Anderson w/ enclosures via email
Mr. Duane Grimsman w/ enclosures via email

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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WWW.CARLSMITH.COM

SLIM@CARLSMITH.COM

PLANNING DEPARTMENT

2015 MAR 16 PM 2:55

OUR REFERENCE NO.:
051730-00035

March 16, 2015

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

Re: Request for tolling of time for completion of the Phase 1 shoreline park
SMA Use Permit No. 401
Project: Hokuli'a
Applicant: 1250 Oceanside, LLC
Tax Map Key: (3) 7-9-012:003; 8-1-004:003 (the "Property")

Dear Mr. Kanuha:

On May 23, 2000, the Planning Commission issued Special Management Area Use Permit No. 401 ("SMA 401"), to allow the development of a shoreline park and related used and improvements, specifically located at Tax Map Key: (3) 7-9-012: Portion of 003 and 8-1-004: Portion of 003. Shortly following the issuance of SMA 401, the State of Hawaii also issued Conservation District Use Permit No. HA-2977, to allow the construction of the shoreline park within the Conservation District.

Condition No. 4 of SMA 401, states:

"An area comprising twenty-five percent (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 thirty (30) days following the opening of the golf course."

In compliance with the above condition, 1250 Oceanside, LLC¹ ("1250") constructed 25 public parking stalls, installed portable restroom facilities, hand cleared trails to Keikiwaha Point, and provided adequate vehicular access from the Mamalahoa Highway to the parking area. The subject shoreline park improvements were opened and available for public use on August 1, 2002².

¹ Effective June 18, 2014, 1250 Oceanside Partners was converted to 1250 Oceanside, LLC, a Delaware limited liability company, which succeeded to all of the right, title and interest of 1250 Oceanside Partners. The original and successor entities are referred to herein as "Oceanside".

² Also complied with Change of Zone Ordinance No. 96-7 (Condition K.1) and Change of Zone Ordinance No. 96-8 (Condition H.1), which both contain a similar requirement.

Since emerging from bankruptcy on July 1, 2014, 1250 retained PBR Hawaii to review and update the 1998 Shoreline Park Management Plan to implement the remaining phases of the shoreline park. In order to honor its obligations to protect the cultural resources within the Conservation District, 1250 recently applied to State Office of Conservation and Coastal Lands to obtain approval to remove non-native vegetation, including the removal of any dead and hazardous trees. The vegetation clearing will help to facilitate the archaeological work needed to prepare a preservation plan for the southern portion of the shoreline park (SHPD/DLNR approved the June 2008 Historic Preservation Plan for the northern portion of the shoreline park, including the Phase 1 area, but excluding the State-owned parcel of Hokukano Village).

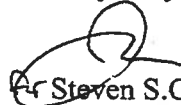
Although the Phase 1 shoreline park improvements have been opened and available for public use for over a decade, the project's consultants have recently informed 1250 that the parking lot improvements were inadvertently located on Tax Map Key No.: (3) 8-1-034: 014 and 015. In addition to relocating the existing parking improvements to the appropriate park parcel, 1250 intends to initiate renovations to the Phase 1 shoreline park. 1250's renovations will include the installation of additional park improvements in compliance with SMA 401, some of which will include the installation of appropriate interpretive and directional signage, trail improvements and landscaping, as determined by the updated Shoreline Park Management Plan, which 1250 will submit to the Planning Department for review and approval prior to the construction of actual improvements.

By letter dated April 20, 2007, as a result of litigation associated with Civil No. 00-1-0192K (Kelly Litigation), the Planning Department tolled the effective date of the various Hokuli'a permits, including SMA 401 until September 4, 2005. More recently, as a result of the bankruptcy proceedings that involved the Project, on October 30, 2014, the Planning Department tolled the effective dates of SMA 404 and Special Permit No. 1056 until March 4, 2012 to allow the continued development of the Phase 1 Waste Water Treatment Plant ("WWTP").

Similarly, and based on the circumstances outlined above which were outside of 1250's control, 1250 requests that the Planning Department toll the effective date of SMA 401 to March 4, 2012 (similar to 1250's earlier request for the WWTP entitlements). Based on our prior discussions, we understand that the tolling of the effective date of SMA 401 to March 4, 2012 would have the net effect of providing 1250 until March 4, 2017, to complete the necessary renovations to the Phase 1 shoreline park, as required by Condition No. 4 of SMA 401.

Thank you for your time and attention to this matter. Please contact me or my paralegal Jason Knable at 808-935-6644, if you have any questions or if you require any additional information.

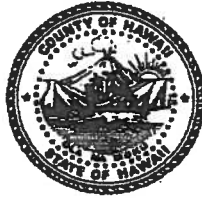
Very truly yours,


Ar Steven S.C. Lim

SSL/JKK1

cc: 1250 Oceanside, LLC

William P Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokaloie Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

July 23, 2015

Mr Steven S C. Lim, Esq
Carlsmith Ball, LLP
P O Box 686
Hilo, HI 96721-0686

Dear Mr Lim.

Request for tolling of time for completion of Hokulia Phase 1 Shoreline Park
As required by Condition No 4 of SMA Use Permit No 401 (SMA No 401)
Applicant: 1250 Oceanside, LLC
TMK. 7-9-012:003,8-1-004:003, Hokukano 1st thru Onouli, N & S Kona, Hawaii

This letter will respond to your March 16, 2015 letter described above, for which we have had discussions to clarify the scope of the request. We thank you for your patience and understanding.

Special Management Area Use Permit No 401 (SMA No 401) was issued by the Planning Commission on May 5, 2000, to development the shoreline park and related uses and improvements. The shoreline park, according to findings of the approval, comprised a total of 140 acres and was to be implemented according to the following schedule:

<u>Timing of Improvements</u>	<u>General Location</u>	<u>Timing</u>
Phase 1 - Park improvements	Nenua to Kainaliu	5 years
Phase 2 - Park improvements	Nenua 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 Keawekahaka	2 years

Condition No 4 of SMA No 401 specifies that:

“An area comprising twenty-five percent (25 %) of the total park area shall be developed and improved by the applicant in phases within five (5) years from

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Mr Steven S C. Lim, Esq.
Carlsmith Ball, LLP
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July 23, 2015

the date of final subdivision approval, September 18, 1999 The first phase shall be completed and open to the public within thirty (30) days following the opening of the golf course.”

As required by Condition No 4, a minimum of 35 acres of the proposed shoreline park shall be developed on or before May 5, 2005, which shall constitute all of Phase 1 and consisting of the following minimum improvements

- 1 25 paved public parking stalls,
2. Installation of signage for public access (night fishing and marine food gathering);
- 3 Improvements to existing trails and creation of new trails, trail connections & extensions;
- 4 Restroom, information kiosk, pavilions, civil defense warning system, park furniture;
- 5 Protection and stabilization of archaeological areas for picnicking and camping;
- 6 Landscape removal, remediation, and planting;
- 7 And appropriate signage of some historic sites as part of overall interpretive program.

As indicated in your letter, Phase 1 opened for public use on August 1, 2002, in compliance with the requirements of Condition No. 4

Phase 2 of the Shoreline Park, to contain similar improvements as specified for Phase 1, was to be available for public use by May 5, 2008, as required by Condition No 4 of SMA No 401

Our previous letter to your office and your client dated April 20, 2007 regarding other permits issued to 1250 Oceanside, LLC determined that the new effective date of the permits would be September 4, 2005, which considered the period during the litigation associated with Civil No. 00-1-0192K (Kelly Litigation). It is reasonable to apply the same tolling opportunities to SMA 401 As we previously mentioned, we will only consider the period during the bankruptcy proceedings in determining the amount of time tolled, as detailed below:

Bankruptcy Proceedings. December 31, 2007 through June 30, 2014 (6 yrs, 6 mos/2,373 days)

AMICO Settlement: March 2, 2012 through June 30, 2014 (2 yrs, 3 mos/28 days)
(this period runs concurrent with bankruptcy proceedings)

Therefore, with a revised permit effective date of September 4, 2005, and a period of 2,373 days tolled due to litigation, we conclude that the effective date of March 4, 2012 is hereby applied to SMA No. 401, the date from which the applicant must complete the remaining phases of the shoreline park as scheduled by Condition No 4 This means that Phase 2 shoreline park improvements should have been completed by March 4, 2015 However, we will exercise the option of an initial administrative time extension afforded by Condition No 17 to grant a time

Mr Steven S C Lim, Esq
Carlsmith Ball, LLP
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extension until March 4, 2018 by which to complete Phase 2. As you understand from our discussions, it is not reasonable to toll the Phase 1 completion deadline since it was tied to the opening of the golf course over a decade ago. Remaining phases will be benchmarked from this new March 4, 2018 completion deadline.

As for the relocation and reconstruction of the Phase 1 park improvements inadvertently located on incorrect properties, this is a separate matter that must be dealt with independently as no compliance issues currently affect Phase 1. The timing of relocating and reconstructing the Phase 1 park improvements is more a matter of when the applicant is interested in recovering the use of the affected properties for potential home sites and its effect on other proposed lots within this portion of the subdivision. We only ask that you keep this office informed of plans that will accommodate the relocation and reconstruction of Phase 1 without compromising the availability of the park improvements for continual public use.

We hope that we have covered all matters associated with your request. If additional information or clarification is needed, please do not hesitate to contact this office.

Sincerely,

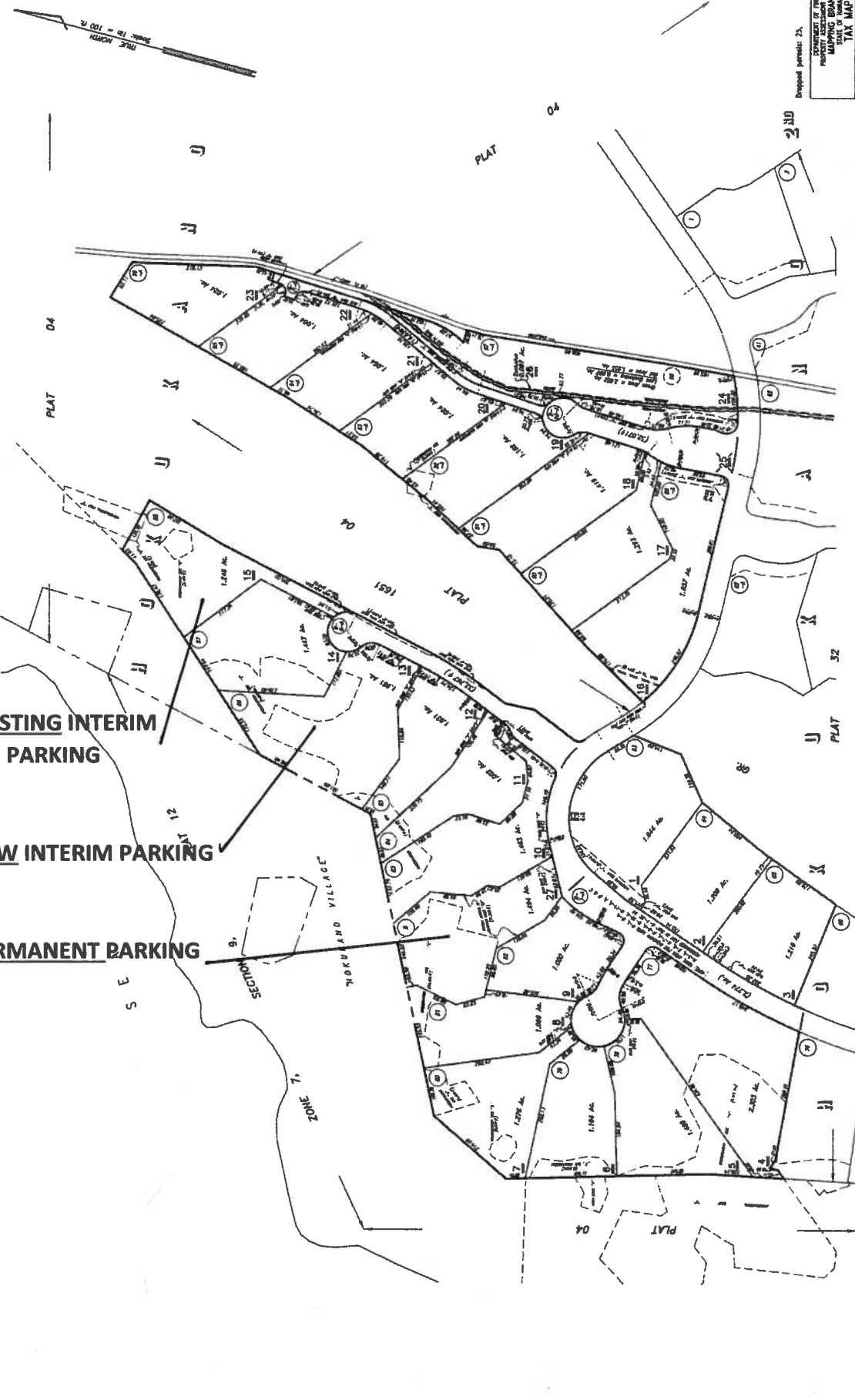


DUANE KANUHA
Planning Director

DSA.klt
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cc w/Carlsmith 3-16-15 ltr Planning, West Hawaii Division (SMA No. 401)

3RD. DIST. 8 - 1 - 34



**EXISTING INTERIM
PARKING**

NEW INTERIM PARKING

PERMANENT BARKING

11/07/04
7/21/06
4/25/07
6/16/11

DATE: 08/28/2007 BY: 01/2/S SOURCE: F.P. 2295, F.P. 2707, SUB-04-124, SUB-02-517

Dropped parcel 25.

DEPARTMENT OF REVENUE PROPERTY TAX DIVISION MAPPING BRANCH STATE OF HAWAII TAX MAP	
COUNTY OF HAWAII	PLAT
ZONE 8	SECTION 1
SCALE: 1 IN. = 100 FT.	
PRINTED:	

Owner, lessee, & vendee names are shown for information only and may not be correct. Please refer to computer and history sheets for current names.

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

"HOKULU'A, PHASE 2" (AMENDED), C.P. 2307
"HOKULU'A, PHASE 2", C.P. 2295, HOKUKANO 1ST & 2ND, NORTH KONA, HAWAII (FORMERLY POR. 8-1-04)