

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 • FAX: (808) 768-5106 • INTERNET: www.honolulu.gov



PETER B. CARLISLE
MAYOR

CARRIE K.S. OKINAGA
ACTING CORPORATION COUNSEL

KATHLEEN A. KELLY
FIRST DEPUTY CORPORATION COUNSEL

December 3, 2010

U.S. MAIL and Email (ecase@legalthawaii.com)

Edward E. Case, Esq.
Bays Deaver Lung Rose Holma
16th Floor, Ali'I Place
Honolulu, Hawaii 96813

U.S. MAIL and Email (ronald.ress@navy.mil)

R.G. Ress
Office of Counsel
Naval Facilities Engineering Command Pacific
258 Makalapa Drive, Suite 100
Pearl Harbor, Hawaii 96860-3134

Dear Mr. Case and Mr. Ress:

Re: Notice of Violation NOV 2010/NOV-10-013 ("NOV")
Ford Island Ventures, LLC ("FIV");
Naval Facilities Engineering Command Pacific ("Navy")

The above-referenced NOV dated October 4, 2010 was issued by the Department of Planning and Permitting ("DPP"), City and County of Honolulu ("City"), to FIV and the Navy for activities taking place on the property at 94-990 Pakela Place, which is located in Waikele Gulch, Oahu. I have received the letter dated November 8, 2010 from R.G. Ress, Counsel for the Navy, which sets forth the Navy's position that the City "do[es] not have the requisite jurisdiction to enforce, by NOV or otherwise, regulation of land uses on federal land," and that "zoning restrictions or other local land use regulations may not be imposed on the federal land in question, so long as it remains federal property." The letter further states that the subject Waikele Gulch land was leased to Flour Hawaii, LLC, FIV's predecessor in interest, "for the express purpose of furthering a federal

Edward E. Case, Esq. and R.G. Ress
December 3, 2010
Page 2

interest." The letter further states that the lease to FIV was entered into "pursuant to the plan of development set forth in the Ford Island Master Development Agreement" and in furtherance of the statutory authority found in 10 U.S.C. 2814 which authorizes the Secretary of the Navy to lease such real property "for the purpose of developing or facilitating the development of Ford Island, Hawaii...."

The City has taken the position that a private lessee of federal property is subject to local zoning ordinances where the use of the land is purely proprietary. However, in view of the Navy's clear statement that FIV's lease of the subject property is "for the express purpose of furthering a federal interest" and is specifically authorized under U.S.C. 2814, DPP is willing to withdraw the NOV under these specific circumstances.

I have been authorized by Director Tanoue to withdraw the above-referenced NOV, and the same is hereby withdrawn, without prejudice. The withdrawal of this NOV shall not constitute a waiver by the City of its zoning jurisdiction over lands or land uses by operation of law. The City expressly reserves any and all rights and remedies available to the City in the proper exercise of its zoning jurisdiction.

As we have previously discussed, the NOV was issued in response to citizen complaints about the land uses and activities conducted upon the subject property. Therefore, we understand that FIV and the Navy are willing to provide a contact person to whom these citizen complainants can be referred. Please provide the name, address, telephone number and other contact information for this person at your earliest convenience. Thank you for your cooperation and attention to this matter.

Very truly yours,



DON S. KITAOKA
Deputy Corporation Counsel

DSK:ml