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October 29, 2010

Via E-Mail
and U.S. Mail, postage prepaid

David Tanoue, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, HI 96813

RE: 2010/NOV-10-013 (EX)
TMK 9-4-003-006
94-990 Pakela Street (Waikele Gulch)

Dear Director Tanoue:

We represent Ford Island Ventures, LLC (FIV).

This addresses the above Notice of Violation dated October 4, 2010 and issued to landowner United States of America (through the Department of the Navy) (USA) and ground lessee FIV. A copy of the NOV is attached for your convenience.

As a preliminary matter, please note that TMKs 9-4-002-012 and 9-4-005-009 do not appear to be current tax map parcels. TMK 9-4-003-006 does appear to be current and we assume is the parcel to which the NOV is directed.

This letter is to request that your department immediately rescind the NOV on the basis that the parcel is owned by USA, is subject to exclusive federal jurisdiction, and is not subject to the zoning jurisdiction of the City and County of Honolulu.

By way of background, the parcel has been owned by USA for decades and was operated by USA until June 30, 2003, when it was leased by USA to FIV's predecessor-in-interest which immediately assigned the lease to FIV. A copy of the initial pages of the lease, which remains in full force and effect, is attached.

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As described in the lease recitals, the lease was entered into pursuant to express Congressional authority set forth in 10 U.S.C. sec. 2814. That statute (copy attached) authorizes the Secretary of the Navy, for USA, to “exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii” The authorized actions include the lease by the Secretary “to any public or private person or entity [of] any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii”

Per that authority, USA and FIV’s predecessor-in-interest entered into the Ford Island Master Development Agreement effective June 30, 2003 as referenced in the lease. Under the Master Development Agreement, USA agreed in part to lease various federal properties on Oahu, including its Waikele Gulch properties, to FIV in return for substantial consideration to be utilized for the development of Ford Island per Congressional directive.

These properties, including the Waikele Gulch property to which the NOV is directed, are owned by USA and subject to exclusive federal jurisdiction. Moreover, the lease of those properties, including the Waikele Gulch property, is pursuant to specific Congressional authority for a specific federal purpose.

Under these facts and law, the City and County has no legal basis for asserting zoning jurisdiction and the NOV is of no legal effect. Moreover, the filing of the NOV is specifically contrary to exclusive federal jurisdiction and is further interfering with the contractual relationship between USA and FIV and with the stated federal purpose of the authorizing statute.

We do not believe that the City and County can cite to any specific governing authority that supports its assertion of zoning jurisdiction as set forth in the NOV. If there is any such purported authority, please provide the specifics at your earliest opportunity.

Regardless, FIV asks that your department confirm rescission of the NOV by no later than Wednesday, November 3rd, the date cited in the NOV as the City and County’s asserted deadline for corrective action. In the event the City and County does not confirm rescission by that date, FIV must assume that the City and County continues to assert such authority and intends to pursue the remedies cited in the NOV, and must exercise all of its legal rights and remedies to defend exclusive federal jurisdiction and its contractual rights and the substantial investment it has made in reliance on both.

We have discussed this matter at length with USA and understand that it fully concurs with our position. We believe that USA has contacted the City and County’s Corporation Counsel directly and will be confirming its position in writing shortly.

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I am available to meet with you and your department to discuss this matter further. If there are any related questions or needs at this time, please let me know.

Thank you very much for your prompt attention to this matter of great importance to FIV and USA.

Sincerely,

Edward E. Case

EEC/jah

Enclosures

cc: Corporation Counsel
USA/Navy
Steven Colón

**INTERIM REAL ESTATE GROUND LEASE FOR
WAIKELE GULCH
(Lease No. N6274203RP00121)**

**United States of America,
acting by and through the Department of the Navy, as
Lessor**

and

Fluor Hawaii, LLC, as Lessee

Dated: June 30, 2003

INTERIM REAL ESTATE GROUND LEASE

THIS INTERIM REAL ESTATE GROUND LEASE (this “Lease”), made as of this 30th day of June 2003, by and between the United States of America, acting by and through the Department of the Navy, as lessor (the “Government”), and Fluor Hawaii, LLC, a Hawaii limited liability company, as lessee (the “Lessee”) (the Government and the Lessee are sometimes referred to herein collectively as the “Parties” and each separately as a “Party”).

WITNESSETH:

WHEREAS, the Secretary of Navy, pursuant to the provisions of 10 U.S.C. § 2814, has determined that the Premises (as defined below) is not needed for the current operations of the Navy or any other Armed Forces and that the lease of the Premises to the Lessee hereunder will promote the purposes of 10 U.S.C. § 2814; and

WHEREAS, the Secretary of the Navy, after consultation with the Environmental Protection Agency Administrator has determined that the Premises is suitable for lease, and the uses contemplated for the Premises hereunder are consistent with protection of human health and the environment; and

WHEREAS, the Government and Lessee have entered into the Master Development Agreement (as hereinafter defined); and

WHEREAS, under the Master Development Agreement, the Lessee has agreed to provide certain In-Kind Consideration (as hereinafter defined) and has further agreed to provide (or caused to be provided) to the Government concurrently herewith, cash collateral, a guaranty, payment and performance bonds, and other collateral to secure the performance of Lessee’s obligations to provide the In-Kind Consideration; and

WHEREAS, in consideration of Lessee’s collateralized agreement to provide such In-Kind Consideration and in consideration of the additional rent as may be payable as provided herein, the Government has agreed, *inter alia*, to lease the Premises to the Lessee; and

WHEREAS, the Lessee and the Government have entered into the Purchase Agreement (as hereinafter defined in **Section C**) pursuant to which the Government has agreed to sell, among other things, the Land (as hereinafter defined) to the Lessee as more particularly provided therein and the Lessee has agreed to purchase, among other things, the Land as more particularly provided therein; and

WHEREAS, pending the conveyance of the Premises in accordance with the terms and conditions of the Purchase Agreement, the Lessee and the Government desire to enter into this Lease to provide for, among other things, the lease of the Land to the Lessee for the term as more particularly described herein; and

WHEREAS, Lessee has the ability to acquire, lease and develop real property, and the Lessee and the Government desire to enter into this Lease.

"§2814. Special authority for development of Ford Island, Hawaii

"(a) IN GENERAL.-(1) Subject to paragraph (2), the Secretary of the Navy may exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii, to the extent that the Secretary determines the development is compatible with the mission of the Navy.

"(2) The Secretary of the Navy may not exercise any authority under this section until-

"(A) the Secretary submits to the appropriate committees of Congress a master plan for the development of Ford Island, Hawaii; and

"(B) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

"(b) CONVEYANCE AUTHORITY.-(1) The Secretary of the Navy may convey to any public or private person or entity all right, title, and interest of the United States in and to any real property (including any improvements thereon) or personal property under the jurisdiction of the Secretary in the State of Hawaii. that the Secretary determines-

"(A) is excess to the needs of the Navy and all of the other armed forces; and

"(B) will promote the purpose of this section.

"(2) A conveyance under this subsection may include such terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

"(c) LEASE AUTHORITY.-(1) The Secretary of the Navy may lease to any public or private person or entity any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines-

"(A) is not needed for current operations of the Navy and all of the other armed forces; and

"(B) will promote the purpose of this section.

"(2) A lease under this subsection shall be subject to section 2667(b)(1) of this title and may include such other terms as the Secretary considers appropriate to protect the interests of the United States.

"(3) A lease of real property under this subsection may provide that, upon termination of the lease term, the lessee shall have the right of first refusal to acquire the real property covered by the lease if the property is then conveyed under subsection (b).

"(4)(A) The Secretary may provide property support services to or for real property leased under this subsection.

"(B) To the extent provided in appropriations Acts, any payment made to the Secretary for services provided under this paragraph shall be credited to the appropriation, account, or fund from which the cost of providing the services was paid.

"(d) ACQUISITION OF LEASEHOLD INTEREST BY SECRETARY.-(1) The Secretary of the Navy may acquire a leasehold interest in any facility constructed under subsection (f) as consideration for a transaction authorized by this section upon such terms as the Secretary considers appropriate to promote the purpose of this section.

"(2) The term of a lease under paragraph (1) may not exceed 10 years, unless the Secretary of Defense approves a term in excess of 10 years for purposes of this section.

"(3) A lease under this subsection may provide that, upon termination of the lease term, the United States shall have the right of first refusal to acquire the facility covered by the lease.

"(e) REQUIREMENT FOR COMPETITION.-The Secretary of the Navy shall use competitive procedures for purposes of selecting the recipient of real or personal property under subsection (b) and the lessee of real or personal property under subsection (c).

"(f) CONSIDERATION.-(1) As consideration for the conveyance of real or personal property under subsection (b), or for the lease of real or personal property under subsection (c), the Secretary of the Navy shall accept cash, real property, personal property, or services, or any combination thereof, in an

aggregate amount equal to not less than the fair market value of the real or personal property conveyed or leased.

"(2) Subject to subsection (i), the services accepted by the Secretary under paragraph (1) may include the following:

"(A) The construction or improvement of facilities at Ford Island.

"(B) The restoration or rehabilitation of real property at Ford Island.

"(C) The provision of property support services for property or facilities at Ford Island.

"(g) NOTICE AND WAIT REQUIREMENTS.-The Secretary of the Navy may not carry out a transaction authorized by this section until-

"(1) the Secretary submits to the appropriate committees of Congress a notification of the transaction, including-

"(A) a detailed description of the transaction; and

"(B) a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section; and

"(2) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

"(h) FORD ISLAND IMPROVEMENT ACCOUNT.- (1) There is established on the books of the Treasury an account to be known as the 'Ford Island Improvement Account'.

"(2) There shall be deposited into the account the following amounts:

"(A) Amounts authorized and appropriated to the account.

"(B) Except as provided in subsection (c)(4)(B), the amount of any cash payment received by the Secretary for a transaction under this section.

"(i) USE OF ACCOUNT.- (1) Subject to paragraph (2), to the extent provided in advance in appropriations Acts, funds in the Ford Island Improvement Account may be used as follows:

"(A) To carry out or facilitate the carrying out of a transaction authorized by this section.

"(B) To carry out improvements of property or facilities at Ford Island.

"(C) To obtain property support services for property or facilities at Ford Island.

"(2) To extent that the authorities provided under subchapter IV of this chapter are available to the Secretary of the Navy, the Secretary may not use the authorities in this section to acquire, construct, or improve family housing units, military unaccompanied housing units, or ancillary supporting facilities related to military housing.

"(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

"(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

"(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.

"(B) Amounts transferred under subparagraph (A) to a fund referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

"(j) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.-Except as otherwise provided in this section, transactions under this section shall not be subject to the following:

"(1) Sections 2667 and 2696 of this title.

"(2) Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

"(3) Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484).

"(k) SCORING.-Nothing in this section shall be construed to waive the applicability to any lease entered into under this section of the budget scorekeeping guidelines used to measure compliance with the Balanced Budget Emergency Deficit Control Act of 1985.

"(l) PROPERTY SUPPORT SERVICE DEFINED.-In this section, the term 'property support service' means the following:

"(1) Any utility service or other service listed in section 2686(a) of this title.

"(2) Any other service determined by the Secretary to be a service that supports the operation and maintenance of real property, personal property, or facilities."

(2) The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2814. Special authority for development of Ford Island, Hawaii."

(b) CONFORMING AMENDMENTS.-Section 2883(c) of title 10, United States Code, is amended-

(1) in paragraph (1), by adding at the end the following new subparagraph:

"(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section."; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

"(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section."
