

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

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Smith/Foti Development Limited Partnership  
212 Merchant Street, Suite 330  
Honolulu, Hawaii 96813  
Telephone: (808) 524-3551

Total Pages: 13  
14

Tax Map Key No.: (1) 9-1-005:011

SECOND AMENDMENT TO  
DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
EWA OCEANSIDE

THIS SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF EWA OCEANSIDE (this "Amendment"), is made as of December 7, 2005, by SMITH/FOTI DEVELOPMENT LIMITED PARTNERSHIP, a Hawaii limited partnership ("Declarant"), the address of which is 212 Merchant Street, Suite 330, Honolulu, Hawaii 96813, and EWA OCEANSIDE, LLC, a Hawaii limited liability company ("Fee Owner"), the address of which is 212 Merchant Street, Suite 330, Honolulu, Hawaii 96813.

RECITALS:

A. By Declaration of Condominium Property Regime of Ewa Oceanside, dated January 20, 2005, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as Document No. 3221021, and noted on Transfer Certificate of Title No. 723,368 (the "Original Declaration"), Declarant and Fee Owner submitted certain land and improvements, as described in the Original Declaration, to a condominium property regime known as Ewa Oceanside (the "Project"), with the plans therefor filed in the Land Court as Condominium Map No. 1691 (the "Condominium Map").

B. The Original Declaration was amended by that certain First Amendment to Declaration of Condominium Property Regime of Ewa Oceanside (Amendment to Condominium Map No. 1691), dated August 18, 2005, recorded in the Land Court as Document No. 3315128, and noted on Transfer Certificate of Title No. 723,368 (the "First Amendment").

C. The Original Declaration and the First Amendment are collectively referred to in this Amendment as the "Declaration".

D. Section Q.2 of the Declaration provides, in relevant part, that "until the Recording of Apartment conveyances or agreements of sale with respect to all of the Apartments in the Project in favor of persons other than Fee Owner or Declarant, Declarant may amend the Declaration . . . without the approval, consent or joinder of any person or group of persons, including Fee Owner, the Association, any Apartment Owner or any mortgagee, lienholder, Apartment purchaser or any other person who may have an interest in the Project, to make such amendments as may be required by" the City and County of Honolulu (the "City"), including the Department of Planning and Permitting of the City (the "DPP").

E. As of the date of this Amendment, Fee Owner is the Owner of one hundred percent (100%) of the common interest of the Project, and there has been no Recording of any Apartment conveyances or agreements of sale with respect to any of the Apartments in the Project.

F. Pursuant to Section Q.2 of the Declaration and pursuant to the requirements of the DPP, Declarant and Fee Owner desire to amend the Declaration as set forth in this Amendment and, by this Amendment, approve and consent to the amendment set forth herein.

G. Unless otherwise defined in this Amendment, all capitalized terms (other than those at the beginning of sentences) shall have the definitions given to them in the Declaration.

#### AMENDMENT:

NOW, THEREFORE, in consideration of the Recitals, Declarant and Fee Owner hereby amend the Declaration as follows:

Section O of the Declaration is deleted in its entirety and replaced with the following:

"A copy of the approved Existing Use Permit, DPP File Number 2004/EU-11, dated September 2, 2004 (the "Existing Use Permit"), and a copy of the approved Minor Special Management Area Permit, DPP File Number 2004/SMA-47, dated September 2, 2004 (the "Minor SMA Permit"), are attached to this Declaration as Exhibit "D" and are incorporated herein by this reference.

"The fence master plan, prepared in accordance with the Existing Use Permit and approved by the DPP (the "Fence Master Plan"), a copy of which is

attached hereto as Exhibit "E", is hereby made a part of and incorporated into this Declaration.

"The covenants, conditions and restrictions set forth in the Existing Use Permit shall apply to the Project and shall be binding upon and run with the land described in Exhibit "A" (except and to the extent the Existing Use Permit may be amended from time to time.

"Only fences as shown on the Fence Master Plan are permitted within the Yard Areas appurtenant to the Apartments."

Copies of the Existing Use Permit and the Minor SMA Permit are attached to this Amendment as Exhibit "1".

A copy of the Fence Master Plan is attached to this Amendment as Exhibit "2".


Except as amended by this Amendment and all other recorded amendments, the Declaration shall continue in full force and effect as first written.

[SIGNATURE PAGE FOLLOWS]

Declarant and Fee Owner have executed this Amendment as of the date referenced above.


SMITH/FOTI DEVELOPMENT LIMITED  
PARTNERSHIP,  
a Hawaii limited partnership

By: SMITH/FOTI DEVELOPMENT, INC.  
Its General Partner

By   
Name: John Foti  
Title: Vice President

Declarant

EWA OCEANSIDE, LLC,  
a Hawaii limited liability company

By   
Name: John Foti  
Title: member

Fee Owner

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 7 day of December, 2005, before me personally appeared John Foti, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

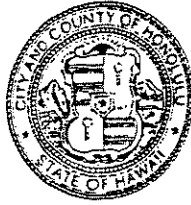
LS

Robbielyn P. Barant  
Notary Public, State of Hawaii  
Print or Type Name: Robbielyn P. Barant  
My commission expires: 09/27/2009

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET • HONOLULU, HAWAII 96813  
 TELEPHONE: (808) 523-4414 • FAX: (808) 527-6743 • INTERNET: www.cc.honolulu.hi.us

JEREMY HARRIS  
 MAYOR



ERIC G. CRISPIN, AIA  
 DIRECTOR

BARBARA KIM STANTON  
 DEPUTY DIRECTOR

KATHY SOKUGAWA  
 CHIEF PLANNER  
 2004/EU-11(sn)

PERMIT	EXISTING USE (EU)
File Number	: 2004/EU-11
Project	: Smith/Foti Existing Use
Applicant	: Smith/Foti Development, Limited Partnership
Landowner	: Mike Muller, Inc.
Agent	: Analytical Planning Consultants
Location	: 91-069 Fort Weaver Road – Ewa Beach
Tax Map Key	: 9-1-5: 11
Zoning	: R-5 Residential District
Date Accepted	: July 19, 2004

**APPROVAL** is hereby granted for an EU Permit, with minor modification, for 23 single-family detached dwellings, in accordance with the application documents (plans date-stamped July 2, 2004) and subject to the conditions below. The minor modifications include relocation of 3 existing structures and appurtenant infrastructure improvements.

1. All work shall be in accordance with approved application documents, the conditions enumerated below and the Land Use Ordinance (LUO) unless otherwise stated by this permit.
2. The Existing Use (EU) Permit is only for the continued use, repair, alteration, expansion, relocation, or reconstruction of the existing dwellings. This EU approval does not certify that the existing structures and improvements comply with the current zoning code or other regulations, including the SMA and shoreline setback requirements of Chapters 25 and 23 of the Revised Ordinances of Honolulu.
3. In accordance with Section 2.100(a) of the LUO, in the event of destruction, uses may be continued and structures may be rebuilt under the approved existing use plan, provided that such restoration is permitted by the Building Code and Flood Hazard Regulations and is started within two years.
4. Only minor modifications to the EU plans shall be allowed. Any major modification which may have an adverse impact on surrounding land uses, increases the number of dwelling units, and/or involves the reconstruction and/or expansion of a dwelling(s)

which is part of a larger development, shall require the processing of a Cluster Housing Permit.

5. Prior to the issuance of any building permit or transfer of ownership subsequent to this approval, whichever comes first, the applicant shall:

a. Convert Building Nos. 1, 2, 5, 8 and 24 from two-family dwellings to single-family dwellings for a maximum project total of 23 single-family dwellings as follows:

- i. Remove the second kitchen from each building;
- ii. Remove the wall between the duplex units within each building; and
- iii. Either include an internal stairs connecting the two floors within building No. 24 and eliminate the exterior stairs leading to the upper floor, or remove all interior walls, except for a bathroom, within one floor of unit No. 24.

Revised floor plans for the above-mentioned units and photographic evidence as evidence toward compliance shall be required.

b. Correct any zoning and/or building code violations, including but not limited to implementing the following corrective measures:

- i. Remove or relocate the CMU and wooden fence along the rear southwestern corner of the site out of the 40-foot shoreline setback to where it was approved in Building Permit No. 502548, i.e., not less than 58 feet from the rear property line;
- ii. Remove or obtain building permits for the two new additions to unit No. 24: a 24 feet by 26 feet addition attached to the Waianae side and a 20 feet by 20 feet detached garage approximately 10 feet muaka of the building; and
- iii. Remove or relocate all storage sheds out of the 5-foot side yards and obtain building permits for all the storage sheds (the combination of which exceeds 120 square feet).

An affidavit, confirming that necessary measures to correct zoning and/or building code violations have been completed, shall be required.

Submit a revised site plan showing:

- i. An adequate turnaround area for fire trunks and apparatus in accordance with cluster development guidelines;
- ii. A revised pedestrian path that provides direct perpendicular access from the turnaround to the beach;
- iii. Revised Community Property Regime (CPR) lines to provide for minimum 5-foot side yards, including but not limited to CPR lines proposed for unit no. 15 and 6.

- d. Submit a revised flood elevations map showing the boundaries of the Flood Zone AE, and a completed Flood Fringe District Certification form if the existing and relocated dwellings will be located within Flood Zone AE.
6. The applicant or owner shall incorporate this EU Permit into restrictive covenants, which run with the land, to serve as notice to all owners and tenants. The draft covenant shall be submitted for review and approval by the DPP. Upon approval of the covenant, a certified recorded copy shall be filed with the DPP, prior to the transfer of ownership or the issuance of any building permits, whichever comes first.
- 7.. If the project will be condominiumized, the applicant or owner shall submit a draft copy of the Condominium Property Regime (CPR) map, including flood district regulations, and documents to the DPP for our review. Future work subsequent to the creation of a CPR may require approval from the homeowners association prior to the start of work. If the EU Permit is incorporated into the CPR documents, a separate declaration of restrictive covenants is not required.
8. All new work shall comply with the applicable LUO standards for the underlying zoning district, unless otherwise stated herein:
- a. A minimum 10-foot setback for structures shall be required from the common access way.
  - b. A 13-foot, 6-inch vertical clearance shall be maintained throughout the access way.
  - b. Within the project, the minimum distances between buildings shall be as follows:
    - 1) 10 feet between two one-story dwellings.
    - 2) 15 feet between a one-story and a two-story dwelling or portion thereof.
    - 3) 20 feet between two-story dwellings.

If the property is condominiumized, then, buildings shall comply with required yards and height setbacks of the underlying zoning district as measured from limited common element (CPR) lines.

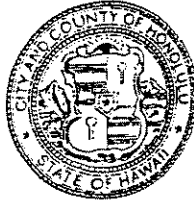
- c. Maximum building area shall not exceed 30 percent of the original lot area of 2.819 acres. If the property is condominiumized, then within each limited common element, the maximum building area shall not exceed 50 percent of the area for each limited common element.
9. All new work shall be compatible in design with the existing and surrounding structures. If a dwelling is reconstructed, it shall not exceed twice its existing size (building area), and shall be in the same general location. The Director may require the redesign of exterior entrances, stairways, bar areas, including plumbing and electrical systems, to ensure that the number of dwellings is not increased.
10. The common access way shall have minimum 20-foot clear pavement width and the boundaries shall be designated, preserved and maintained as common access to facilitate vehicular maneuvering and pedestrian access into and out of the project. No structures, fences, or walls shall be allowed in this area, the boundaries of which shall be designated in subsequent sales documents.
11. A minimum of 46 parking spaces, 2 spaces for each dwelling unit, shall be provided prior to the issuance of any building permits subsequent to this approval. Dwelling additions shall comply with the LUO parking regulations.
12. Prior to the issuance of any building permit or transfer of ownership subsequent to this approval, whichever comes first, the applicant shall pave the common access way with an all-weather surface.
13. Reconstructed dwellings shall have a minimum 16-foot driveway depth fronting the carport or garage.
14. A Fence Master Plan shall be submitted to the DPP for review and approval prior to the issuance of any building permit or transfer of ownership subsequent to this approval, whichever comes first. No fences are permitted within the 40-foot shoreline setback area. Fences adjacent to the common access driveway shall be set back a minimum of 2 feet and landscaped with hedge on the street side. New perimeter fencing and fencing along the common access driveway shall be of open material, such as chain link or wrought iron, and screened with a hedge and maintained in a healthy condition.
15. All existing trees 6 inches or greater in diameter shall be retained on-site, or replacement landscaping shall be required. All landscaping shall be maintained in a healthy visual condition at all times.
16. The relocation, alteration or reconstruction of any dwelling unit shall comply with Fire Department requirements for access, water and/or Fire Department connections, and shall include:



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MAYOR



ERIC G. CRISPIN, AIA  
DIRECTOR

BARBARA KIM STANTON  
DEPUTY DIRECTOR

KATHY SOKUGAWA  
CHIEF PLANNER

2004/SMA-47(sn)

PERMIT	SPECIAL MANAGEMENT AREA (Minor)
File Number	: 2004/SMA-47
Project (Valuation):	Smith/Foti Existing Use – Relocation of dwellings and repaving access driveway
Applicant	: Smith/Foti Development, Limited Partnership
Landowner	: Mike Muller, Inc.
Agent	: Analytical Planning Consultants
Location	: 91-069 Fort Weaver Road – Ewa Beach
Tax Map Key	: 9-1-5: 11
Zoning	: R-5 Residential District
Date Accepted	: July 19, 2004

We have reviewed your proposal and find that it lies within the Special Management Area (SMA) established in Chapter 25, Revised Ordinances of Honolulu (ROH). The site is also subject to the shoreline setback requirements of Chapter 23, ROH.

We find that your proposed development has a stated valuation of less than \$125,000, and will have no significant effect on the SMA. Therefore, a Minor SMA Permit is hereby **APPROVED** in accordance with the application documents in the file (No. 2004/SMA-47) and subject to the conditions listed below:

1. The applicant shall remove or relocate the CMU and wooden fence along the rear southwestern corner of the site out of the 40-foot shoreline setback to where it was approved in Building Permit No. 502548, i.e., no less than 58 feet from the rear property line.
2. If the accepted valuation of the proposed work exceeds \$125,000, the project will be returned to the Department of Planning and Permitting (DPP) for further review under Chapter 25, ROH.

The applicant must attach a copy of this approval to all applications for construction permits.

cc: Office of Planning (John Nakagawa)

G:\ctory\Sharon\smith\fortie\smz47.doc

**THIS COPY, WHEN SIGNED BELOW, IS NOTIFICATION OF THE ACTION TAKEN.**

Pat B Segowitz Director September 2, 2004  
SIGNATURE TITLE DATE

This approval does not constitute approval of any other required permits, such as building or sign permits.

FORT WEAVER ROAD



Expiry: 7/31/2006  
 THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Hawaii Architects, Inc.  
 James M. Mitchell, PE

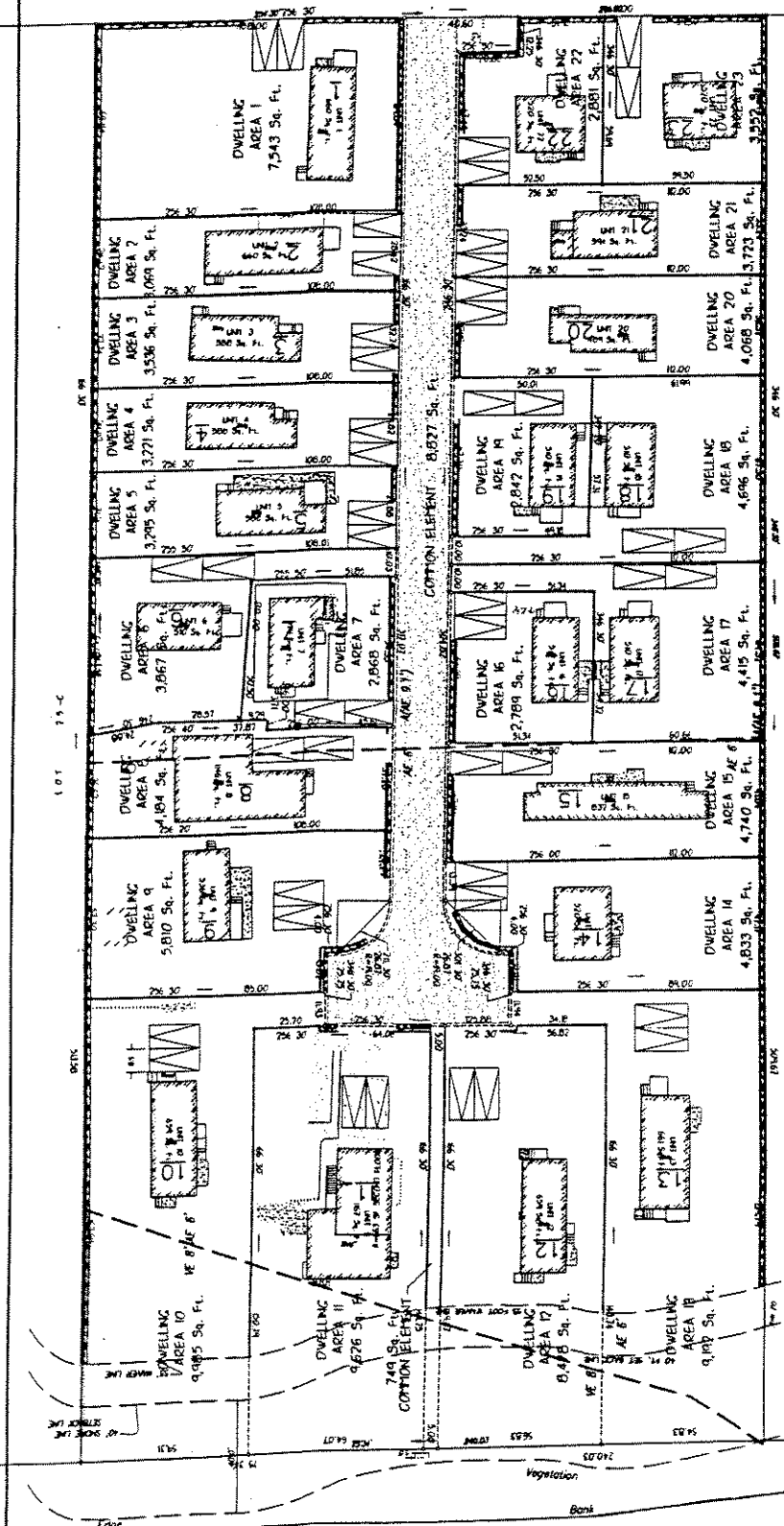
HAWAII James Mitchell, PE  
 ARCHITECTS  
 1075 LELOA STREET  
 HONOLULU, HAWAII 96813  
 TELEPHONE: (808) 262-2473

SMITH / FOTI DEVELOPMENT  
 212 MERCHANT ST. SUITE 330  
 HONOLULU, HAWAII 96813

EWA OCEANSIDE  
 OWNER: SMITH / FOTI DEVELOPMENT  
 TAX MAP KEY: 9-1-005:011

FENCE MASTER PLAN  
 LANDSCAPING HEDGE  
 APPROVED: DATE

C-6



TRUE NORTH

"NOT TO SCALE"

FENCE MASTER PLAN



EWA BEACH PART  
 NEW FENCE SET BACK 7 FT FROM COTTON ELEMENT ROADWAY  
 HEDGE (THICK ORANGE OR EQUAL)



FENCE DETAILS  
 APPROVED MATERIALS INCLUDE: VINYL, WOOD, CHAIN LINK, ORNAMENTAL METALS  
 AND WROUGHT IRON. HEIGHT OF FENCE SHALL NOT EXCEED 6 FEET.  
 THERE SHALL BE A MINIMUM OF 4 INCH GAP BETWEEN PICKETS, BOARDS OR FEETS  
 AND EACH PICKET, BOARD OR FEET MAY NOT BE GREATER THAN 1 1/2" IN WIDTH.  
 MINIMUM SPACING BETWEEN POSTS SHALL BE 8 FEET.  
 PERIFER FENCE FACING THE BEACH PARK AND STREET MUST BE CONSTRUCTED  
 OF THE SAME DESIGN AND MATERIALS  
 THE PERIFER FENCE MUST BE SCREENED WITH A HEDGE

EXHIBIT "2"