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Mr. Robert V. Pellettieri  
Vice President/Treasurer  
Ku'au Bay View at Paia  
Homeowners Association  
P.O. Box 792175  
Paia, Hawaii 96779-2175

RE: Easement 19 for Landscaping Purposes

Dear Bob:

As a follow-up to my letter to you of April 7, 2005, you have asked whether the Association Board, through an action of the Board, could extinguish Easement 19 for landscaping purposes as shown on the project file plan no. 2181. You have informed me that within Easement 19 a rock wall was constructed by the project developer which is now maintained by the Association. Confirmation of Easement 19 and the rock wall being a part of the project improvements is set forth in the Declaration of Covenants, Conditions and Restrictions for Ku'au Bay View at Paia at item 3(c):

The Association shall be granted the following easements: (i) along the boundary of each lot in the subdivision fronting Hana Highway, for the purpose of maintaining, repairing and replacing the wall and fence to be constructed along Hana Highway by Declarant...

Accordingly, the developer contemplated the Association would be the holder of an easement in perpetuity (Easement 19) in which easement there would be constructed a wall to be maintained by the Association. Hence, all owners purchased their lots with the understanding that Easement 19 would exist and be a part of the Association's improvements and facilities. While an argument could be made that therefore one-hundred percent (100%) of the lot owners must agree to the termination of the Easement 19, at the very least, I believe to extinguish the easement would require an amendment to the Declaration which would require the approval of owners of at least two-thirds of the total lots.

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In other words, I do not believe the Board has the unilateral right to terminate Easement 19; rather the approval of at least two-thirds of the lots, and perhaps all the lot owners, would be necessary to terminate Easement 19.

I trust the foregoing adequately responds to your inquires regarding Easement 19; however, if you require further input please let me know.

Very truly yours,



Robert E. Rowland

RER:kk