

September 25, 2013

Mr. Orlando Davidson
Executive Officer
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804-2359

LAND USE COMMISSION
STATE OF HAWAII
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Subject: 2013 Annual Report for the State Land Use Commission
Docket No. A93-696 Kukui'ula Development Company (Hawaii), LLC

Dear Mr. Davidson,

Kukui'ula Development Company (Hawaii), LLC ("Petitioner") is pleased to submit to the State Land Use Commission (the "SLUC") its 2013 Annual Report pursuant to Docket No. A93-696. Please note that the previous annual report was submitted on January 6, 2012, for the year 2011. Therefore, this report actually covers the time period of January 2012 through September 2013.

Project Land Use Entitlements

On August 8, 2003, the SLUC issued its Decision and Order subject to thirty (30) conditions. This was followed by the County of Kauai's approval of County zoning and visitor destination area designations for the project on July 28, 2004 (Ordinance No. PM-2004-370-Zoning Amendment and Ordinance No. PM-2004-371-VDA Amendment). Specific details of the project's land use entitlement process were outlined in previous annual reports submitted to the SLUC.

Project Development Activities

Kukui'ula now has a mixture of full and part time and residents within the project. Completion of construction of the project's initial onsite and offsite infrastructure systems (roadways, potable and non-potable water, sewage treatment and utility systems), as well as amenities such as the the club, spa and 18-hole golf course have been completed and are now in use by residents. Construction of the adjacent Shops at Kukui'ula have been completed and is now a thriving retail shopping center.

Since approval of the project's initial large-lot subdivision on July 11, 2006, the Petitioner has since filed five subsequent residential lot subdivisions as follows:

Phase IIA Subdivision M1M4) Final Map approved July 11, 2006.

Phase I (Subdivision Y) Final Map approved September 12, 2006.

Phase IIB (Subdivision M2M3) Final Map approved March 11, 2008

Phase IIIA (Subdivision CCFF) Final Map approved December 14, 2010

(subsequently, several Consolidation / Re-Subdivision Final Maps to the above were approved for the purpose of providing more marketable, larger estate sized residential lots)

An earlier residential subdivision, Parcel Q Tentative Map, was approved on April 11, 2006, but subsequently allowed to expire. Four additional subdivisions specifically related to regional roadways, potable water system improvements, affordable housing sites, an elementary school expansion and archaeological preserves also received final map approval in 2010 and 2011.

Petitioner has constructed and in 2010 conveyed to the County of Kauai Department of Water all of the required offsite regional potable water system improvements including (2) wells, (4) storage tanks and several miles of transmission lines. The Western Bypass Road was opened to public traffic in October 2008 and formally accepted by County Council in August 2013. Also in August 2013 the Petitioner completed its obligation to the County by assisting in the acquisition of right of way for the Northern Leg of the Western Bypass Road In so far as onsite backbone infrastructure, the Major Project Road Phase 1 and all phases of Mass Grading and Drainage were completed in 2010.

The project's 18-hole golf course has been completed and was opened for public play in mid 2011. The golf course includes provisions for kama`aina golf tee times and fees as required under Condition No. 11. The Shops at Kukui`ula (retail shopping center) was opened in late 2009 and the club and spa facility was opened in late 2010. Due to the slowed economy the the 20 acre Community Park is now scheduled to begin construction in late 2016.

Status of Activities Relating to Imposed Conditions

This annual report will confine itself to reporting on the status of conditions imposed under the Decision and Order dated August 8, 2003. Listed below are each of the conditions imposed under the Decision and Order and the status of activities pertaining to each respective condition.

Condition No. 1: Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements of the County of Kauai. The location and distribution of the affordable housing or other provisions for affordable

housing shall be under such terms as may be mutually agreeable between the Petitioner and the County.

Status: To date, Petitioner has provided 176 affordable housing units in two (2) projects. These projects are described in more detail below.

Eleele Nani Subdivision Phase II:

This single-family residential project is located to the west of the Kukui'ula project area in Eleele, Kauai. The project comprises 146 single-family residential lots located on approximately 27 acres. Of the 146 total lots; 116 lots, 58 lots only and 58 lots with houses, were sold under County-approved affordable housing guidelines. Eligibility, prices, buy-back options and other conditions of sale of these 116 lots were established with the County housing authorities. The remaining 30 lots were sold at market prices. Lot sizes averaged between 6,000 – 8,000 square feet. The Petitioner's total investment in affordable housing units; including onsite infrastructure, offsite infrastructure and home construction; at Eleele Nani Phase II totaled approximately \$10 million.

The 58 houses and lot packages included three bedroom and two bath homes with double carports. A variety of models were offered, with home sizes ranging from 1,000 and 1,200 square feet. The project included the design and construction of all site utilities and roadways. Additionally, 38 lots were sold to eligible low/moderate income families at an average price of \$52,000 per lot and 20 lots were sold to the County at \$35,000 per lot specifically for low income households. The project was built and completed in 1993.

County's Paanau Housing Project:

In cooperation with the County of Kauai, the Petitioner conveyed 4.9 acres north of the Kukui'ula project area in Paanau to the County of Kauai for the development of 60 affordable multi-family rental units. This land was conveyed by deed dated October 7, 1991 and recorded in the Bureau of Conveyances on March 13, 1992. In addition to the land dedication, the Petitioner provided the County sewage hookups for these units to its Kukui'ula wastewater treatment plant free of charge. Construction of these affordable rental units was completed by the County in 1995.

Together, these two (2) projects resulted in 176 affordable housing units (Eleele Nani-116 units and Paanau-60 units).

In addition to the existing affordable housing units developed by KDCI, the County included Condition of Approval No. 21 to Ordinance No. PM-2004-370 addressing the re-zoning of Kukui'ula and requiring the Petitioner to set aside and convey to the County an approximately 4-acre parcel adjacent to the existing Paanau Housing Project for future expansion by the County of the affordable Paanau Housing Project. Final Subdivision Map approval was granted by the County on September 28, 2010 and the 4 acre lot conveyed to the County on November 24, 2010. The County of Kauai Housing Agency subsequently developed 50 affordable units on said site in 2011 / 2012. In addition, the Petitioner has provided sewage hookup for these 50 affordable units for which Petitioner will be entitled to an additional credit of 10 affordable units from the County.

Additionally, Condition No. 19 to County Ordinance No. PM-2004-370 further requires the Petitioner to provide a minimum of 75 affordable and “gap” income housing units for project employees and Kauai residents. A 10-acre site has been selected on the west side of Poipu Road across from the proposed community park. Application was made to the County of Kauai to reclassify this parcel from agriculture to urban and for rezoning to residential use. With the assistance of the County, Ordinances Nos. PM-2005-373 and PM-2005-374 were approved by the Kauai County Council on March 10, 2005 and signed by the Mayor of Kauai on March 17, 2005. Tentative approval of this subdivision was granted by the County on July 24, 2007 and an associated Project Development Use Permit (PDU-2007-24) and Class IV Zoning Permit (Z-IV-2007-28) approved by Planning Commission on June 26, 2007. However, due to the decline in the need for additional affordable units (County had a surplus of un-rented units), the County of Kauai, in a letter dated November 4, 2009 approved a 5 year extension (to July 28, 2013) in which to commence construction of the Kukui’ula 75 units.

More recently, in late 2012 the County Housing Authority approached the Petitioner to negotiate a restructuring of this Condition whereby the County would take possession of this “gap” site and directly develop the site in lieu of the Petitioner. To facilitate this new arrangement the County of Kauai, in a letter dated March 11, 2013 approved an additional 2 year extension (to July 28, 2015) in which to commence construction of the Kukui’ula 75 units.

Condition No. 2: Petitioner shall initiate and fund a near shore water quality-monitoring program. The monitoring program shall be approved by the State Department of Health in consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the DOH in consultation with the above mentioned agencies, and the County Public Works Department. Petitioner shall coordinate this consultation process with the concurrence of the DOH.

Status: The Petitioner initiated a near shore water quality-monitoring program in 1991 as a requirement of a County issued grading permit. The monitoring program is ongoing, will continue through the completion of the construction of the project, and continues to be funded by the Petitioner. The program has established and continues to expand baseline data for future comparison.

Condition No. 3: Petitioner shall implement effective soil erosion and dust control measures during construction to the satisfaction of the State Department of Health and the County of Kauai.

Status: All engineering plans currently will provide for storm water pollution protection systems (SWPPS) and NPDES compliance. All of those requirements are being implemented at the time of construction. The project wide NPDES General Permit expired

on October 21, 2012 with State Wide General Permit expiration, therefore Individual Permits are being obtained for all future plan sets within the Project Subsequent Contractor's Site Specific BMP's will be prepared, submitted and approved by the DOH prior to construction of each job within the Project.

Condition No. 4: Petitioner shall produce a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes. Petitioner's Solid Waste Management Plan shall be approved by the County of Kauai. The Plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County's landfills.

Status: The County has included as Condition of Approval No. 27 to Ordinance No. PM-2004-370 an expanded version of this SLUC Condition of Approval. The Petitioner has initiated discussions with the County Department of Public Works, Solid Waste Division concerning this condition. Petitioner prepared an Integrated Solid Waste Management Plan which includes provisions for construction debris disposal, green waste disposal, and recycling in order to reduce the flow of waste material to County facilities. Also included in this plan is the identification of a site for possible use as a construction debris disposal site. The Petitioner submitted the Integrated Solid Waste Management Plan to the County Department of Public Works for review and approval on March 21, 2006. Additionally, the Petitioner has on an on-site construction debris management plan to supplement the Integrated Solid Waste Management Plan.

Condition No. 5: Petitioner shall fund and construct adequate wastewater treatment transmission and disposal facilities, as determined by the State Department of Health and the County of Kauai Department of Public Works as necessary and appropriate to service the needs of the Project area.

Status: KDCI constructed a wastewater treatment plant to serve the entire Kukui'ula project area. The facility began operation in 1993 with a processing capacity of 1.2 million gallons per day. The facility served the Paanau Housing Project, located near Koloa School, and the Koloa Estates residential subdivision that was completed in 1999. As part of the infrastructure system improvements for the Koloa Estates subdivision, sewer lines, force mains and a pump station were constructed.

Petitioner undertook the design of a replacement Waste Water Treatment Plant ("WWTP") in order to produce effluent of "R-1" quality that could be utilized in the project irrigation systems, thus reducing the use of potable water. The replacement WWTP was designed to utilize the newest membrane technology in order to produce the best quality effluent. In June 2006, final design plans for the proposed WWTP were submitted to the State Department of Health for review and were approved on July 27, 2006.

Additionally, other acceptable alternatives, including participation in a Regional Wastewater System, were examined for the treatment and disposal of wastewater from the Project. Towards the goal of participating in a “regional” system rather than an onsite replacement WWTP, in 2009 the Petitioner entered into a “will serve” agreement with HOH Utilities and completed construction of an offsite 18” gravity sewer main to the recently expanded existing Poipu sewer treatment plant to service a portion of the Kukui’ula project. In late 2009 the retail center was the first component of Kukui’ula to be connected and serviced by the existing Poipu plant. In late 2010 the club house facility and our first four residential subdivisions were connected and are now serviced by the existing Poipu plant. Additionally, in 2012 the Petitioner completed the decommissioning of the onsite wastewater treatment facility with the intent of diverting sewer flows received from the Paanau Housing Project and the Koloa Estates residential subdivision to being treated at the existing Poipu plant.

Condition No. 6: Petitioner shall comply with the recommendations of the State Department of Health, dated August 1994 (Version 5), and entitled “Guidelines Applicable to Golf Courses in Hawaii”.

Status: Petitioner has prepared and is implementing golf course BMP’s (Best Management Practices) to protect surface water quality from contamination by the application of fertilizers and pesticides. Chemical containment buildings have been purchased for storage of pesticides and other chemicals. All chemicals are applied by a licensed Chemical Applicator. All chemical and fertilizer applications are recorded and kept on file. Also, as part of a comprehensive, project wide water quality monitoring program, Petitioner continues to monitor baseline water quality conditions both prior to and during final construction of the golf course.

Condition No. 7: Petitioner shall participate in an air quality-monitoring program as specified by the State Department of Health.

Status: Petitioner met with the DOH, Clean Air Branch concerning this condition. The DOH reviewed the Air Quality Report previously prepared for the Kukui’ula project area. The DOH noted that Kukui’ula is not anticipated to be a major source of air pollutants for which an air quality-monitoring program would be required.

Condition No. 8: Petitioner shall provide its fair share of costs to fund and construct adequate civil defense measures to service the Property and surrounding area as determined by the State and County of Kauai civil defense agencies.

Status: In August 2000, Petitioner met with representatives of both the Kauai Civil Defense and State Civil Defense Departments concerning this condition. The agencies’ primary

concern was the tsunami hazard to future developments within the shoreline area. As a result of the meeting, two new (2) sirens, properly located and engineered, have been required for the project area. A subsequent meeting was held with these agencies on April 28, 2004. A copy of a letter dated May 5, 2004 to Mr. Norman M. Ogasawara, Assistant Telecommunications Officer, State of Hawaii – Civil Defense Division was previously transmitted to the SLUC with the 2004 annual report. The County has included as Condition of Approval No. 26 to Ordinance No. PM-2004-370 an expanded version of this SLUC Condition of Approval.

On December 9, 2005, Petitioner discussed with Mr. Ogasawara and Mr. Clifford Ikeda the locations and design of the new sirens as well as a relocation site for an existing siren. As a result of this meeting, agreement was reached on both the design and location of the two new sirens. The Petitioner provided a site adjacent the retail center for the ‘relocation’ of the existing siren and it has since been installed by Civil Defense. The first of two new sirens will be installed in mid 2016 in conjunction with final pump station / public parking improvements on Lawai Road. The second of two new sirens will be installed at a location across Lawai Bay at a date yet to be determined.

Condition No. 9: Petitioner shall provide a fair-share contribution for school facilities to the satisfaction of the State Department of Education (“DOE”). In the following manner: (a) Petitioner shall donate in fee simple seven (7) acres for the expansion of Koloa Elementary School with all the infrastructure provided at no cost to DOE; (b) Petitioner shall donate in fee simple twelve (12) acres of usable land for a second elementary school site within the Property, with all infrastructure provided at no cost to DOE, or an agreed to in-lieu fee; (c) The infrastructure provided shall include a sewer connection for the abovementioned 12-acre site, 7-acre site and the Koloa Elementary School from Petitioner’s existing Sewage Treatment Plant at no cost to the DOE. The timing of the conveyances of the lands and the location of the 12-acre site shall be determined by mutual agreement between Petitioner and the DOE. Petitioner and the DOE shall submit a written agreement on this matter prior to Petitioner obtaining approval for county zoning.

Status: KDCI and the DOE agreed to the terms of an Educational Contribution Agreement for Kukui’ula (the “Educational Contribution Agreement”) dated November 23, 1999, a copy of which was previously transmitted to the SLUC by letter dated December 15, 1999. The Educational Contribution Agreement was amended by the First Amendment to Educational Contribution Agreement for Kukui’ula (“First Amendment”) dated January 28, 2005, between the KDC Hawaii and the DOE. The First Amendment, provided for the assignment of the Educational Contribution Agreement to the Petitioner and included the “in-lieu fee” provision relating to the 12-acre second elementary school site. The First Amendment was previously transmitted to the SLUC by letter dated April 6, 2005.

Condition No. 10: Petitioner shall participate in the pro rata funding and construction of local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Kauai.

- (a) *Petitioner shall, prior to obtaining County Zoning, revise or supplement the Traffic Impact Assessment Report dated March 2003 for the review and approval of the Department of Transportation which shall include an analysis of the entire master planned development as required by the Department of Transportation.*

Status: The Petitioner will participate in the pro rata funding and construction of local and regional roadway improvements in consultation with the State Department of Transportation (the “DOT”) and the County of Kauai. The County has included as Condition of Approval No. 7. f) to Ordinance No. PM-2004-370, a similar version of this SLUC Condition of Approval. Furthermore, the Petitioner developed Supplement No. 1 to the Traffic Impact Report dated October 2003 and submitted a copy to the DOT on October 15, 2003. The DOT responded on December 22, 2003. Copies of this correspondence were previously transmitted to the SLUC with the 2004 annual report.

In addition to the above requirements, Petitioner also actively supported the funding of a Koloa-Poipu Area Circulation Plan prepared by Charlier Associates, Inc. on behalf of the Koloa Community Association. This plan is intended to be utilized in conjunction with the transportation element of the Koloa-Poipu-Kalaheo Development Plan which is beginning the update process. The circulation plan was accepted by County Council on August 8, 2007.

In conjunction with the County of Kauai, Petitioner also agreed to fund the preparation of the National Environmental Policy Act (“NEPA”) Environmental Assessment for the planned Northern Leg of the Western Bypass Road (between Koloa Road and Maluhia Road), which will complete the bypass loop. The NEPA Environmental Assessment was completed and a FONSI issued in 2012.

Condition No. 11: As determined by the County of Kauai, Petitioner shall make available recreational facilities which are developed within the Project, including available adequate golf tee times, for public play at rates which shall include Kama’aina rates.

Status: The County has included in its Condition of Approval No. 15. a) to Ordinance No. PM-2004-370 a requirement that the Petitioner develop, dedicate and maintain in perpetuity a 20-acre active regional/community park within Kukui’ula. In addition, the County included Condition of Approval No. 15. d) to Ordinance No. PM-2004-370 requiring the Petitioner to develop, dedicate and maintain in perpetuity an approximately 2-acre public park in the vicinity of Kukui’ula Bay. Finally, the County outlined in its Condition of Approval No. 17 to Ordinance No. PM-2004-370 the required Kukui’ula golf course kama’aina golf tee times and fees. The Petitioner has completed the golf course and public golf play commenced in June 2011. Construction of Kukui’ula Bay Park is expected

to start in late 2016. Construction of the 20-acre Community Park is also expected to start in late 2016.

Condition No. 12: Petitioner shall fund and construct adequate water source, storage and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Status: Petitioner has completed and conveyed to the County of Kauai Department of Water all required offsite potable water improvements including two (2) potable water groundwater wells, (4) water tanks and several miles of transmission lines.

Condition No. 13: Petitioner shall work with the residents of Omao and the County of Kauai Department of Water Supply to resolve concerns regarding the Omao well(s).

Status: The DOH has determined that residents may continue to use septic systems within 1,000 feet of the Omao well, thereby resolving the residents' primary concern. The Petitioner does not currently intend to utilize the Omao well for potable water purposes, thus mitigating any impact to existing nearby residential septic systems. The Omao well will likely be used for backup irrigation only. The Petitioner will work with the DOW concerning the ultimate development and use of the Omao well.

Condition No. 14: Petitioner shall complete the following:

- a. *Ten significant historic sites within the Property identified by Petitioner's archaeological consultant not recommended for preservation shall be subject to archaeological data recovery work. An archaeological data recovery plan shall be submitted to the State Historic Preservation Division for approval, the successful execution of which plan shall be verified in writing by the Division prior to the start of land altering activities of those areas which are proximate to the historic sites and could adversely impact upon those historic sites.*
- b. *Seven additional significant historic sites within the Property identified by Petitioner's archaeological consultant and recommended for preservation shall be preserved. A preservation plan shall be submitted to the State Historic Preservation Division for approval, prior to the start of land altering*

activities of those areas which are proximate to the historic sites and could adversely impact upon the historic sites.

- c. *Petitioner shall comply with all applicable statutory provisions and administrative rules regarding inadvertent burial finds within the Property.*

Status: Archaeological Data Recovery Work has been completed and approved by the State Historic Preservation Division (the "SHPD") for the above referenced sites. This work included an "Archaeological Data Recovery Report for the Kukui'ula Bay Planned Community Phase II" dated September 1998, Revised August 1999 and approved by the SHPD on May 19, 2000 and "Archaeological Data Recovery Report for Five Archaeological Sites (50-30-10-1918 to 50-30-10-1921, 50-30-10-1923)" dated May 2003 and approved by the SHPD on August 6, 2003, a copy of which was previously transmitted to the SLUC with the 2004 annual report.

Preservation plans have been prepared and approved by the SHPD for the above referenced sites. These plans include the "Preservation Plan for Archaeological Sites 50-30-10-1903 and 50-30-10-1904" dated December 2000 and approved by the SHPD on January 18, 2001 and "Preservation Plan for Six Archaeological Sites 50-30-10-1912 to 50-30-10-1914, 50-30-10-1917, 50-30-10-3075 (A, B, C) and 50-30-10-3179" dated October 2001 and approved by the SHPD on November 5, 2001. Pursuant to the approved preservation plan, Sites 1903 and 1904 were carefully cleared under the supervision of the Kauai State Archaeologist, Nancy McMahon. Implementation of these preservation plans will occur prior to any construction activity affecting these sites.

The Petitioner has prepared a written protocol regarding inadvertent finds of burials, and is including this protocol with all contracts for work on site. This protocol was attached to our 2005 annual report.

Condition No. 15: Petitioner shall conduct a biological survey for terrestrial invertebrates (Kauai blind wolf spider and Kauai cave amphipod), and a study to determine the extent of the caves on the surface. The study shall include a buffer area of a minimum of 100 feet around the perimeter of the lava tube caves. The survey and study shall be completed prior to obtaining zoning approval from the County of Kauai. Petitioner shall consult with the U.S. Fish and Wildlife Service ("USFWS") regarding the content and completeness of both studies. Petitioner shall develop with the USFWS a conservation plan establishing specific conditions for the conservation of the cave animals and their habitat. Such conservation plan shall be legally enforceable in a court of law and will run with the land as an encumbrance on title. The plan shall be accepted and approved by the USFWS. The USFWS must also verify in writing to the Commission, the successful execution of the study, and implementation of the mitigation/conservation plan. Petitioner shall consult with the USFWS prior to any blasting, movement of heavy construction equipment, roadway construction, or grading which may impact terrestrial invertebrates.

Status: A Cooperative Agreement between the USFWS and the Petitioner was signed on September 27, 1995. A copy of this Cooperative Agreement was provided to the SLUC as

part of Petitioner's March 25, 1998 Motion to Amend the Decision and Order (Petitioner's Exhibit No. 26). The purpose of the Cooperative Agreement was to restore and protect subterranean habitats of the Kauai cave wolf spider and the Kauai cave amphipod. Under the terms of the Cooperative Agreement, the USFWS completed an initial biological survey of the cave system and continues to monitor the cave system on a periodic basis. A copy of this Cooperative Agreement was provided to the SLUC as part of Petitioner's March 25, 1998 Motion to Amend the Decision and Order (Petitioner's Exhibit No. 26). Protective grating to secure the cave entrances was installed to limit access to the cave system per the conditions of the Cooperative Agreement. Additionally, the Petitioner consulted with the USFWS before construction of the Koloa Estates subdivision and will continue to do so for future nearby projects.

The Petitioner cooperated with the USFWS during their designation of critical habitat for the Kauai blind wolf spider and Kauai cave amphipod published in their Final Rule on April 9, 2003. In making its final determination of the critical habitat, the USFWS used the field surveys completed by Dr. Francis G. Howarth of the Bishop Museum, a consultant to the Petitioner. The Petitioner has agreed with the USFWS to accomplish permanent protection of the Kauai blind wolf spider and Kauai cave amphipod within the Kukui'ula project area by (i) preparing and recording, to the satisfaction of the USFWS, a conservation easement deed permanently precluding any future development of the preservation areas, and (ii) developing a long-term conservation management plan to guide the Petitioner in the on-going management of the preservation areas.

The existing Cooperative Agreement expired on September 27, 2005 with the acknowledgement of the USFWS that all of the terms of the Agreement had been fulfilled. Prior to the expiration of the Agreement, the USFWS and the Petitioner discussed a variety of alternatives related to the continuation of a formal relationship between the USFWS and the Petitioner, including an extension of the existing Agreement, an amendment to the existing Agreement, a new agreement and a memorandum of understanding ("MOU"). The USFWS determined that an MOU would be sufficient and indicated that it would take the lead in preparing an initial draft. Subsequently, the USFWS revised its position on the MOU and determined that the best method to ensure the protection of the Kauai blind wolf spider and Kauai cave amphipod within the Kukui'ula preserves, would be the recording of the above referenced conservation easement deed. The Petitioner has prepared an initial draft of this conservation easement deed and forwarded it to the USFWS for review. In addition, a draft long-term conservation management plan has been developed by Dr. Howarth.

By letter dated March 2, 2006, Petitioner notified the USFWS of its intent to commence onsite construction at the Project. A copy of this letter along with a discussion of measures being undertaken to protect and conserve the Kauai blind wolf spider and Kauai cave amphipod was provided to the SLUC by letter dated March 2, 2006. By letter dated March 15, 2006, the SLUC acknowledged receipt of Petitioner's March 2, 2006 letter.

Condition No. 16: Petitioner, successors, agents, transferees, or assigns shall comply with any conservation agreement with the USFWS related to terrestrial invertebrates (Kauai blind wolf spider and Kauai cave amphipod).

Status: Petitioner will comply with the terms of the conservation easement, Cooperative Agreement and conservation management plan described in Condition No. 15 above.

Condition No. 17: The Project shall be limited to 1,500 units along with the various Project components.

Status: The County has included as Condition of Approval No. 2 to Ordinance No. PM-2004-370 a limitation of 1,500 units that shall include hotel rooms, single-family detached and attached dwellings and multi-family dwellings. The Petitioner is complying with this condition and will include restrictions in deeds to all buyers of the 1,500 unit limit.

Condition No. 18: As determined by the County of Kauai, bike paths and pedestrian walkways shall be provided by Petitioner within the Project.

Status: As originally designed and constructed for the Koloa Estates subdivision, Lopaka Paipa Blvd. included bike lanes and pedestrian walkways. However, the Koloa Estates Home Owners Association subsequently removed the sidewalks in Lopaka Paipa due to maintenance concerns and a general lack of use.

Adjacent to Koloa Estates, the Petitioner, as part of its Condition of Approval No. 15. c) to Ordinance No. PM-2004-370, developed a comprehensive pedestrian and biking trail system throughout the Project. Petitioner has prepared a Trails Master Plan which has been submitted to the County of Kauai for review and approval and will implement the plan in increments. To date several miles of public walkways have been installed through and adjacent to the project. Furthermore, the Petitioner executed a trails system declaration on February 28, 2008 assuring the County that upon completion of construction of the Paths and Trails the Petitioner will deliver a Grant of Easement over said facilities.

Condition No. 19: Petitioner shall (a) provide land for, and or access to, a site for the disposal of construction materials from the Project, or b) contribute a pro rata share in developing a disposal site, or (c) construct a facility in connection with the disposal site.

Status: The Petitioner discussed with the County Department of Public Works, Solid Waste Division its plan regarding future construction of disposal sites and landfills. The Petitioner will continue to monitor the County's progress related to developing new disposal sites/landfills and the possibility of contributing a pro rata share to their development. Petitioner prepared an Integrated Solid Waste Management Plan which

includes provisions for construction debris disposal, green waste disposal, and recycling in order to reduce the flow of waste material to County facilities. Included in this plan is the identification of a site for possible use as a construction debris disposal site. The Petitioner submitted the Integrated Solid Waste Management Plan to the County Department of Public Works, Solid Waste Division, on March 21, 2006. Petitioner has also implemented on-site reclamation operations to minimize the amount of offsite debris disposal.

Condition No. 20: Petitioner shall resolve with the County the Petitioner's:

(i) contribution to pro rata share of improvements to Maluhia Road, including widening and realignments;

(ii) contribution to pro rata share of improvements to Po'ipu Road from Koloa Town to the Project site; and

(iii) timing of the construction of the westerly by-pass road to avoid congestion on Po'ipu Road, particularly through the Koloa Town area.

Status: The County has included as Condition of Approval No. 14 to Ordinance No. PM-2004-370 a requirement that the Petitioner commit to the expenditure of not more than six hundred thousand dollars (\$600,000.00) towards the cost of improvements to the roadway system serving the Koloa – Poipu region, including improvements to Maluhia Road and Poipu Road. Furthermore, the County has included as Conditions of Approval No. 7. c), d) and e) describing the Petitioner's responsibility to construct improvements related to the Western Bypass Road and its intersection with Koloa Road and requiring completion of said improvements within thirty (30) months after commencement of onsite construction of Phase I of the Project. Construction of the Western Bypass Road began in spring 2006 and was completed and open for public use in October 2008. In 2013 the Petitioner completed its obligation of assisting the County in the acquisition of the land required for the Northern Leg of the Western Bypass Road (between Koloa Road and Maluhia Road) by funding the preparation of the NEPA Environmental Assessment required for that future roadway and by funding the land purchase through escrow.

Condition No. 21: Building setback lines shall be established along the rim of Lawa'i Kai Bay and or Lawa'i Valley at not less than 50 feet from the edge of the rim.

Status: Future buildings will be setback from Lawai Kai Bay and Lawai Valley as provided in this condition. In addition, the County has included Condition of Approval No. 5. d), to Ordinance No. PM-2004-370 that is an expanded version of this SLUC Condition of Approval. The Petitioner will comply with this condition by incorporating this requirement into the Petitioner's subdivision plans, design guidelines and standards for development in this portion of the project area.

Condition No. 22: Petitioner shall cooperate with the County of Kauai in implementing a program for shoreline land acquisition for park and or hazard mitigation purposes as may be undertaken by the County.

Status: In January 2001, KDCI undertook a beach nourishment project at the crescent beach located between the Kukui'ula boat launch ramp and Lawai Road. The project included the removal of scrub vegetation, debris, loose rocks and the placement of 500 cubic yards of sand on the beach. These improvements were implemented in fulfillment of County requirements to enhance the beach for public use. Ten years later, in April 2011, the Petitioner again replenished beach sand at Kukui'ula by placing 500 cubic yards of sand on the beach.

As stated earlier, the County included Condition of Approval No. 15. d) to Ordinance No. PM-2004-370 requiring the Applicant to establish a twenty (20) foot wide lateral public beach access easement along the Kukui'ula Bay shoreline as well as developing, dedicating and maintaining in perpetuity an approximately 2-acre public park in the vicinity of Kukui'ula Bay. Furthermore, the County included Condition No. 15. e) to Ordinance No. PM-2004-370 requiring the Petitioner to contribute not more than \$500,000.00 to mitigate impacts to shoreline recreation resources including, but not limited to, acquisition of beach accesses or Poipu Beach Park expansion and improvements. In partial compliance with the shoreline improvements requirements, Petitioner has constructed a 20-car parking lot in the Boyden's pond area off of Lawai Road. In addition, the Petitioner has assisted the County in their efforts to acquire a beach access easement to a County specified beach along Lawai Road. If said Beach Access Easement is not obtainable, the Petitioner will contribute funds towards beach park improvements at other locations designated by the County.

Condition No. 23: An agreement between Petitioner and the County of Kauai shall be formulated that covers the elements which Petitioner will be participating in contributing its pro rata share toward items that are determined to provide regional and or islandwide benefits (excluding items which service the Project) for which Petitioner shall be credited against County requirements affecting the Project.

Status: Pursuant to this condition, the Petitioner has been working with the County and private companies to develop regional systems related to public roadway improvements and sewer collection treatment facilities. Included are efforts to reconcile these against the County's current requirements for the project.

Condition No. 24: As permitted by law, Petitioner shall provide employment opportunities in the project to give preference to those persons who have been or will be displaced by the withdrawal of sugarcane lands.

Status: To the extent legally permissible, the Petitioner intends to give preference to displaced sugar workers for future employment opportunities. McBryde Sugar Company, Limited, an affiliate of KDCI, implemented a comprehensive program to assist displaced sugar workers with the closure of its sugar operations in 1996. This program included, among other things, opportunities for job training and independent farming. Additionally, the Petitioner has utilized local Kauai contractors and materials suppliers in the development and construction of the Koloa Estates subdivision, as well as for its prior construction work at the project.

The initial construction contracts for offsite water and road facilities were broken into manageable sizes in order to encourage the participation of local contractors, and were publicly bid. The contractors and the Petitioner will continue to use reasonable efforts to utilize local Kauai contractors and materials suppliers in the development and construction of the Project whenever possible.

Condition No. 25: Petitioner shall develop the Project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former land use classification, or change to a more appropriate classification.

Status: The Kukui'ula project area has been developed to date in substantial compliance with prior representations made to the SLUC. The Petitioner will continue to comply with this condition.

Condition No. 26: Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the property prior to the development of the Property.

Status: The SLUC was informed of the intent of KDCI to transfer all right, title and interest in the Kukui'ula project area to KDC Hawaii and that transfer was completed on March 31, 2005. Additionally, KDCI previously provided the SLUC prior notice to sell individual residential lots within the 32-lot Koloa Estates project. As part of the ongoing development process, Petitioner is proceeding with subdivision, as well as other regulatory approvals required for the sale of property to individual purchasers. In previous Annual Reports the SLUC was notified of the intent of the Petitioner to offer for sale 35 lots in Kukui'ula Residential Subdivision Phase IIA, 48 lots (was 55 originally) in Kukui'ula Residential Subdivision IIB, and 88 lots in Kukui'ula Residential Subdivision Phase I to individual purchasers. In addition, in 2011 the Petitioner began sales for approximately 16 lots in Kuku'ula residential subdivision Phase III A. In late 2010 the Petitioner conveyed to the County of Kauai a 4 acre lot for their development of affordable housing. In late 2011 the Petitioner obtained subdivision mapping from the County for the purpose of conveying 16 acres to the Royal Order of Kamehameha at Prince Kuhio Memorial Park. Conveyance of the 16 acres is anticipated in early 2014.

Condition No. 27: Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or has been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Status: This report is submitted in response to and in compliance with this condition.

Condition No. 28: The Land Use Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Status: Previously, the SLUC, by the Supplemental Order dated June 22, 1998, granted the release and discharge of the lands comprising the National Tropical Botanical Gardens' Visitor Center from the operation of the conditions of the Decision and Order dated May 18, 1995. Also, by order dated May 24, 1999, the SLUC granted the release and discharge of lands comprising the Koloa Estates subdivision from the operation of the conditions of the Decision and Order dated May 18, 1995, as amended by the Supplemental Order dated June 22, 1998.

Petitioner may file future motions with the SLUC for the release of conditions for other portions of the project area.

Condition No. 29: Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a Statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

Status: On May 25, 1995, a statement that the Kukui'ula project area was subject to conditions imposed in the Original Decision and Order was recorded with the Bureau of Conveyances as Document Number 95-069813 and a copy of such statement was filed with the SLUC. Further, as noted in Condition 30 below, Petitioner has recorded the conditions imposed by the SLUC with the Bureau of Conveyances.

Condition No. 30: Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

Status: The Declaration of Conditions dated July 28, 1998 setting forth the conditions imposed by the SLUC in the Supplemental Order recorded with the Bureau of Conveyances as Document Number 98-118338 were revoked pursuant to the Revocation and Cancellation of Conditions dated November 3, 2003 and recorded with the Bureau of

Conveyances as Document Number 2003-244115 on November 5, 2003. Also on November 5, 2003, the Declaration of Conditions dated August 8, 2003 setting forth the conditions imposed by the SLUC in the Revised Decision and Order was recorded with the Bureau of Conveyances as Document Number 2003-244116. Copies of these documents were filed with the SLUC on December 1, 2003.

I hope you find the report responsive to your needs. If you need any further information regarding this project or our progress, please do not hesitate to contact me at (808) 742-6304.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Crawford". The signature is fluid and cursive, with a large, stylized initial "L" and "C".

Lindsay Crawford
Senior Project Manager
Planning and Entitlements

cc: State Office of Planning
County of Kauai Planning Department