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June 25, 2014

VIA U.S. MAIL

Daniel E. Orodenker
Executive Director
State of Hawaii Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804

Re: **2005 to 2014 Annual Progress Report**
Land Use Commission Docket No. A92-677 ("**LUC A92-677**"), Condition 19
Original Petitioner: North Kona Development Group
Successor Petitioner: KD Maniniowali, LLLP (fka WB Maniniowali, LLC)
Development: Maniniowali
Tax Map Key Nos.: (3) 7-2-016:010, 12, and 013; 7-2-023:001 to 030; 7-2-024:001, 003, 006, 009 to 019; 7-2-028:001 to 008, 010, 013 to 032; 7-2-033:001, 002, 004, 005 to 35 (Formerly (3) 7-2-004: portion of 17)

Dear Mr. Orodenker:

By Findings of Fact, Conclusions of Law, and Decisions and Order filed on March 5, 1993, in Docket No. A92-677, the State Land Use Commission ("**Commission**") reclassified approximately 388.057 acres of Land from the Conservation District into the Urban District located at Maniniowali/Kuki'o 2, North Kona, Island of Hawaii, formerly a portion of TMK No.: 7-2-004: 017 (the "**Property**"). On behalf of our client KD Maniniowali, LLLP (fka WB Maniniowali, LLC) ("**KDM**"), we hereby submit 2005 to 2014 Annual Progress Report, pursuant to Docket No. A92-677, Condition 19. We have enclosed a chart that outlines the various conditions of approval and the status of KDM's compliance with the stated conditions of approval.

On January 18, 2002, PBR Hawaii & Associates, Inc. and I appeared before the Commission to report on the status of the development and KDM's compliance with the conditions of approval under Docket No. A92-677. On January 30, 2002, the Commission confirmed that KDM development efforts were in substantial compliance with the representations previously made to the Commission (See KDM's March 2002 Annual Progress

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LAND USE COMMISSION
STATE OF HAWAII

Report, Attachment O).

Our client acknowledges that no annual reports were submitted from 2005 through 2013, and we apologize for not providing the Commission with an update on the development of the Property sooner.

KDM has since sold the 34-lot Maniniowali Phase III Subdivision (TMK: (3) 7-2-034:001 through 037) locate within the Maniniowali development, in fee simple to TDM Kua 4, LLC ("**TDM**") under Warranty Deed recorded in the State Bureau of Conveyances, as Document No. 2008-077398, executed on May 12, 2008. On May 29, 2008, the Planning Department discharged KDM from obligations under the original Phase III Subdivision Agreement and Bond. KDM has also completed the construction of all remaining infrastructure and member amenities.

The following sections will provide a brief summary on the status of KDM's current development activities, excluding the areas now under the control of TDM. We understand that TDM will provide the Commission with a separate Annual Progress Report to address the status of the 34-lot Maniniowali Phase III development.

I. Development Summary

A. KDM Development History - Subdivisions

On September 19, 2001, the Planning Department approved KDM's Project District Site Plan ("**Site Plan**") for the Property, which allowed development of approximately 140 lots, consisting of 110 "estate" single-family residential lots, 30 "cottage" single-family residential lots, and 3 bulk lots for the Member's Club and Pool, the Sports Club, and Play Field.

Shortly after receiving Site Plan Approval, KDM obtained various Final Subdivision Approvals, as summarized in the table below:

Subdivision No.	Subdivision Phase	Tentative Approval Date	Final Subdivision Approval Date	No. of Lots
2000-0096	Phase I	10/19/01	12/24/02	33
2003-0138	Villas	02/04/04	10/12/04	30
2004-000085	Phase II	09/04/04	10/11/05	43
2005-000225	Phase III	08/11/06	04/21/08	34
			Total Lot Count:	140

As indicated earlier, KDM sold the 34-lot Maniniowali Phase III Subdivision to TDM on May 12, 2008, therefore, the Phase III lots are no longer within the KDM inventory.

Phase I currently consists of 28 lots, as 5 lots were consolidated and resubdivided into larger lots. In Phase II, 2 lots were consolidated for a total of 42 lots, while 3 of the Villas lots were consolidated and resubdivided for a total of 27 lots. Therefore, there are 97 total lots within the KDM's portion of the Maniniowali project (the "**KDM's Project**").

When we appeared before the Commission on January 18, 2002, we informed the Commission the Maniniowali project would include less residential units and no golf course development.

B. KDM Development History - Amenities

On May 8, 2006, KDM obtained Final Plan Approval for a Member's Comfort Station (aka the Members Club and Pool), located on TMK: (3) 7-2-016:010. The Member's Comfort Station received Final Inspection on December 20, 2007. The Member's Comfort Station is located mauka of the 400-ft. open space buffer along the makai Property boundary, pursuant to the requirements of SMA 395 (Condition 4), PDO 99-017 (Condition E), and the Declaration of Open Space Covenants dated December 1, 2001 (See BOC Document No. 2002-007701).

On May 8, 2006, KDM also obtained Final Plan Approval for the Member's Sports Complex located on TMK: (3) 7-2-024:017. The Member's Sports Complex received Final Inspection on November 24, 2008. The Member's Sports Complex consists of a main structure housing a kitchen, storage area, and restrooms, a smaller shade structure, pool, 4 tennis courts and a basketball court. KDM also constructed a Play Field on a neighboring property (TMK: (3) 7-2-024:018).

II. Current Development Plans

With the exception of those specific conditions that require on-going monitoring until all construction activities cease within KDM's Project, KDM has satisfied all of the conditions of approval for Docket No. A92-677.

According to KDM, all of the Phase I and Villas lots have been sold. Of the 97 total lots in KDM's Project, there are only 2 lots left for sale, which are both located in Phase II. KDM has completed the finished grading for all of the remaining house pads and any additional site refinement will be the responsibility of the individual lot owner. KDM has also completed all of the Project roadways and utilities. There will be no further construction activities initiated by KDM within KDM's Project. While there might be future construction activities relating to the on-going maintenance of the KDM's Project, the major elements of the development as proposed under the Property entitlements are essentially complete.

KDM will turn over the common areas and project roadways to the Kukio Community Association, Inc. ("**KCA**") later this year. Once the turnover to the KCA is completed, the KCA will be responsible for maintenance of the areas under its control. KDM already turned over the recreational amenities and improvements (e.g. member's comfort station, member's sports complex, play field) to the Kukio Golf and Beach Club, Inc. ("**KGBC**") in early 2013. The KGBC is responsible for maintenance of the areas under its control.

We trust that the information provided satisfies the annual reporting requirements of Docket No. A92-677, Condition 19. No further annual reports will be submitted by KDM. For those specific entitlement conditions that require on-going monitoring, once the turnover to the

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KCA is completed, the KCA will submit monitoring reports to the appropriate agencies and at the appropriate time, the KCA will request the Commission release the development from the conditions of Docket No. A92-677.

If you require any additional information, please feel free to contact my paralegal Jason Knable at 808-935-6644 at any time.

Sincerely,


Steven S.C. Lim

Attachment(s)

SSL/jkk1

cc: KD Maniniowali, LLLP
Kukio Golf and Beach Club, Inc.
Kukio Community Association, Inc.

LAND USE COMMISSION
STATE OF HAWAII

2005 to 2014 Annual Progress Report

LUC Docket No. A92-667

Reclassification of 388.057 acres from the Conservation District to the Urban District

Effective Date March 5, 1993

2014 JUN 27 A 8:38

KD Maniniowali, LLLP (fka WB Manini'owali, LLC) ("KDM")

No.	Condition	Status	Comments
1.	Petitioner shall provide affordable housing opportunities for low-low/moderate and gap group residents of the State of Hawaii to the satisfaction of the State Housing Finance and Development Corporation in accordance with the Affordable Housing Guidelines, adopted by the Housing Finance and Development Corporation, effective July 1, 1992, as periodically amended. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable among Petitioner, the State Housing Finance and Development Corporation and the County of Hawaii.	Satisfied	KDM satisfied this condition as it relates to KDM's portion of the Maniniowali Project, which consists of the completed Phase I, Phase II, and Villas subdivisions ("KDM's Project"). <u>REFERENCE:</u> <ul style="list-style-type: none"> • Hawaii County Housing Agency approval (10/23/01) - Resolution No. 126 approving payment of in-lieu fee of \$66,080.00 for 140 residential units. • County of Hawaii Office of Housing & Community Development approval (12/05/02) - \$66,080 payment of in-lieu fees for 140 residential units.
2.	Petitioner shall immediately stop work on the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources, should any archaeological resources such as artifacts, shell, bones or charcoal deposits, human burials, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development of the Property.	Satisfied	KDM satisfied this condition for KDM's Project. KDM has completed all site work and grading within KDM's Project.
3.	Petitioner shall preserve at least 5 historic sites (all or a portion of the mauka-makai trail as determined by the Department of Land and Natural and 4 burial sites), and archaeologically data recover the remaining sites, provided that if any remaining site is established as a shrine, its disposition shall be determined by the State Department of Land and Natural Resources. A detailed preservation plan (scope of work) and archaeological data recovery plan (scope of work) shall be approved by the State Department of Land and Natural Resources prior to the work. The detailed preservation plan shall include acceptable buffer zones around the sites, interim protection measures during construction, and long-term management measures (e.g., public access, trails, interpretative sign design and text, maintenance). The buffer zones and interim protection measures shall be approved and implemented prior to construction. The archaeological data recovery plan shall be executed prior to construction. The State Department of Land and Natural Resources shall verify in writing the successful execution of both	Satisfied	KDM satisfied this condition for KDM's Project. <u>REFERENCE:</u> <ul style="list-style-type: none"> • State Department of Land and Natural Resources – Historic Preservation Division (“DLNR-HPD”) approval (02/12/01) - <i>Archaeological Data Recovery Plan</i> (October 2000) • DLNR-HPD approval (11/29/01)- <i>Final Detailed Interim Preservation Plan</i> (09/11/01) • DLNR-HPD approval (07/30/03) - <i>Long-Term Preservation Plan, includes Interpretation Plan</i> (3/3/03) • DLNR-HPD approval (08/19/03) - <i>Archaeological Data Recovery Report</i> (2002) • T.S. Dye Final Data Recovery Report submittal letter to DLNR-HPD (11/12/03)- <i>Archaeological Data Recovery in the Barren Zone, Manini'owali and Kuki'o 2nd Ahupua`a, Kona Hawaii</i> (10/20/03)

	plans.		
4.	<p>Petitioner shall fund, design, and construct the necessary roadway improvements to the satisfaction of the State Department of Transportation and the County of Hawaii.</p> <p>a. The Petitioner shall submit construction plans for work within the State highway right-of-way for review and approval by the State Department of Transportation.</p> <p>b. Petitioner shall participate in the funding and construction of off-site transportation improvements necessitated by the proposed development of the Property.</p> <p>c. In the event that the County of Hawaii adopts an impact fee ordinance for transportation improvements, the requirements set forth in condition 4 herein, shall be satisfied to the extent that the cost of any specific traffic improvement is also included in the County's impact fee computation..</p>	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>All highway access related improvements were coordinated with the State Department of Transportation ("DOT"). Primary access to the KDM's Project is via the DOT-approved Kuki'o Resort channelized intersection at the Queen Ka'ahumanu Highway ("QKH").</p> <p>Secondary access to KDM's Project is via the Kekaha Kai State Park intersection at QKH. The secondary access is currently limited to construction and maintenance vehicle traffic.</p> <p>The County of Hawaii has not adopted an Impact Fee Ordinance for transportation improvements, however, Condition U of Change of Zone Ordinance 00-7 required KDM to provide "fair-share" contributions to support road and traffic improvements for 140 residential lots. KDM constructed traffic improvements, and paid the balance of the required "fair-share" contributions for 140 residential lots. The County of Hawaii Planning Department ("PD") confirmed KDM's "fair-share" payment by letter dated December 24, 2002.</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • <i>Condition M-3: Traffic Monitoring Program</i> and approved by the State DOT. • PD approval (12/24/02) - \$90,528.20 payment of fair share contribution (less credits for project infrastructure) for 140 residential units.
5.	<p>Petition shall provide its fair share for school facilities necessitated by the proposed development, as required by the State Department of Education.</p>	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>On December 19, 2001, KDM and the State Department of Education ("DOE") executed an Education Contribution Agreement ("ECA"), wherein KDM agreed to provide payments of \$1,011.01 per unit developed within the Maninio'wali project area, capped at 140 residential units.</p> <p>On May 17, 2004, KDM paid the DOE \$33,363.00 for the 33-lot Phase I subdivision. On February 29, 2008, KDM paid the balance of \$108,177.00 to the DOE to fully satisfy the terms of the ECA for the remaining 107 residential lots. On March 10, 2008, the DOE confirmed KDM satisfaction of the ECA. KDM paid a total of \$141,540.00 for 140 residential units.</p>

6.	Petitioner shall implement effective soil erosion and dust control measures both during and after construction to the satisfaction of the State Department of Health..	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>A soil erosion and dust control program was approved by the State Department of Health ("DOH") as part of the Air Quality Monitoring and Mitigation Plan for the overall Maniniowali project. A letter from the DOH approving the Air Quality Monitoring and Mitigation Plan was attached to KDM's March 2002 annual progress report as Attachment J.</p> <p>KDM has completed all site work and grading within KDM's Project. KDM also completed all subdivision related improvements and the various member related amenities within KDM's Project.</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • DOE agreement with KDM (12/19/01) - Education Contribution Agreement • DOE letter (03/10/08) - Satisfaction of Education of Contribution Agreement
7.	Petitioner shall fund and construct adequate civil defense measures as determined by the State and County of Hawaii civil defense agencies.	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>On November 5, 2001, the PD acknowledged receipt of the final Emergency Preparedness and Response Plan, which required KDM to fund the installation of a civil defense siren.</p> <p>KDM is currently coordinating with the County Civil Defense Agency on installation of the required civil defense siren.</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • PD approval (11/05/02) - Emergency Preparedness and Response Plan
8.	Petitioner shall make available adequate golf tee times at affordable rates for public play to State of Hawaii residents.	No longer applicable	<p>On January 18, 2002, KDM informed the State Land Use Commission ("SLUC") that KDM voluntarily downsized the scope of the project to eliminate the golf course from the current development, among other things, however, KDM also reserved the right to pursue the project's original scope, in the unlikely event that circumstances change. This issue was further confirmed by the SLUC by its substantial compliance letter dated January 30, 2002.</p> <p><u>REFERENCE:</u></p> <ul style="list-style-type: none"> • SLUC confirmation (01/30/02) - Compliance letter

9.	Petitioner shall fund and construct adequate wastewater transmission and disposal facilities, as determined by the State Department of Health and the County of Hawaii Department of Public Works.	Satisfied	KDM satisfied this condition for KDM's Project. KDM developed a wastewater disposal system that met the approval of the DOH and the County of Hawaii Department of Public Works ("DPW").
10.	Petitioner shall comply with the "Twelve (12) Conditions Applicable to All New Golf Course Developments", prepared by the State Department of Health dated January 1992 (Version 4), as amended.	No longer applicable	See our response to Condition 8.
11.	Petitioner shall engage the services of a qualified golf course superintendent to oversee the irrigation of the golf course and applicable of fertilizers, pesticides and herbicides to the golf course within the Property and who shall be qualified in the application of fertilizers, pesticides and herbicides on those area..	No longer applicable	See our response to Condition 8.
12.	Petitioner shall participate in the air quality monitoring program as specified by the State Department of Health..	Satisfied	KDM satisfied this condition for KDM's Project. The DOH approved an Air Quality Monitoring and Mitigation Program for the overall project. A DOH letter dated January 16, 2002 acknowledged the KDM's compliance with the foregoing condition and was attached to the Petitioner's March 2002 annual progress report, as Attachment J.
13.	Petitioner shall cooperate with the State Department of Health and the County of Hawaii Department of Public Works to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.	Satisfied	KDM satisfied this condition for KDM's Project. On October 21, 2001, the DPW approved the Integrated Solid Waste Management Program for the Project, which was attached to KDM's March, 2002 annual progress report as Attachment M.
14.	Petitioner shall monitor coastal water quality, and develop and implement a program to identify major areas of groundwater introduction into the marine environment, in consultation with the State Department of Health.	Satisfied	KDM satisfied this condition for KDM's Project. On December 18, 2001, the DOH approved the Manini'owali Water Quality Monitoring Program, which was attached to KDM's March 2002 annual progress report, as Attachment N. KDM regularly submits annual Water Quality Monitoring Reports to the PD, most recently on February 12, 2014. On March 14, 2014, the PD acknowledged receipt of the 2013 Water Quality Monitoring Report and confirmed compliance with the conditions of approval for the project's entitlements. <u>REFERENCES:</u>

			<ul style="list-style-type: none"> • 2008 Annual Water Quality Monitoring Report: Submittal to PD and DOH (02/10/09) • 2009 Annual Water Quality Monitoring Report: Submittal to PD and DOH (08/24/10) ; PD acknowledgment of receipt (09/09/10) • 2010 Annual Water Quality Monitoring Reports: Submitted to PD and DOH (04/05/12) • 2011 Annual Water Quality Monitoring Report: Submittal to PD and DOH (01/18/13) ; PD acknowledgment of receipt (01/28/13) • 2012 Annual Water Quality Monitoring Report: Submittal to PD and DOH (05/29/13); PD acknowledgment of receipt (08/13/13) • 2013 Annual Water Quality Monitoring Report: Submittal to PD and DOH (02.12.14); PD acknowledgment of receipt (03.14.14)
15.	Petitioner shall fund the development of the necessary water source, storage, and transmission facilities to provide an adequate supply of potable water to the Property.	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>KDM installed a private potable water system for KDM's Project, which is fully functional and operational. A public utility water company manages the private water system.</p>
16.	Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the County of Hawaii Department of Public Works and the State Department of Land and Natural Resources.	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>The DPW approved the drainage studies for KDM's Project.</p>
17.	Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification..	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>On January 18, 2002, PBR Hawaii and Steven S.C. Lim, Esq. of Carlsmith Ball, LLP made a presentation to the SLUC on the status of the development and KDM's compliance with the conditions of approval and representations made to the SLUC. The SLUC confirmed that KDM was in substantial compliance with the representations previously made to the SLUC on January 30, 2002, which was attached to KDM's March 2002 annual progress report, as Attachment O.</p>
18.	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 covered by the approved petition prior to visible commencement of construction on the Property.	Satisfied	<p>KDM satisfied this condition for KDM's Project.</p> <p>On November 8, 2001, notice was provided to the SLUC on KDM's purchase of the Property from Maniniowali Equity Group, a copy of which was attached to Petitioner's March 2002 annual progress report, as Attachment P.</p> <p>On May 12, 2008, KDM sold its interest in the Phase III subdivision to TDM Kua 4, LLC. Although no construction has occurred in Phase III yet, this shall serve as notice to the SLUC of the earlier sale of this portion of the Property.</p>

19.	<p>Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed.</p> <p>Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of State Planning will certify for itself and all state departments and agencies, and the County of Hawaii Planning Department will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction.</p>	On-going	KDM submits its 2005 to 2014 annual report to the SLUC, and by copy, submits the same to the State Office of Planning and the PD in compliance with this condition.
20.	The commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.		KDM acknowledges this condition.
21.	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 to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.	Satisfied	<p>KDM satisfied this condition.</p> <p>Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, the original Petitioner recorded at Statement to the effect that the Property is subject to conditions imposed by the SLUC in the reclassification of the property with the Bureau of Conveyances and filed a copy of said recorded Statement with the SLUC.</p>
22.	Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Title 15, Chapter 15, Section 92, Hawaii Administrative Rules.	Satisfied	<p>KDM satisfied this condition.</p> <p>The conditions of Docket No. 92-677 were recorded by the original Petitioner at the Bureau of Conveyances and a copy was filed with the Commission.</p>