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September 21, 2016

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

Re: **2016 Annual Progress Report**
Docket Nos. A81-524 and A93-701
Original Petitioner: Kaupulehu Developments
Successor Petitioner: KD Acquisition, LLLP (fka WB KD Acquisition, LLC)
Tax Map Key Nos.: (3) 7-2-031:001, 002, 004, 006 thru 011, 013 thru 031; (3)
7-2-032:001 thru 010, 014 thru 053; (3) 7-2-010:023 and portions of 022, 024,
and 025 (Formerly (3) 7-2-003: Portion of 001) ("**Lot 4-A**")

Dear Mr. Orodener:

By Findings of Fact, Conclusions of Law, and Decision and Order filed on June 17, 1996, in Docket No. A93-701, the State Land Use Commission ("**Commission**") reclassified approximately 1,009.086 acres of land from the Conservation District to the Urban District located in Kaupulehu, North Kona, Island of Hawaii, formerly a portion of TMK No.: (3) 7-2-003:001. On behalf of our client, KD Acquisition, LLLP¹ ("**KD**"), successor in interest to Kaupulehu Developments, the original Petitioner in Docket No. A93-701, we hereby submit the 2016 Annual Progress Report pursuant to Condition 27². .

¹We provided an entitlement summary within our 2008 to 2015 Annual Progress Report to the Commission dated February 18, 2015, but we did not mention that on June 9, 2014, KD Acquisition, LLC was converted to KD Acquisition, LLLP. We apologize for this omission.

²As indicated in our 2003 to 2004 Annual Progress Report to the Commission, Hualalai Investors, LLC (the successor-in-interest to former Petitioner Kaupulehu Makai Venture) will file separate annual progress reports with the Commission for Lot 4-B

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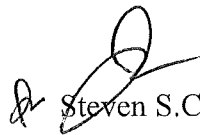
The comprehensive development status provided in our 2008 to 2015 Annual Progress Report to the Commission dated February 18, 2015, remains largely unchanged. KD is still awaiting State Historic Preservation Division review and approval of a Revised Long-term Preservation Plan for Kaleamano Cultural Reserve, which encompasses Subzones A and B-1 of the Coastal Planning Area. Nevertheless, as we indicated in our last report to the Commission, KD is committed to satisfying the conditions of Docket No. A93-701.

Attached for your reference you will find a chart that outlines the various conditions of approval and the status of KD's compliance with these conditions.

We trust that the foregoing and the charts attached satisfy the annual reporting requirements of Docket No. A93-701 (Condition 27).

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

SSL/jkk1

Attachment(s)

cc: KD Acquisition, LLLP
County of Hawaii Planning Department

KD Acquisition, LLLP (fka WB KD Acquisition, LLC) ("Successor Petitioner")
State Land Use Commission Docket Nos.: A81-524 and A93-701
Effective Date: August 12, 1982 (A81-524) and October 18, 2001 (A93-701)
2016 Annual Report

State Land Use Commission Docket No.: A81-524 - Compliance with Conditions of Approval

The 65-acre area reclassified under State Land Use Commission ("Commission") Docket No.: A81-524 on August 12, 1982, from Conservation District to Urban District, was originally proposed for development of hotel condominiums. Subsequently, the Commission adopted conditions through LUC Docket No.: A93-701, which essentially converted a majority of the 65-acre Urban District area into a resource management area for preservation, education, and stewardship uses, now identified by the County of Hawaii Planning Department ("PD") approved Project District Site Plan dated July 2, 2003, as Coastal Planning Area A. Coastal Planning Area A was designed for preservation of salt gathering, coastal trails, coastal views, and archaeological sites, subject to requirements that prohibit any ground disturbance activities within the area, except for pedestrian paths or public access improvements.

No.	Condition	Status	Comments
A	Petitioner shall provide housing opportunities for employees of the Kona Village Resort and/or hotel to be constructed on the subject "Area B" in any one or combination of the following manners prior to assigning or transferring (except by way of mortgage or assignment as security) its interest in the public properties: - To construct, either on Area B or on other Urban land to be acquired by the Petitioner, a number of residential units for sale or rental to employees of the Kona Village Resort and/or the hotel to be constructed in Area A at the prices of rentals affordable by said employees, and of a size standard equivalent to Federal Housing Administration Minimum Property Standards, equal to ten percent (10%) of the number of condominium apartments or hotel rooms to be constructed on Area B; or - To pay the Hawaii Housing Authority or County of Hawaii, for use in a housing assistance fund or for the benefit of employees of the Kona Village Resort and/or the hotel to be constructed on Area B, or low and moderate income residents of the State of Hawaii, a sum determined by the Hawaii Housing Authority or County of Hawaii to be equal to the costs of acquiring land for, developing and constructing a number of residential units equal to ten percent (10%) of the number of condominium apartments or hotel rooms to be constructed on Area B.	N/A	This condition is not applicable to the Successor Petitioner's development plans for Lot 4-A. The Successor Petitioner is not proposing development of "condominium apartments or hotel rooms" within the 65-acre Urban District reclassified under LUC Docket No.: A81-524. The Successor Petitioner is instead utilizing the 65-acre area primarily for preservation, cultural and recreational uses, as described under the Kaupulehu Integrated Resources Management Plan dated 6/17/98, and in compliance with the conditions of LUC Docket No.: A93-701. Therefore, the affordable housing and employee housing requirements of Condition A are not applicable at this time. <u>REFERENCE:</u> 1) "Kaupulehu Integrated Resources Management Plan" ("IRMP") (Belt Collins Hawaii, Ltd., 6/17/98)
B	Petitioner shall provide access from Queen Kaahumanu Highway to the shoreline, for public recreational purposes along the entire length of shoreline owned, leased or controlled by Petitioner and its successors, and assigns, the location and form of said easements to be approved and accepted by the County of Hawaii.	Satisfied	The Successor Petitioner has satisfied this condition. The Successor Petitioner completed the public access improvements in 2008, however, while hand clearing the shoreline public access alignment to facilitate public access along the shoreline, additional archaeological features were uncovered. The project archaeologist is currently preparing the appropriate archaeological plans for submittal to the State Historic

		Preservation Division for the newly discovered archaeological sites. The Successor Petitioner is also working with the KDMC and the lineal descendants from the area to develop a management plan to ensure the protection of these new archaeological sites.
		<u>REFERENCE:</u> 1) PD approval (09/29/04) - "Kaupulehu Lot 4-A Comprehensive Public Access Plan" ("Kaupulehu Lot 4-A CPAP") (PBR Hawaii & Belt Collins, September 2004)

State Land Use Commission Docket No.: A93-701 ("SLUC A93-701") - Compliance with Conditions of Approval

The Successor Petitioner is processing the development of Lot 4-A in two (2) increments, which are noted as follows:

1) The "Increment 1 Development" shall refer to the development area comprised of the Interpretive Center located on TMK: (3) 7-2-010: Portion of 022, the Members' Beach Club located on TMK: (3) 7-2-031:031, and the 80 single-family residential lots developed into two (2) phases; Phase 1 (38 lots) now TMK Nos.: (3) 7-2-031:001, 002, 004, 006 thru 011, 013 thru 030 and TMK Nos.: (3) 7-2-032:001 thru 008; and Phase 2 (42 lots) now TMK Nos.: (3) 7-2-032:009, 010, 014 thru 053.

2) The "Increment 2 Development" shall refer to the development area comprised of approximately 391 residential units, outdoor recreational facilities, and the related infrastructure located within TMK Nos.: (3) 7-2-010:023 and portions of 022, 024, and 025.

The Successor Petitioner's compliance with the conditions of approval for each increment are either addressed collectively as the "Kaupulehu Project" or noted separately by increment, as applicable.

No.	Condition	Status	Comments
1a.	Petitioner shall initially establish and annually provide reasonable operating and capital expenditure costs through revenues from the Project and assessments, a Kaupulehu Development Monitoring Committee (KDMC) composed of: (1) person of native Hawaiian ancestry who is knowledgeable regarding the type of cultural resources and practices within the Petition Area, as selected by LUC from a list of three names submitted by each of the parties based on review of their resumes and a formal interview process; and (2) a management member knowledgeable regarding the type of cultural resources and practices within the Petition Area, as selected by Petitioner and landowner. The individuals making up the KDMC shall operate on an equal vote basis. In the event that the individuals making up the KDMC cannot agree on specific decision, they shall jointly select a third person to break the tie.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. Hannah Kihalani Springer was selected to be the native Hawaiian representative on the KDMC pursuant to the D&O Approval Selection of Native Hawaiian Committee Member to the KDMC dated 05/13/02. Leina'ala Keakealani Lightner was selected as the Successor Petitioner's appointee to the KDMC. Pursuant to the KDMC Operational Plan, each KDMC member shall serve a 5-year term. The first 5-year term for Ms. Springer and Ms. Lightner expired on 04/09/07. Although the terms for Ms. Springer and Ms. Lightner were extended for an additional 5 years ending in 04/07/12, they continue to serve the KDMC in their original capacity. <u>REFERENCE:</u> 1) KDMC term extension letter (May 2007)

1b.	The KDMC shall be established by Petitioner no later than six months from the issuance of this decision and order. Upon establishment of the KDMC, Petitioner shall provide a written report to the Land Use Commission, the Office of Planning, and the County of Hawaii with details as to its composition, structure, operating costs and compensation for members and staff, procedures, and plan of action to be approved by the Land Use Commission.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The KDMC was established and commenced operations on 04/25/02. The KDMC Operational Plan was filed with the Commission on 05/13/02. <u>REFERENCE:</u> 1) KDMC Operational Plan (05/13/02)
1c.	The KDMC shall jointly decide on an equal vote basis monitoring and dispute resolution decisions related to the protection of native Hawaiian practitioner's exercise of customary and traditional practices and rights as described above; the availability of natural and cultural resources for present and future generations; and appropriate access in the subject areas to the extent that these rights are protected by PASH vs. Hawaii County Planning Commission, 79 Haw. 425, (1995), in perpetuity. In the event that the two person KDMC cannot agree on a specific decision, they shall jointly select a third person to break the tie. A certified description of any action requiring section of a third member of the KDMC shall be filed with the Land Use Commission.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The KDMC Operational Plan outlines monitoring and dispute resolution decisions. Pursuant to the charter of duties established in the KDMC Operational Plan, the KDMC continues to monitor and make recommendations relating to the maintenance and or preservation of traditional and customary native Hawaiian practices and cultural resources. <u>REFERENCE:</u> 1) KDMC Operational Plan (05/13/02)
1d.	The KDMC shall monitor the quality of the salt gathering resource and the effectiveness of the Petitioner's actions to provide access to and/or preserve and maintain traditional and customary native Hawaiian practices and cultural resources. The KDMC shall provide recommendations consistent with this decision and order to the Land Use Commission with respect to maintenance and/or preservation of those traditional and customary native Hawaiian practices and cultural resources.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The KDMC continues to monitor the salt gathering and the Successor Petitioner's actions to allow to adequate traditional and customary native Hawaiian access. "Salt Pans and Quality of Salt from Kalaemano, Lot 4 Project Site" (March 2008, Environmental Assessment, LLC) was reviewed and approved by the KDMC and submitted to the County of Hawaii Planning Department ("PD"), LUC, DLNR and DOH Clean Water Branch on 02/10/09. <u>REFERENCE:</u> 1) The "Salt Pan Monitoring Plan" (Marine Research Consultants, 5/23/00) 2) KDMC and DOH approval (01/11/05) - "Proposed Water Quality/Salt Pan/Marine Life Monitoring Plan" (Environmental Assessment, LLC, 4/26/04) 3) Reviewed and approved by the KDMC; and submitted to the PD, LUC, DLNR, and DOH Clean Water Branch (02/10/09) - "Salt Pans and Quality of Salt from Kalaemano, Lot 4 Project Site" (Environmental Assessment, LLC, March 2008)
1e.	The KDMC shall provide reports on an annual basis describing items and issues covered in their deliberations and any other findings and recommendations.	On-going	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. The last KDMC annual report filed with SLUC was on 08/20/13.

2a.	Petitioner shall establish a 235-acre resource management area to maintain, protect, and preserve the exercise of traditional and customary practices and cultural resources within the Petition Area consistent with this decision and order. Petitioner shall establish an annual budget for maintaining the resource management area including the costs for administration, infrastructure, capital costs, security and educational personnel to be approved by the KDMC. Excluding the approx. 37.064-acre archaeological preserve, the resource will be retained in the Conservation District, the resource management area shall encompass approx. 198 acres.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. Pursuant to the provisions of the "Kaupulehu Integrated Resources Management Plan" ("IRMP") (Belt Collins Hawaii, Ltd., 6/17/98), a 235-acre resource management area, designated as "coastal planning areas", was established and recorded under the Declaration of Coastal Planning Area on 11/10/04 (Document No.: 2004-228042). <u>REFERENCE:</u> 1) Declaration of Coastal Planning Area (11/10/04) (BOC Document No.: 2004-228042) The Kaupulehu Community Association ("KCA") funds the maintenance of the annual budget resource management area. The KDMC will review and approve the KCA annual budget upon turnover by the Developer. The resource management area encompasses 203.5 acres, as the Successor Application has excluded the 37.064-acre archaeological preserve (Subzone C) from this area. The following is a breakdown of the various subzones within the resource management area: Subzone A: 104.221; Subzone B1 = 31.961 acres; Subzone B2 = 19.660 acres; Subzone B3 = 47.656 acres. The Successor Petitioner has satisfied this condition for the Kaupulehu Project.
2b.	The resource management area shall contain five subzones. The delineation of the five subzones shall be based upon the resources and activities within each respective subzone and the management and preservation measures to be employed with regard to those resources as set forth in the decision and order. All five subzones will be linked by public access way consisting of portions of the historic coastal trail and new pedestrian paths. Petitioner shall provide metes and bounds map and description of boundaries of each of the subzones to the Land Use Commission within six months of the issuance of this decision and order.	Satisfied	The metes and bounds map and description of the boundaries of each of the five (5) subzones was submitted to the SLUC on 11/14/02, and recorded with the State Bureau of Conveyances on 11/10/04 by way of Declaration of Coastal Planning Area (Document No.: 2004-228042). <u>REFERENCE:</u> 1) Declaration of Coastal Planning Area (11/10/04) (BOC Document No.: 2004-228042) The Successor Petitioner has satisfied this condition for the Kaupulehu Project.
2c.	Subzone A shall be designated for preservation of salt gathering, the coastal trail, coastal views, and archaeological sites. Petitioner shall prohibit any ground-disturbing activity within the subzone except for pedestrian paths or other public access improvements that may be required by the State of County. Public access will be provided to and within this subzone over the shoreline, historic coastal trail, and other onsite pedestrian pathways.	Satisfied	The provisions for restricted activity and public access within Subzone A are addressed in the following documents on file with the Commission. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&Rs' regarding Restricted Parcels (Recorded on 12/23/05; Document No.: 2004-262407) 3) Declaration of Coastal Planning Area (Recorded on 11/10/04; Document No.: 2004-228042) [A = 104.221 acres]

2d.	Subzone B shall be divided into three components, B1, B2, and B3. Subzone B1 shall include approximately 30 acres, and will be designated as an activity-oriented area for public access parking. Subzone B2 shall include approximately 15 acres and traverse the coastal edge of the 1800-1801 lava flow over a distance of approximately 3,900 feet along the coast and at least 100 feet inland from the certified shoreline, and in some instances 300 feet. It will preserve the coastal trail and the shoreline resources. Subzone B3 shall include approximately 49 acres surrounding Kona Village Resort, and will provide a buffer to reduce visual and other impacts to the Kona Village Resort. This buffer are will be restricted to open space uses such as golf course and related improvements, landscaping, infrastructure, existing heliport, and other uses which may be acceptable to Kona Village Resort.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The provisions for restricted activity and public access within Subzone B1, B2, and B3 are addressed in the following documents on file with the Commission. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&Rs' Regarding Restricted Parcels (Recorded on 12/23/05; Document No.: 2004-262407) 3) Declaration of Coastal Planning Area (Recorded on 11/10/04; Document No.: 2004-228042) [B1 = 31.961 acres; B2 = 19.660 acres; B3 = 47.656 acres]
2e.	Subzone C shall consist of approximately 37 acres just inland of Kona Village Resort and will be an archaeological preserve for 38 archaeological sites containing 191 separate features, as identified in the archaeological inventory level survey conducted by Paul H. Rosendahl, Inc. Improvements in this subzone will be limited to interpretive signage and trail maintenance.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The provisions for restricted activity and public access within Subzone C are addressed in the following documents on file with the Commission. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&Rs' regarding Restricted Parcels (Recorded on 12/23/05; Document No.: 2004-262407) 3) Declaration of Coastal Planning Area (Recorded on 11/10/04; Document No.: 2004-228042) [C = 37.064 acres]
3a.	Petitioner shall preserve and protect the gathering and access rights of native Hawaiians by providing appropriate access to the salt gathering resource at Kalaemano and fund adequate security and maintenance to maintain trails and salt gathering areas in accordance with traditional and customary native Hawaiian practices located within Subzone A as decided and monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The access provisions of this condition are included and addressed in the IRMP and the Kaupulehu Lot 4-A CPAP. The funding of the maintenance and security of the resources management areas have been budgeted through the KCA and will be developed in consultation with and monitored by the KDMC.
3b.	Petitioner shall preserve and protect the gathering for cultural purposes including religious practice by providing appropriate access to burial sites and other archaeological sites within the Petition area consistent with this decision and order. Petitioner shall adhere to prevailing and/or published protocols of the Hawaii County Burial Council and/or State Historic Preservation Division where these sites are found to exist as monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The approved "Archaeological Site Preservation Plan" addresses public access to archaeological sites, as monitored by the KDMC. <u>REFERENCE:</u> 1) Hawaii Island Burial Council approval (08/15/02): "Burial Treatment Plan -

		Kaupulehu Resort Expansion Project" 2) DLNR- State Historic Preservation Division ("SHPD") (08/19/02): "Burial Sites Program" 3) SHPD approval (08/14/03): "Archaeological Data Recovery and Interim Site Preservation Plans, Remainder of Lot 4, Kaupulehu Makai" (October 2002) 4) DLNR-SHPD submittal (02/12/08): "Archaeological Data Recovery, Kaupulehu Makai, Remainder of Lot 4" (January 2008) 5) SHPD approval (08/8/08): "Archaeological Site Preservation Plan" (January 2008) 6) Revised Long-term Preservation Plan for Kalaemano Cultural Reserve submitted to SHPD for review in December 2013 for review. Still pending SHPD approval.	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. To date, the KDMC has not observed Pele worship activities occurring on within the development, therefore, the KDMC has not identified a specific site for Pele worship.	2) DLNR- State Historic Preservation Division ("SHPD") (08/19/02): "Burial Sites Program" 3) SHPD approval (08/14/03): "Archaeological Data Recovery and Interim Site Preservation Plans, Remainder of Lot 4, Kaupulehu Makai" (October 2002) 4) DLNR-SHPD submittal (02/12/08): "Archaeological Data Recovery, Kaupulehu Makai, Remainder of Lot 4" (January 2008) 5) SHPD approval (08/8/08): "Archaeological Site Preservation Plan" (January 2008) 6) Revised Long-term Preservation Plan for Kalaemano Cultural Reserve submitted to SHPD for review in December 2013 for review. Still pending SHPD approval.
3c.	Pele worship shall be allowed to continue however, it shall not be further allowed in the portion of the 1800-1801 Hualalai lava flow to be developed. There is no reference in the record to a specific site on the flow that has been utilized for such worship. Therefore, the Land Use Commission is not designating a specific site. However, if the KDMC should identify a specific site in the course of their monitoring of Petitioner's efforts to maintain and/or preserve traditional native Hawaiian cultural resources, it shall forward its recommendation to the Land Use Commission for its approval that such site be designated for Pele worship. Petitioner shall initiate and fund a nearshore water quality monitoring program. The parameters of the monitoring program shall be approved by the State Department of Health (DOH). Petitioner shall provide regular reports to the Land Use Commission and the KDMC as to the findings of this water quality monitoring program.	On-going	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. Environmental Assessment, LLC prepares regular monitoring reports on the nearshore water quality, copies of which were provided to the Commission, PD, DLNR, DOH/Clean Water Branch, and the KDMC. REFERENCE: 1) DOH submittal (PBR, 09/16/04): "Proposed Water Quality/Salt Pan/Marine Life Monitoring Program for Kaupulehu Lot 4-A" 2) DOH Letter (01/11/05) 3) PD acknowledgement letter (02/08/06) 4) PD submittal (WB KD, 05/13/13): "2012 Annual Water Quality Monitoring Report, Kalaemano, North Kona (Jan. 2013; EAC Report No. 2013-01)" and "Quantitative Assessment of the Marine Communities Fronting the Kalaemano Development - 2012 Annual Survey (Jan. 2013; EAC Report No. 2013-02)". The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The Successor Petitioner has surveyed the described location and has not found any Pele's Tears.	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. Environmental Assessment, LLC prepares regular monitoring reports on the nearshore water quality, copies of which were provided to the Commission, PD, DLNR, DOH/Clean Water Branch, and the KDMC. REFERENCE: 1) DOH submittal (PBR, 09/16/04): "Proposed Water Quality/Salt Pan/Marine Life Monitoring Program for Kaupulehu Lot 4-A" 2) DOH Letter (01/11/05) 3) PD acknowledgement letter (02/08/06) 4) PD submittal (WB KD, 05/13/13): "2012 Annual Water Quality Monitoring Report, Kalaemano, North Kona (Jan. 2013; EAC Report No. 2013-01)" and "Quantitative Assessment of the Marine Communities Fronting the Kalaemano Development - 2012 Annual Survey (Jan. 2013; EAC Report No. 2013-02)". The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The Successor Petitioner has surveyed the described location and has not found any Pele's Tears.
4	Petitioner shall to the extent feasible inventory non-renewable resources such as Pele's Tears found at the makai edge of the 1800-1801 Hualalai lava flow located in Subzones A, B2, and B3. The KDMC shall review this inventory and recommend to the Land Use Commission methods to preserve, protect, exhibit, or provide appropriate access to any such resource in its six-month plan for the	Satisfied		

	LUC approval.			
5	Petitioner shall provide appropriate access to the shoreline of the Petition Area to preserve and protect access rights of native Hawaiians and the general public to Kupe's shells that may be found along the shoreline as monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) PD approval (09/29/04) - Kaupulehu Lot 4-A CPAP	
6a.	At a minimum, to preserve and protect mauka and makai view planes and the shoreline as a site for spiritual meditation and educational practices, Petitioner shall cause to be established a setback zone of 75 feet from the certified shoreline within which there shall be no improvements of any kind other than improvements which may be reasonably necessary for purposes of public safety, and where the property will be left in its natural state; provided that certain golf holes may be allowed within the setback subject to mutual agreement between Petitioner, the Department of Land and Natural Resources, and the Office of Planning.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) PD approval (07/02/03) - Project District Site Plan 2) PD approval (5/10/05) - "Kaupulehu Design Guidelines"	
6b.	At a minimum, to preserve and protect mauka and makai view planes and the shoreline as a site for spiritual meditation and education practices, Petitioner shall prohibit any residential development or vertical improvements, other than landscaping and improvements allowed by County ordinance or variance, to be constructed or erected within 150 feet of the certified shoreline.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) PD approval (7/02/03) - Project District Site Plan	
7a.	The proposed mitigation commitments for all identified sites with burials must be submitted to the State Historic Preservations Division's Hawaii Island Burial Council for vote on the mitigation proposals. Once a decision is made by the Council, then the mitigation commitments for those sites will be finalized. A burial treatment plan for the mitigation treatment for those sites must then be approved by the State Historic Preservation Division, in consultation with their Hawaii Island Burial Council, and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites as monitored by the KDMC. Mitigation commitments shall be monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The KDMC continues to monitor the mitigation protocols for the identified burial sites. <u>REFERENCE:</u> 1) Hawaii Island Burial Council approval (8/15/02) - "Burial Treatment Plan" and mitigation treatment for those sites was approved by SHPD-Burial Sites Program (8/19/02).	
7b.	For all sites approved by the State Historic Preservation Division (SHPD) to undergo archaeological data recovery, an archaeological date recovery plan (scope of work) must be prepared by Petitioner. This plan must be approved by the SHPD and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites. The approval plan will be monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) SHPD approval (8/14/03) - "Archaeological Data Recovery and Interim Site Preservation Plans, Remainder of Lot 4, Kaupulehu Makai" 2) DLNR-SHPD submittal on 2/12/08 - "Archaeological Data Recovery, Kaupulehu Makai, Remainder of Lot 4" (January 2008) 3) SHPD approval (8/08/08) - "Archaeological Site Preservation Plan" (January 2008)	

7c.	For all sites approved for preservation by the State Historic Preservation Division (SHPD), a preservation plan must be prepared by Petitioner. (Burial sites may be covered under the burial treatment plan.) This plan must include buffer zones/interim protection measures during construction, and long-range preservation (including public access and interpretation, where appropriate). The plan must include input from the local native Hawaiian community and relevant Hawaiian groups. The plan must be approved by the SHPD and a certified copy of said plan shall be filed with the LUC prior to any land alteration in the vicinity of these sites. The approval plan will be monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) SHPD approval (8/8/08) - "Archaeological Site Preservation Plan, Lot 4A, Kaupulehu Makai" (January 2008)
7d.	Petitioner shall immediately stop work and contact the SHPD should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered during Project development. Mitigation and preservation shall be monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Increment 1 Development and shall comply with this condition when further developing the Increment 2 Development.
8	Petitioner shall preserve and protect the coastal trail in its entirety and portions of the mauka-makai trail located within the Resource Management Area and Petition Area with interpretive development, pursuant to the recommendations of Paul H. Rosendahl, Inc., and as approved by the State Historic Preservation Division to manage this cultural resource. Preservation and protection shall be monitored by the KDMC.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The KDMC monitors the coastal and mauka-makai trails and collaborates with National Park Service ("NPS") Ala Kahakai Trail Program on trail preservation and interpretation. <u>REFERENCE:</u> 1) PD approval (09/29/04) - Kaupulehu Lot 4-A CPAP 2) SHPD approval (8/08/08) - "Archaeological Site Preservation Plan" (January 2008)
9	Petitioner shall initiate and fund a program to monitor the populations of threatened and endangered green sea turtles, hawksbill turtles, and humpback whales, as required by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Division of Aquatics Resources. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the US Fish and Wildlife Service, the National Marine Fisheries Service, and Department of Land and Natural Resources.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. As recommended by the U.S. Fish & Wildlife Service in its 12/16/02 letter, the Successor Petitioner will continue to monitor two (2) shoreline sites that show characteristics of turtle nesting beaches. <u>REFERENCE:</u> 1) DLNR Letter (06/19/02) 2) National Ocean and Atmospheric Administration ("NOAA")/National Marine Fisheries Service ("NMFS") Letter (09/18/02) 3) U.S. Fish and Wildlife Service ("USFWS") Letter (12/16/02)
10	Petitioner shall conduct biological survey for terrestrial invertebrates, the Hawaiian Hoary bat, and Kona Nightingale (feral donkey), prior to submitting an application for rezoning to the County of Hawaii. Petitioner shall consult with the U.S. Fish and Wildlife Service prior to initiating the study, regarding the content	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) USFWS Letter (09/11/98) - "Avifaunal and Feral Mammal Survey of Kaupulehu Phase 2 Expansion Project, North Kona, Hawaii" (Belt Collins,

	and completeness. The study shall be accepted and approved by the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service must also verify in writing the successful execution of the study, and the implementation of the mitigation/preservation plan.		02/9/94)
11	Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents in the State of Hawaii to the satisfaction of the County of Hawaii. 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 Petitioner and the County of Hawaii.	Satisfied	The Successor Petitioner has satisfied this condition for the Increment 1 Development and shall comply with this condition when further developing the Increment 2 Development. <u>REFERENCE:</u> 1) County PD letter (04/9/08) - Agreement for Assignment of Affordable Housing Credits between Seascope Development LLC and the Successor Petitioner (09/15/06) The Successor Petitioner has satisfied this condition for the Increment 1 Development and shall comply with this condition when further developing the Increment 2 Development. Soil erosion and dust control measures are mitigated in the Increment 1 Development as required by the approved Grading plans and permits, Drainage Plan, and through developer and individual contractor Best Management Practices, as required and monitored by DOH/NPDES Permit No. HI S000124, which expires on April 18, 2018. The Successor Petitioner satisfied this condition for the Increment 1 Development through the County's issuance of Final Subdivision Approval as referenced below. The Successor Petitioner shall continue to comply with this condition when further developing the Increment 2 Development. <u>REFERENCE:</u> 1) County Department of Public Works ("DPW"), Solid Waste Management Division approval (12/28/00) - "A Solid Waste Management Plan for the Hualalai Resort Phase II Development" 2) DPW- Department of Environmental Management ("DEM") approval (7/6/07) - "Supplemental Solid Water Management Plan for Kaupulehu Lot 4-A, Phase 1 (May 2004)" 3) Increment 1, Phase 1 (SUB 7891) - Final Subdivision Approval ("FSA") (12/30/04) 4) Increment 1, Phase 2 (SUB 05-000066): FSA (11/22/06) 5) Increment 1, Phase 2 (SUB 05-000066 Revised): FSA (02/21/07) 6) Increment 2, Phase 1 (SUB 13-001254): FSA (06/09/14) The Successor Petitioner satisfied this condition for the Increment 1 Development through the County's issuance of Final Subdivision Approval as referenced below. The Successor Petitioner shall continue to comply with this condition when further developing the Increment 2 Development. <u>REFERENCE:</u>
12	Petitioner shall implement effective soil erosion and dust control measures during and after construction to ensure that the development activities of the Petitioner shall not impact the salt gathering resources at Kalaemano located within subzone A of the Resources Management Area and other resources. Such measures shall be to the satisfaction of the State Department of Health and the County of Hawaii.	Satisfied	
13	Petitioner shall develop 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 Hawaii Department of Public Works.	Satisfied	
14	Petitioners shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Hawaii.	Satisfied	

			1) Increment 1, Phase 1 (SUB 7891) - FSA (12/30/04) 2) Increment 1, Phase 2 (SUB 05-000066): FSA (11/22/06) 3) Increment 1, Phase 2 (SUB 05-000066 Revised): FSA (02/21/07) 4) Increment 2, Phase 1 (SUB 13-001254): FSA (06/09/14) The Successor Petitioner has satisfied this condition for the Kaupulehu Project, as the DOH has not specified an air quality monitoring program for the project and/or surrounding areas.		1) Increment 1, Phase 1 (SUB 7891) - FSA (12/30/04) 2) Increment 1, Phase 2 (SUB 05-000066): FSA (11/22/06) 3) Increment 1, Phase 2 (SUB 05-000066 Revised): FSA (02/21/07) 4) Increment 2, Phase 1 (SUB 13-001254): FSA (06/09/14) The Successor Petitioner has satisfied this condition for the Kaupulehu Project, as the DOH has not specified an air quality monitoring program for the project and/or surrounding areas.
15	Petitioner shall participate in air quality monitoring program as specified by the State Department of Health.	Satisfied		On-going	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. The Successor Petitioner has consulted with the County of Hawaii Civil Defense Agency and Fire Dept., and the State of Hawaii, Department of Defense ("DOD") on the appropriate civil defense measures. By letter dated 09/9/04, the DOD identified the coverage area and civil defense equipment to be installed as part of the development. The Successor Petitioner is currently coordinating with the County of Hawaii Civil Defense Agency on implementation of the civil siren. Additionally, the Successor Petitioner is working on securing the necessary funding to install a civil defense siren within the development. <u>REFERENCE:</u> 1) "Emergency Preparedness & Response Plan Kaupulehu Lot 4A Residential Community" (06/4/04) 2) DOD Letter (09/09/04)
17	Petitioner shall provide a fair-share contribution for school facilities as mutually agreed upon with the Department of Education. The contribution may be combination of land and/or cash required to address the impact on school facilities.	Satisfied			The Successor Petitioner has satisfied this condition for the Increment 1 Development and shall comply with this condition when further developing the Increment 2 Development. <u>REFERENCE:</u> 1) "Educational Contribution Agreement for Kaupulehu Lot 4-A" (Phase I - 4/28/05; Phase II - 7/7/05)
18	Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and scheduled accepted by the State Department of Transportation and the County of Hawaii.	Satisfied			The Successor Petitioner satisfied this condition for the Increment 1 Development through the County's issuance of Final Subdivision Approval as referenced below. The Successor Petitioner shall continue to comply with this condition when further developing the Increment 2 Development. <u>REFERENCE:</u> 1) Increment 1, Phase 1 (SUB 7891) - FSA (12/30/04) 2) Increment 1, Phase 2 (SUB 05-000066): FSA (11/22/06) 3) Increment 1, Phase 2 (SUB 05-000066 Revised): FSA (02/21/07) 4) Increment 2, Phase 1 (SUB 13-001254): FSA (06/09/14) 5) Carlsmith Ball transmittal to DOT (04/15/10): Updated Traffic Signal Warrants and Traffic Monitoring Program (11/25/09, PB Americas, Inc.)

19	Petitioner shall fund and construct adequate water source, storage and transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.	Satisfied The Successor Petitioner satisfied this condition for the Increment 1 Development through the County's issuance of Final Subdivision Approval as referenced below. The Successor Petitioner shall continue to comply with this condition when further developing the Increment 2 Development. The Successor Petitioner completed the private water system for the Increment 1, Phase 1 subdivision and the public utility water company now operates the water system. The Successor Petitioner has also bonded the private water systems for the Increment 1, Phase 2 and Increment 2, Phase 1 subdivisions and construction of these improvements are pending completion. The private water system will not be dedicated to the County of Hawaii. <u>REFERENCE:</u> 1) Department of Public Works ("DPW") approval letter (08/03/00) - Water Resource Management Plan for Hualalai Resort, Increment 2, Kaupulehu, North Kona, Hawaii (July 2000); Water Resource Management Plan for Public Water System 163 Kaupulehu (May 2004) 2) Increment 1, Phase 1 (SUB 7891) - FSA (12/30/04) 3) Increment 1, Phase 2 (SUB 05-000066): FSA (11/22/06) 4) Increment 1, Phase 2 (SUB 05-000066 Revised): FSA (02/21/07) 5) Increment 2, Phase 1 (SUB 13-001254): FSA (06/09/14)
20	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 appropriate State and County agencies.	Satisfied The Successor Petitioner satisfied this condition for the Increment 1 Development through the County's issuance of Final Subdivision Approval as referenced below. The Successor Petitioner shall continue to comply with this condition when further developing the Increment 2 Development. <u>REFERENCE:</u> 1) "Drainage Report for Kaupulehu Lot 4A – Increment 1: Phase 1 Subdivision Improvements; Phase 2 Mass Grading Improvements" (May 2004) 2) Increment 1, Phase 1 (SUB 7891) - FSA (12/30/04) 3) Increment 1, Phase 2 (SUB 05-000066): FSA (11/22/06) 4) Increment 1, Phase 2 (SUB 05-000066 Revised): FSA (02/21/07) 5) Increment 2, Phase 1 (SUB 13-001254): FSA (06/09/14) The Successor Petitioner has satisfied this condition. <u>REFERENCE:</u> 1) DOH approval (1/11/05) - "Proposed Water Quality/Salt Pan/Marine Life Monitoring Plan" (Environmental Assessment, LLC) 2) PD submittal (WB KD, 05/13/13): "2012 Annual Water Quality Monitoring Report, Kalaemano, North Kona (Jan. 2013; EAC Report No. 2013-01)" and "Quantitative Assessment of the Marine Communities Fronting the Kalaemano Development - 2012 Annual Survey (Jan. 2013; EAC Report No. 2013-02)".
21	Petitioner shall initiate and fund a groundwater monitoring program as determined by the State Department of Health. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the State Department of Health.	Satisfied

22	Petitioner shall make available adequate golf tee times for affordable rates for public play to State of Hawaii residents.	On-going	The Successor Petitioner shall comply with this condition upon development of the golf course.
23	Petitioner shall comply with environmental health conditions for the State Department of Health, dated August, 1994 (version 5), and entitled "Guidelines Applicable for Golf Courses in Hawaii."	On-going	The Successor Petitioner shall comply with this condition upon development of the golf course.
24	In developing and operating the golf course and residential development in the Kaupulehu Resort Development Project, Petitioner shall at a minimum protect public access along the accessible coastline by the following:	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu development. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&R's for Restricted Parcels (12/23/05)
24a.	Petitioner shall establish a perpetual right of public access along the coastline from the State's Puuwaawaa landholding to the intersection of the shoreline with the southernmost boundary of the Project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such access, subject to reasonable rules and regulations for public safety, provided that access shall be maintained.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu development. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&R's for Restricted Parcels (12/23/05)
24b	In operating the golf course and any future residential development in the Kaupulehu Development Petition Area, Petitioner shall maintain and protect the public's right of access along the shoreline especially at the 1800-1801 a'a lava flow where the existing trail is near the same level as the proposed dwelling units.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu development. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&R's for Restricted Parcels (12/23/05)
24c.	Petitioner shall work with the Department of Land and Natural Resources to incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible coastline areas.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu development. <u>REFERENCE:</u> 1) Kaupulehu Lot 4-A CPAP (September 2004) 2) Declaration of CC&R's for Restricted Parcels (12/23/05)
24d	Petitioner shall adopt golf course rules and provide mutually agreeable signage which may protect the access along the public access areas and pathways.	On-going	The Successor Petitioner shall comply with this condition upon development of the golf course.
24e.	Petitioner shall provide the plans for golf course layout, location of holes, access pathways, and signage to OP and the appropriate governmental agencies in advance of any final approval of such plans.	On-going	The Successor Petitioner shall comply with this condition upon development of the golf course.
24f.	Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purpose of this paragraph.	On-going	The Successor Petitioner shall comply with this condition upon development of the golf course.

25	Petitioner shall complete 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.	On-going	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. The Successor Petitioner provided the Commission with a status report on compliance with LUC Docket No. A93-701 on 6/21/07. The Commission acknowledged the Successor Petitioner's "substantial compliance" on 10/12/07.
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 covered by the approved Petition prior to the visible commencement of construction of the Property.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. The Successor Petitioner is the new lessee of Lot 4-A by way of Memorandum of Lease recorded in the State Bureau of Conveyances ("BOC") on 02/13/04, as Document No.: 2004-031733.
27	Petitioner shall provide annual reports to the Land Use Commission, the Office of Planning, and the County of Hawaii in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission and shall also include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency.	Satisfied	The Successor Petitioner shall continue to comply with this condition for the Kaupulehu Project. The Successor Petitioner submits this 2016 Annual Progress Report in compliance with this condition.
28	The 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.	On-going	The Successor Petitioner acknowledges this condition.
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 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	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) Notice of Imposition of Conditions by the Commission - BOC recordation 10/26/01 (Document No. 2001-169466).
30	Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.	Satisfied	The Successor Petitioner has satisfied this condition for the Kaupulehu Project. <u>REFERENCE:</u> 1) Certificate of Conditions Imposed by the Commission in LUC Docket No. A93-701 - BOC recordation 8/19/96 (Document No. 96-118872).