



LAND USE COMMISSION
STATE OF HAWAII

2010 SEP 15 A 8:54

September 10, 2010

Mr. Orlando "Dan" Davidson
Executive Director
State of Hawai'i Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

RE: 2010 Annual Report
Kula Nei Project
Docket No. A06-770

Dear Mr. Davidson:

This annual report is being submitted to the State of Hawai'i Land Use Commission (hereinafter, the "Commission"), the State Office of Planning, and the County of Hawai'i by The Shopoff Group, L.P. (hereinafter, the "Petitioner") on behalf of TSG Kula Nei, L.P. and Springbrook Investments, L.P. (collectively hereinafter, the "Owners") pursuant to Condition 25 of the Decision and Order for State Land Use Boundary Amendment filed October 21, 2008, in Docket No. A06-770 (hereinafter, the "Decision and Order"). The Petitioner is authorized by TSG Kula Nei, L.P. and Springbrook Investments, L.P. to represent them in matters pertaining to the reclassification of the Petition Area. The Petitioner, as the managing entity, is responsible for managing the development process on behalf of TSG Kula Nei, L.P. and Springbrook Investments, L.P.

This annual report addresses the petition area identified as "Kula Nei", (hereinafter, the "Project"). The petition area is comprised of approximately 129.99 acres, specifically identified as Tax Map Key Nos. (3) 7-3-007:038, 039 and (3) 7-3-009:007 (hereinafter, the "Property" or "Petition Area").

Project Overview

The Property is located at O'oma in the South Kohala District, Island of Hawai'i. The Property is planned for 270 residential dwelling units, consisting of approximately 216 to 220 single-family homesites, as well as affordable housing units that are needed to conform to County affordable housing requirements. Proposed Project improvements include a 4.4-acre private community park, a wastewater treatment plant to serve the affordable housing area and residential lots immediately surrounding the affordable housing area, individual wastewater systems to serve the remaining residential lots, an offsite drinking water well, storage reservoirs, water transmission lines, an internal roadway circulation system and offsite roadway connections. The Project includes construction of a segment of Holoholo Street, a key mid-level connector in the North Kona region that bisects the Petition Area.

The Property was acquired by the Owners in 2005 and 2006. The Owners initiated land planning studies and investigations for the Property in 2006, including preparation of an Environmental Impact Statement (EIS). The EIS was accepted by the Commission in October of 2007. The property was reclassified by the Commission from the Agricultural district to the Urban District pursuant to the Decision and Order filed on October 21, 2008. The next step in the entitlement process is to process zone change application in the County of Hawai'i to change the zoning from 5 acre minimum agricultural lots to Project District zoning. We have initiated our efforts to process the zone change, and have met with representatives of the County of Hawai'i and community stakeholders as part of our community outreach for the proposed zone change.

Status of Compliance with Conditions

The conditions enumerated in the Decision and Order are reproduced below in boldface font, followed by a description of the status and progress of compliance with each condition shown in italicized font.

1. Order to Show Cause. The Commission on its own motion, or at the request of any party or interested person, shall issue an order to show cause and require the Petitioner to appear before the Commission to explain why the Petition Area, or any part thereof, should not revert to its original classification or more appropriate classification for any of the following:

A. Failure to accomplish development of the Petition Area as represented to the Commission or to secure a bond for the completion thereof within 10 years from the date of the Commission's decision and order. For purposes of this decision and order, "development" means completion of backbone infrastructure as defined in finding of fact 55; or

B. Failure to accomplish substantial progress in developing the Petition Area as represented to the Commission by the commencement of construction of the Project in 2011, if necessary county approvals have been obtained or in any event no later than five years from issuance of the decision and order; or

C. Failure to perform a condition of approval, or a representation or commitment made on the part of the Petitioner.

The Petitioner acknowledges this condition.

2. Water Resource Allocation. Petitioner shall fund and construct drinking water source, storage and transmission facilities and improvements as required to accommodate development of the Petition Area, to the satisfaction of the County of Hawai'i and appropriate State agencies.

The Petitioner intends to comply with this condition. The Owners have entered into an agreement with Wai 'O Kula, LLC, an affiliate of the Petitioner, to reserve water commitments to serve the Project from a proposed well and reservoir site owned by Wai 'O Kula, LLC located mauka of the Petition Area.

3. Water Conservation Measures. Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawai'i County Code, including, but not limited to, low-flow water fixtures, and shall also implement BMPs, such as the use of indigenous and drought tolerant plants and turf and

incorporate such measures in the Project's landscape planting. Petitioner shall recommend the use of native and require the use of drought tolerant plants in the Petition Area in the Conditions, Covenants and Restrictions (CC&Rs) associated with the Project or in deed restrictions for each lot in the Project. Petitioner shall also recommend that homeowners consider some form of water reuse or rainwater harvesting system for irrigation purposes.

The Petitioner intends to comply with this condition.

4. Transportation. Based on an analysis of traffic-related impacts, Petitioner shall fund, design, and/or construct necessary local and regional roadway improvements related to the impact from the Project in accordance with the recommended mitigation measures and schedules accepted by the DOT and the county.

The Petitioner intends to comply with this condition.

5. Holoholo Street. Petitioner shall construct that portion of Holoholo Street within the Petition Area. The Petitioner shall reach an agreement with the County of Hawai'i to cause the construction of the north-south road (Holoholo Street) from Ka'iminani Drive to Hina Lani Street prior to receipt of Final Subdivision Approval for the Project. The obligation to construct any portion of the roadway may be bonded as part of Final Subdivision Approval.

The Petitioner has met on numerous occasions with representatives of the County of Hawai'i and several landowners contiguous to the extension of Holoholo Street and Kealakaa Street to coordinate planning and design efforts for Holoholo and Kealakaa Streets.

Pursuant to the above referenced meetings, the County has contracted with PBR Hawaii and Associates, Inc. (PBR) to prepare preliminary design plans and mapping to facilitate the subdivision of roadway lots for both Holoholo and Kealakaa Streets, including the segment of Holoholo Street that is within the Petition Area. As of the date of this report, PBR has established a preliminary alignment, including preliminary grading designs of slopes adjacent to the proposed roadway. Preliminary cross-sections of the roadway have also been prepared.

The Area of Potential Effects (APE) has also been defined to evaluate potential impacts associated with the Roadway. Archaeological, flora, and fauna data has been assembled to evaluate potential impacts within the APE.

The project stakeholders have also prepared draft agreements and documents to facilitate the ultimate construction of the roadway, including the ultimate dedication of the proposed roadway to the County of Hawaii for public street purposes.

6. Street Lights. Petitioner shall use shielded or low sodium street lights within the Project to avoid impacts to flight birds and other populations.

The Petitioner intends to comply with this condition as part of the development of the Petition Area.

7. Affordable Housing. Petitioner shall provide affordable housing opportunities in accordance with applicable affordable housing requirements of the County. 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. The affordable units shall be constructed and offered for sale prior to the sale of more than fifty per cent of the market lots.

The Petitioner intends to comply with this condition.

8. **Previously Unidentified Burials and Archaeological/Historic Sites.** Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop. The finds shall be protected from additional disturbances, and SHPD shall be contacted immediately. Work shall not resume until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.

The Petitioner intends to comply with this condition.

9. **Archaeological Survey.** Petitioner shall comply with the conditions recommended and approved by SHPD, prior to issuance of a permit for grubbing and grading. Petitioner shall confirm in writing to the Commission that SHPD has found Petitioner's preservation mitigation commitments, if any, to be acceptable and has determined that any required historic preservation measures have been successfully implemented.

The Petitioner intends to comply with this condition.

10. **Homestead Road.** Homestead Road shall be kept as a pedestrian trail open to the public, with public parking available at several locations to access it.

The Petitioner intends to comply with this condition.

11. **Lava Tube Cave Preservation.** Petitioner shall preserve the areas recommended for preservation and comply with the list of mitigation measures recommended by Dr. White in Appendix F of the EIS, section 4.0, page 12.

The Petitioner intends to comply with this condition.

12. **Subgrade Cavities.** If subgrade cavities are collapsed and a space large enough to be explored and surveyed is encountered where biology can exist, the space shall be inspected by a karst expert who shall recommend what mitigation measures, if any, should be implemented. Petitioner shall comply with such mitigation measures.

The Petitioner intends to comply with this condition.

13. **NPS Agreement.** Petitioner shall comply with the agreement entered into between Petitioner and NPS regarding stormwater runoff and wastewater as follows:

A. Storm and Surface Water Runoff

i. Prior to the occupancy of any residential unit within the Petition Area, Petitioner shall engineer, construct (or require to be constructed) and maintain storm and surface-water runoff best management practices ("BMPs") designed to prevent violation of State water quality standards as a result of storm-water discharges originating from the Petition Area. To the extent practicable and consistent with applicable laws, Petitioner shall design storm and surface runoff BMPs to treat the first-flush runoff volume, to remove pollutants from storm and surface-water runoff, and to prevent pollutants from reaching the Kaloko Honokohau National Historical Park (hereinafter, "National Park") or entering the water table. Petitioner shall submit designs for storm and surface water runoff BMPs to the National Park Service for consultation, review, and approval prior to construction. Said approval by the National Park Service shall not be

unreasonably withheld. The National Park Service shall complete a review of the design for storm and surface water runoff BMPs within forty-five (45) calendar days of receiving the plan. If no response from the National Park Service is received within forty-five (45) calendar days of the submittal date, the plans will be considered approved by the National Park Service. Petitioner and/or its successors or assigns shall obtain all required permits and construct required improvements for storm water discharges related to the Project, on and from the Petition Area.

ii. No drainage injection well shall be constructed as an element of a storm and surface water runoff containment system in the Petition Area unless, prior to the start of any construction, applicable requirements of HAR Chapter 11-23 are satisfied and the Hawai'i State Department of Health issues an UIC (Underground Injection Control) permit,

iii. All drainage injection wells established in the Petition Area shall be operated and maintained in full compliance with Hawai'i State Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and HRS Chapters 342D and 342E. Relevant HAR include but, are not limited to:

- a. Chapter 11-20, "Rules Relating to Potable Water Systems";
- b. Chapter 11-23, "Underground Injection Control";
- c. Chapter 11-54, "Water Quality Standards";
- d. Chapter 11-55, "Water Pollution Control"; and
- e. Chapter 11-62, "Wastewater Systems".

iv. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of the HRS and HAR as they relate to (but are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

v. Petitioner shall seek to participate with the County of Hawai'i in its pilot storm drain program for roadways within the Kaloko-Honokohau region (i.e., County Ordinance No. 02-114 condition F).

vi. Petitioner, successors and/or Home Owners Association in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures be designed with a debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin's volume should be designed using current industry and engineering standards. The debris catch basin shall be periodically inspected and cleaned accordingly.

vii. To the extent practicable and consistent with applicable laws the Petitioner shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales, grass filter strips, vegetated open space areas, check dams, or other comparable advanced storm water BMPs, specifically engineered to treat the first flush runoff volume from roadways, and from exposed parking lots designed for more than 10 vehicles within the Petition Area to remove pollutants. Additionally,

Petitioner shall consult with the National Park Service to design and install storm water BMPs for treating the first flush runoff volume to remove suspended solids and oils and greases from storm runoff from Holoholo Street and parking lots designed for more than 50 vehicles.

viii. Petitioner shall provide signage for all drainage injection wells in the Petition Area with warnings such as the following: **DUMP NO WASTES. DUMPING IS ILLEGAL AND MAY BE REPORTED TO 974-4000, ext. 64258 GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT.** Signage shall be stand up signs or riveted placards, or be painted on a paved surface next to the drainage well's inlet. Signage shall be situated so that it will not obscure scenic views, contribute to visual blight, or obstruct an accessible route.

B. Pollution Prevention

i. Before constructing any portion of the Petition Area, Petitioner shall develop, in consultation with the National Park Service, a Home Owner's Pollution Prevention Plan that 1) addresses environmental stewardship and the non-point sources of water pollution that can be generated in residential areas, and 2) provides BMPs for pollution prevention. The Home Owner's Pollution Prevention Plan shall include, but not be limited to: water conservation, lot and landscape runoff, erosion control, use of fertilizers, use of pesticides, environmentally safe automobile maintenance, and management of household chemicals. The Plan shall include information on the National Park and the nationally significant cultural and natural resources within the National Park.

C. Wastewater

i. Petitioner and/or its successors and assigns shall refrain from obtaining a certificate of occupancy for a residential lot within the Petition Area until such time as the respective residential lot to be occupied is connected to one of the following: (1) a public wastewater treatment plant ("WWTP"); (2) a private WWTP and effluent disposal system serving the Petition Area (or portion thereof) designed to remove at least 80% Total Nitrogen and at least 90% Total Phosphorus (aerobic nitrification processes combined with anoxic/anaerobic process and/or intermittent sand filters/anaerobic sand filters to perform denitrification, or comparable technology); or (3) for lots 10,000 square feet or larger, an Individual Wastewater System ("IWS") that uses an enhanced treatment (such as Sequential Batch Reactor, CBT, or technology with a comparable nutrient removal efficiency) and an absorption field of import material, featuring adequate percolation rate, such that the IWS and absorption field are designed to achieve at least 80% reduction in Total Nitrogen and 90% reduction in Total Phosphorus. Effluent disposal for the WWTP shall be in accordance with applicable laws and will include either: a) a horizontal absorption system with absorption trenches or beds of sufficient import material (meeting the Hawai'i State Department of Health specifications) featuring adequate percolation rate and constructed in a manner to achieve the level of nutrient removal stated above; or b) an irrigation system for disposing of effluent within the Petition Area in accordance with applicable laws and Hawai'i State Department of Health requirements; or c) a combination thereof. Installation is subject to conditions of approval by the Director of the Hawai'i State Department of Health and HAR Chapter 11-62.

ii. The owner of the IWS shall complete and sign an IWS Owner's Certification Form to certify with the Hawai'i State Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR Chapter 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

iii. If any portion of the Petition Area is served by a private WWTP or IWS, Petitioner and/or each individual lot owner(s), shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before issuance of a certificate of occupancy for any lots within the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment units), whether shared or individual. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

The Petitioner intends to comply with this condition.

14. **Drainage and Stormwater.** Petitioner shall fund, design, and construct any drainage system improvements required to prevent adverse impacts resulting from the development of the Project. Petitioner shall be required to prevent runoff from the Petition Area from adversely affecting state highway facilities and downstream properties. Petitioner shall submit plans to the DOT and appropriate State and County agencies for review and approval. Plans shall be consistent with Petitioner's agreement with NPS.

The Petitioner intends to comply with this condition in conjunction with the development of the Project.

15. **Wastewater Facilities.** Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i and State Department of Health, and consistent with Petitioner's agreement with NPS. The large lots will have individual WWTPs. The affordable units and smaller lots will be serviced by a WWTP built by Petitioner.

The Petitioner intends to comply with this condition in conjunction with the development of the Project.

16. **Solid Waste Management Plan.** Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. Petitioner's solid waste management plan shall be approved by the County of Hawai'i and State Department of Health. The plan shall include provisions for reuse of construction debris generated in the construction of the overall Project. During construction, the Petitioner will recycle green waste, wood waste, cardboard, metals and glass to the extent practical.

The Petitioner intends to comply with this condition prior to commencing construction if the Project.

17. **Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County Department of Environmental Management and the State Department of Health.

The Petitioner intends to comply with this condition.

18. **Established Access Rights Protected.** Petitioner shall preserve any established access to undeveloped lands of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

The Petitioner intends to comply with this condition.

19. **Air Quality Monitoring.** Petitioner will participate in an air quality monitoring program if required by State Department of Health.

The Petitioner intends to comply with this condition.

20. **Best Management Practices.** Petitioner shall implement applicable BMPs applicable to each proposed land use to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with State Department of Health guidelines.

The Petitioner intends to comply with this condition in conjunction with the development of the Project.

21. **Energy Conservation Measures.** Petitioner and its successors shall implement energy conservation and sustainable design measures to promote energy conservation, and environmental stewardship in the Project, for instance the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the U.S. Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai'i, Energy Star, Green Communities, into the design and construction of the Project and the structures within the Petition Area. Petitioner shall provide information to lot purchasers regarding energy conservation and sustainable design measures and encourage lot purchasers to design houses that meet at least the minimum requirements of one of the aforementioned programs.

The Petitioner intends to comply with this condition.

22. **Prohibition on Interference with Farming Operations.** To the extent that the Petition Area is contiguous or adjacent to lands in the State land use Agricultural District, any action that would interfere with or restrain farming operations on those lands is prohibited; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices.

The Petitioner intends to comply with this condition.

23. **Notification of Right to Farm Act.** Petitioner shall notify all prospective developers or purchasers of all or any portion of the Petition Area or any interest in the Petition Area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the Petition Area or any interest in the Petition Area.

The Petitioner intends to comply with this condition.

24. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter

the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.

The Petitioner intends to comply with this condition.

25. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

The submission of this annual report fulfills the requirements of the condition for the 201 reporting year. The Petitioner intends to comply with this condition by submitting annual reports in the future.

26. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

Condition is acknowledged by the Petitioner.

27. Notice of Imposition of Conditions. Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.


A Notice of Imposition of Conditions by the Land Use Commission was recorded with the Land Court System on October 28, 2008 and a copy of the recorded statement was filed with the Commission by the Petitioner on October 28, 2008.

28. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

A Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban was recorded with the Bureau of Conveyances on December 22, 2008.

If you should have any questions or require additional information or clarification regarding this annual report, please feel free to contact me at (949) 231-5068 or via email at brupp@shopoff.com.

Sincerely,


Brian G. Rupp
Project Manager
The Shopoff Group, L.P.

Cc: Abbey Mayor, Director, State of Hawai'i Office of Planning
Bobby Jean Leithead-Todd, Director, County of Hawai'i Planning Department