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MERVYN M. KOTAKE
CURTIS T. TABATA

WYETH M. MATSUBARA
KOJI KATO

MATSUBARA, LEE & KOTAKE

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OF COUNSEL
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OF COUNSEL
DONNA A. O. YOSHIMOTO
Attorney At Law
A Limited Liability
Law Company

April 6, 2005

Mr. Anthony J. H. Ching
Executive Officer
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

LAND USE COMMISSION
STATE OF HAWAII
2005 APR -6 P 2:05

RE: Kukui'ula Project, Koloa, Kauai
Compliance with Condition No. 20 of County of Kauai
Ordinance No. PM-2004-370

Dear Mr. Ching:

Pursuant to Condition No. 9¹ of the Decision and Order issued by the State Land Use Commission (hereafter SLUC) in Docket No. A93-696, Kukui'ula Development Company (Hawaii), LLC (hereinafter "KDC Hawaii") and the State Department of Education (hereinafter "DOE") entered into an *Educational Contribution Agreement for Kukui'ula* dated November 23, 1999 (copy attached as Exhibit "A") as amended by the *First Amendment to Educational Contribution Agreement for Kukui'ula* dated January 28, 2005, (copy attached as Exhibit "B"). Both agreements are hereinafter collectively referred to as the "Agreement". The Agreement specifies certain land contributions by KDC Hawaii for the expansion and development of new elementary school facilities.

¹ Condition No. "9. Petitioner shall provide a fair-share contribution for school facilities to the satisfaction of the State Department of Education ("DOE"). In the following manner: (a) Petitioner shall donate in fee simple seven (7) acres for the expansion of Koloa Elementary School with all the infrastructure provided at no cost to DOE; (b) Petitioner shall donate in fee simple twelve (12) acres of usable land for a second elementary school site within the Property, with all infrastructure provided at no cost to DOE, or an agreed to in-lieu fee; (c) the infrastructure provided shall include a sewer connection for the abovementioned 12-acre site, 7-acre site and the Koloa Elementary School from Petitioner's existing Sewage Treatment Plant at no cost to the DOE. The timing of the conveyances of the lands and the location of the 12-acres site shall be determined by mutual agreement between Petitioner and the DOE. Petitioner and the DOE shall submit a written agreement on this matter prior to Petitioner obtaining approval for county zoning."

Mr. Anthony J. H. Ching
Executive Officer
Land Use Commission
State of Hawaii
April 6, 2005
Page Two (2)

The Agreement includes specific requirements for KDC Hawaii's dedication of two (2) sites: 1) an approximately seven (7) acre site for the expansion of the existing Koloa Elementary School and 2) an approximately twelve (12) acre site for a possible new elementary school, the locations of which are described in the Agreement. The Agreement also includes provisions for the possible payment of an in lieu fee in substitution of the dedication of the new twelve (12) acre school site.

In August of 2004, the County of Kauai approved Ordinance No. PM-2004-370, (Bill No. 2099, Draft 2, A Bill For An Ordinance Amending Chapter 8, Kauai County Code 1987, Relating To Zoning Designations At Kukui'ula, Kauai; And Repealing Ordinance No. PM-323-95 And Ordinance No. PM-349-99) granting County zoning designations for Kukui'ula (hereinafter "Project").

The relevant portion of Condition No. 20² of the Kauai County Ordinance requires KDC Hawaii to seek the release of the

² Condition No. "20. Within one (1) year of the effective date of this ordinance, the Applicant shall request a release from its agreement with the Department of Education and from the condition imposed by the Land Use Commission, both of which appear to require Applicant to give to the State Department of Education the approximately five-acre parcel along Poipu Road identified by Tax Map Key numbers TMK 2-6-04: 11, 18, and 63 for use as an elementary school site. The County shall exert its best efforts to support the Applicant in its request. Once released, this site shall be conveyed to the County or its assignee for development of a limited equity housing cooperative ("LEHC") project, if practicable, which shall give first priority to households containing at least one (1) person employed in the Koloa-Poipu area. The County agrees that the park dedication and environmental impact fee requirements for the LEHC have been met by the contributions of the Project. Except as stated below, the Applicant shall have no obligation with respect to the development of the subject site.

a) The Applicant shall provide wastewater service to the LEHC and shall ensure that any wastewater connection fees, service fees or any similar fees for units in the LEHC shall be at rates substantially similar to those provided to the Country's Paanau housing project, subject to the approval of the State of Hawaii Public Utilities Commission. For the purposes of this condition no. "20.," all units shall be considered "affordable housing".

Mr. Anthony J. H. Ching
Executive Officer
Land Use Commission
State of Hawaii
April 6, 2005
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new school dedication requirement from both the DOE Agreement and SLUC Condition No. 9.

On February 9, 2005, in compliance with Condition No. 20, KDC Hawaii, filed a request with the DOE, with copies to you and to Mr. Peter Nakamura, County Clerk, County of Kauai and to Mr. Ian Costa, Director, Kauai Planning Department, for the release of the requirement to dedicate the new elementary school site (copy attached as Exhibit "C").

By letter dated March 21, 2005 (copy attached as Exhibit "D") the DOE responded to KDC Hawaii's request, indicating that it will not agree to a release of the requirement. The DOE's response is consistent with the position it has taken in prior discussions with KDC Hawaii. As noted in Section 2 of the First Amendment to the Educational Contribution Agreement, the DOE's preference for either a land contribution or in-lieu fee for the new school site will be made upon the construction of the 300th dwelling unit at Kukui'ula. The DOE has indicated that at that time the need for a new school site could be determined.

Given the foregoing facts and the requirements imposed by the attached exhibits, we would request your comments as to how KDC Hawaii should proceed to satisfy Condition No. 20 of County Ordinance No. PM-2004-370 as it relates to the SLUC.

Sincerely,


Benjamin M. Matsubara

Enclosures

b) The Applicant shall not impose any community association, condominium association, association of apartment owners, or any other similar homeowner's association fees, dues, and any improvement district assessments stemming from or related to the project area as defined by this ordinance upon the LEHC or its members."

cc: Mr. Sanford Beppu, Department of Education, State of Hawaii
Ms. Heidi Meeker, Department of Education, State of Hawaii
Mr. Abe Mitsuda, Office of Planning, State of Hawaii
Mr. Peter Nakamura, County Clerk, County of Kauai
Mr. Ian Costa, Planning Department, County of Kauai

EDUCATIONAL CONTRIBUTION AGREEMENT FOR
KUKUIULA

THIS INDENTURE, made this 23rd day of November, 1999, by and between KUKUIULA DEVELOPMENT COMPANY, INC., hereinafter referred to as "KDC," whose post office address is P.O. Box 430, Koloa, Hawaii, 96756, and the State of Hawaii DEPARTMENT OF EDUCATION, hereinafter referred to as the "DOE;"

WHEREAS KDC is the developer and recorded owner of that certain parcel of land comprised of approximately 822.142 acres and identified in Land Use Commission (LUC) Docket No. A93-696 as Tax Map Key parcels 2-6-003: por. 1, 21, por. 31, por. 32; 2-6-004: por. 16, por. 38, por. 39, 40, and por. 45, also known as "Kukuiula;"

WHEREAS KDC and the DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy Condition No. 9 of LUC Docket No. A93-696;

NOW THEREFORE, KDC and the DOE agree as follows:

1. KDC's Land Contribution, Part 1. KDC shall dedicate seven (7) usable acres, ("expansion area"), to the State of Hawaii for expansion of Koloa Elementary School.
2. KDC's Land Contribution, Part 2. KDC shall dedicate twelve (12) usable acres, ("new school site"), to the State of Hawaii for development of a new elementary school within the Kukuiula project area.

LAND USE COMMISSION
STATE OF HAWAII
2005 APR -6 P 2:05

EXHIBIT "A"


3. Dedication of the expansion area and new school site ("dedication areas") shall be subject to the following terms:

- a. The location of the expansion area shall be as generally shown on the map attached hereto and incorporated herein as Exhibit "A."
- b. The location of the new school site shall be within the Phase 1 area of Kukuiula. The specific site within Phase 1 shall be determined by mutual agreement between KDC and the DOE.
- c. Use of the dedication areas shall be limited to public school and ancillary school recreational uses.
- d. Prior to dedication to the State of Hawaii, the dedication areas shall have available, at no cost to the State of Hawaii, all infrastructure necessary to service the sites, including potable water distribution systems for irrigation, domestic, and fire flow needs, sewage collector, treatment and disposal systems, drainage collector and disposal systems, electrical power, telephone, and CATV distribution systems, and, if part of the Kukuiula development, telecommunication distribution systems.
- e. KDC shall ensure that allocations for the above infrastructure systems, as required, are available prior to dedication to the State of Hawaii.
- f. KDC shall be responsible for conducting a title search of the dedication areas. A copy of the report(s) shall be transmitted to the DOE.
- g. If the dedication areas contain any encumbrances which would materially affect the DOE's intended use of the dedication areas, KDC shall clear such encumbrances prior to dedication to the State of Hawaii.

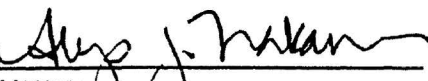
- h. KDC shall be responsible for the subdivision of the dedication areas.
- i. The dedication areas shall be zoned appropriately for school use prior to dedication to the State of Hawaii.
- j. KDC shall conduct a Phase 1 level hazardous material study on the dedication areas prior to dedication to the State of Hawaii. A copy of the report(s) shall be transmitted to the DOE.
- k. The Koloa Elementary School expansion area shall be dedicated to the State of Hawaii on a mutually agreed upon date, but early enough to provide the DOE with sufficient lead time to construct facilities to accommodate the increased enrollment.
- l. The new school site shall be dedicated to the State of Hawaii within one year of completion of the 600th dwelling unit in the Kukuiula project area (excluding the Koloa Estates lots), provided the DOE confirms the need for the new school site at that time.
- m. KDC recognizes that the State's acquisition of private property is subject to approval by the Board of Land and Natural Resources.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

KUKUIULA DEVELOPMENT COMPANY, INC.

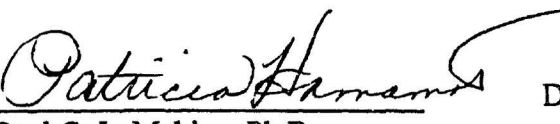
By 
R.K. SASAKI
Its PRESIDENT

Date: 10/8/99

By 
ALYSON J. NAKAMURA
Its SECRETARY

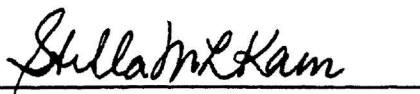
Date: 10/8/99

DEPARTMENT OF EDUCATION

By 
Paul G. LeMahieu, Ph.D.
Its Superintendent

Date: 11/23/99

Approved as to form:

By 
Deputy Attorney General
State of Hawaii

Date: 9/13/99

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

Hamamoto for

On this 23rd day of November, 1999, before me personally appeared *the notary* *Patricia*
Paul G. LeMahieu, Ph.D., Superintendent of the State of Hawaii DEPARTMENT OF
EDUCATION, to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed the same as his free act and
deed.

L.S.

Theresa K. Oydornen
Notary Public, State of Hawaii

My commission expires: 7-6-2002

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 8th day of October 1999, before me appeared R. K.
SASAKI and ALYSON J. NAKAMURA, to me personally known, who, being by me duly
sworn, did say that they are the PRESIDENT and SECRETARY of KUKU'ULA
DEVELOPMENT COMPANY, INC., a Hawaii corporation, and that said instrument was
signed in behalf of said corporation by authority of its Board of Directors, and the said Officer
acknowledged said instrument to be the free act and deed of said corporation.



Melissa A. Matsuura
MELISSA A. MATSUURA
Notary Public
State of Hawaii

My commission expires: 2/13/2001

Koloa Elementary School Expansion Area



A map of the island of Kauai, with a black square indicating the location of the study area in the south-eastern part of the island.

Department of Education
Facilities and Support Services Branch
May 1999

**FIRST AMENDMENT TO
EDUCATIONAL CONTRIBUTION AGREEMENT FOR KUKUI'ULA**

This First Amendment, made this 28 day of January, 2005, by and between KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, a Hawaii limited liability company, hereinafter referred to as "KDC Hawaii", whose mailing address is P.O. Box 280, Koloa, Hawaii 96756, and the State of Hawaii DEPARTMENT OF EDUCATION, hereinafter referred to as the "DOE", whose mailing address is Department of Education, Facilities and Support Services Branch, 809 8th Avenue, Honolulu, Hawaii, 96816.

WITNESSETH

Whereas, Kukui'ula Development Company, Inc. ("KDCI") and the DOE entered into that certain Educational Contribution Agreement For Kukui'ula (the "Agreement") made as of November 23, 1999 pursuant to which KDCI agreed to certain land contributions for the expansion and development of new elementary school facilities;

Whereas KDC Hawaii, KDC, LLC, DMB Kukui'ula LLC, Alexander & Baldwin, Inc., A&B Properties, Inc., KDCI, McBryde Sugar Company, Limited, and South Shore Community Services, LLC entered into a Contribution Agreement dated as of April 25, 2002, pursuant to which the 1,002 acres that make up Kukui'ula have been or will be conveyed to KDC Hawaii;

Whereas, the Land Use Commission of the State of Hawaii ("SLUC"), by its Order Granting Motion For Order Permitting Petitioner To Assign Its Interest In Docket No. A93-696 To Kukui'ula Development Company (Hawaii), LLC issued July 30, 2003, approved the assignment of rights and interest in Docket No. A93-696 from KDCI to KDC Hawaii;

Whereas KDC Hawaii shall develop no more than 1,500 market resort and residential units within Kukui'ula; and

Whereas, the SLUC in Findings Of Fact, Conclusions Of Law And Decision And Order in Docket No. A93-696 issued August 8, 2003, approved a revision to Condition 9 that allows for an "in-lieu fee option" relating to the proposed dedication of twelve (12) acres for a second elementary school site.

EXHIBIT "B"

LAND USE COMMISSION
STATE OF HAWAII
2005 APR -6 P 2:05

NOW THEREFORE, KDC HAWAII AND DOE agree to amend the Agreement as follows:

1. Section 2 is hereby repealed and replaced with the following:

2. KDC Hawaii's Land Contribution, Part 2 or Payment of In-Lieu Fee. KDC Hawaii shall either: 1) dedicate twelve (12) usable acres, (the "new school site"), to the State of Hawaii for development of a new elementary school within the Kukui'ula project area as further provided in this Agreement or 2) pay a mutually agreed to in-lieu fee. The DOE shall select either the land contribution or in-lieu fee upon the construction of the 300th dwelling unit at Kukui'ula.

The DOE and KDC Hawaii must agree on the amount and payment schedule for the in-lieu fee within one (1) year of the DOE's selection of the in-lieu fee.

If selected, the new school site shall be dedicated to the State of Hawaii within one (1) year of completion of the 300th dwelling unit at Kukui'ula (excluding the Koloa Estates lots), provided the DOE confirms the need for the new school site at that time.

2. Section 3.b. is hereby repealed and replaced with the following:

3.b. The location of the new 12-acre school site shall be as generally shown on the map attached hereto and incorporated herein as Exhibit "B".

3. Section 3.d. is hereby repealed and replaced with the following:

3.d. KDC Hawaii shall commit to the completion of the following subdivision infrastructure systems (up to the property line of the new school site and the expansion area) prior to the start of construction of the school:

- (1) Potable water distribution systems for irrigation, domestic, and fire flow needs;*
- (2) Non-potable water distribution system, if required and available, for irrigation;*
- (3) Sewage collector, treatment and disposal systems;*
- (4) Drainage collector and disposal systems;*

- (5) *Access roadway systems sufficient for bus and vehicular traffic (minimum 60-foot right-of-way);*
- (6) *Electrical, telephone, CATV and any other telecommunication distribution systems.*

4. Section 3.e. is hereby repealed and replaced with the following:

3.e. *KDC Hawaii shall provide at no cost to the State of Hawaii, adequate allocations for the above services prior to the start of construction of the new school site and the expansion area, such as:*

- (1) *Subdivision water system allocations based on up to 60 gallons per person per day (DOE to supply #) for domestic use plus 4,000 gallons per day per acre for irrigation purposes.*
- (2) *Subdivision water system capacity of 2,000 gallons per minute for a 2-hour duration (with residual critical pressure of 20 psi at the fire hydrants), as required for fire flow requirements, with related reservoir storage capacity.*
- (3) *Average sewage flow allocations based on 25 gallons per person, per day (DOE to supply #) plus 1,250 gallons per acre per day for wet weather infiltration/inflow or plus 2,750 gallons per acre per day for wet weather if the sewer line is laid below the normal ground water table.*
- (4) *Actual allocations and size of utility lines at street for potable and non-potable water, sewer, drainage, power, telephone, CATV and any other telecommunication systems shall be reported with the conveyance documents.*

5. Section 3.f. is hereby repealed and replaced with the following:

3.f. *KDC Hawaii shall conduct a title search of the new school site and the expansion area at no cost to the State of Hawaii. Two copies of the abstract of title report shall be provided to the DOE and shall be subject to the review and approval by the Department of Land and Natural Resources.*

6. Section 3.g. is hereby repealed and replaced with the following:

3.g. *KDC Hawaii may be required to clear title, encumbrances or liens as required by the DOE or the Department of Land and Natural*

Resources, prior to dedication and at no cost to the State of Hawaii. In the event KDC Hawaii determines that it cannot clear title, encumbrances or liens or it is economically unfeasible to do so, KDC Hawaii shall propose a mutually agreeable alternate site(s) within one (1) year of such determination. The Parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

7. Section 3.h. is hereby repealed and replaced with the following:

3.h. KDC Hawaii shall be responsible for the subdivision of the new school site and the expansion area at no cost to the State of Hawaii, including Land Court recordation, if applicable. KDC Hawaii shall provide metes and bounds descriptions and maps of the new school site and the expansion area in accordance with the subdivision process.

8. Section 3.j. is hereby repealed and replaced with the following:

3.j. KDC Hawaii shall conduct a Phase I Environmental Site Assessment for the dedication areas at no cost to the State of Hawaii. Should the Phase I Environmental Site Assessment identify the potential for hazardous material release or the presence of naturally occurring hazardous materials, KDC Hawaii shall conduct a Phase II Environmental Site Assessment and any applicable abatement and disposal at no cost to the State of Hawaii, and if economically unfeasible to do so, shall propose a mutually agreeable alternative site(s) within one (1) year of such determination of economic unfeasibility. The Parties agree that time is of the essence and shall exercise good faith in selecting a mutually agreeable alternative site(s).

9. Section 3.l. is hereby repealed.

10. A new section 3.n. is added as follows:

3.n. KDC Hawaii shall grant all utility easements over lands owned by KDC Hawaii which are required to provide utility service to the new school site and the expansion area without charge to the State of Hawaii.

11. A new section 3.o. is added as follows:

3.o. *Conveyance of the new school site and the expansion area shall be via Warranty Deed acceptable to the Department of Land and Natural Resources at the time of conveyance.*

12. A new section 3.p. is added as follows:

3.p. *If requested by the DOE, KDC Hawaii shall grant a right-of-entry to the State of Hawaii and its consultants for preliminary data gathering (archaeological, soil testing, topographic surveys, etc.) and construction on the new school site and the expansion area prior to the transfer of title.*

13. A new section 3.q. is added as follows:

3.q. *KDC Hawaii shall provide a soils report with a minimum of two (2) borings and documentation for any fill laid on the site(s) prior to land dedication to the State of Hawaii.*

14. A new section 3.r. is added as follows:


3.r. *KDC Hawaii shall verify the absence of any known historical or archaeological sites with the State Historic Preservation Division ("SHPD") and if necessary, provide mitigation measures acceptable to the SHPD and the DOE.*

15. By execution of this First Amendment to Educational Contribution Agreement for Kukui'ula, the DOE hereby consents to the assignment of the Agreement from KDCI to KDC Hawaii.

16. Save and except as amended herein, the Agreement shall remain in full force and effect.

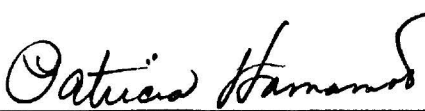
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the date first above written.

KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC

By 
[Name of Individual]
Its PRESIDENT

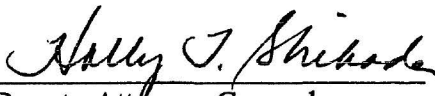
Date: 1.25.05

DEPARTMENT OF EDUCATION

By 
Patricia Hamamoto
Its Superintendent

Date: 1.28.05

Approved as to form:

By 
Deputy Attorney General
State of Hawai'i

Date: 1-10-05

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) ss.


On this 28th day of January, 2005, before me personally appeared Patricia Hamamoto, Superintendent of the State of Hawai'i DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.


Notary Public, State of Hawai'i

My commission expires: 8-27-2008

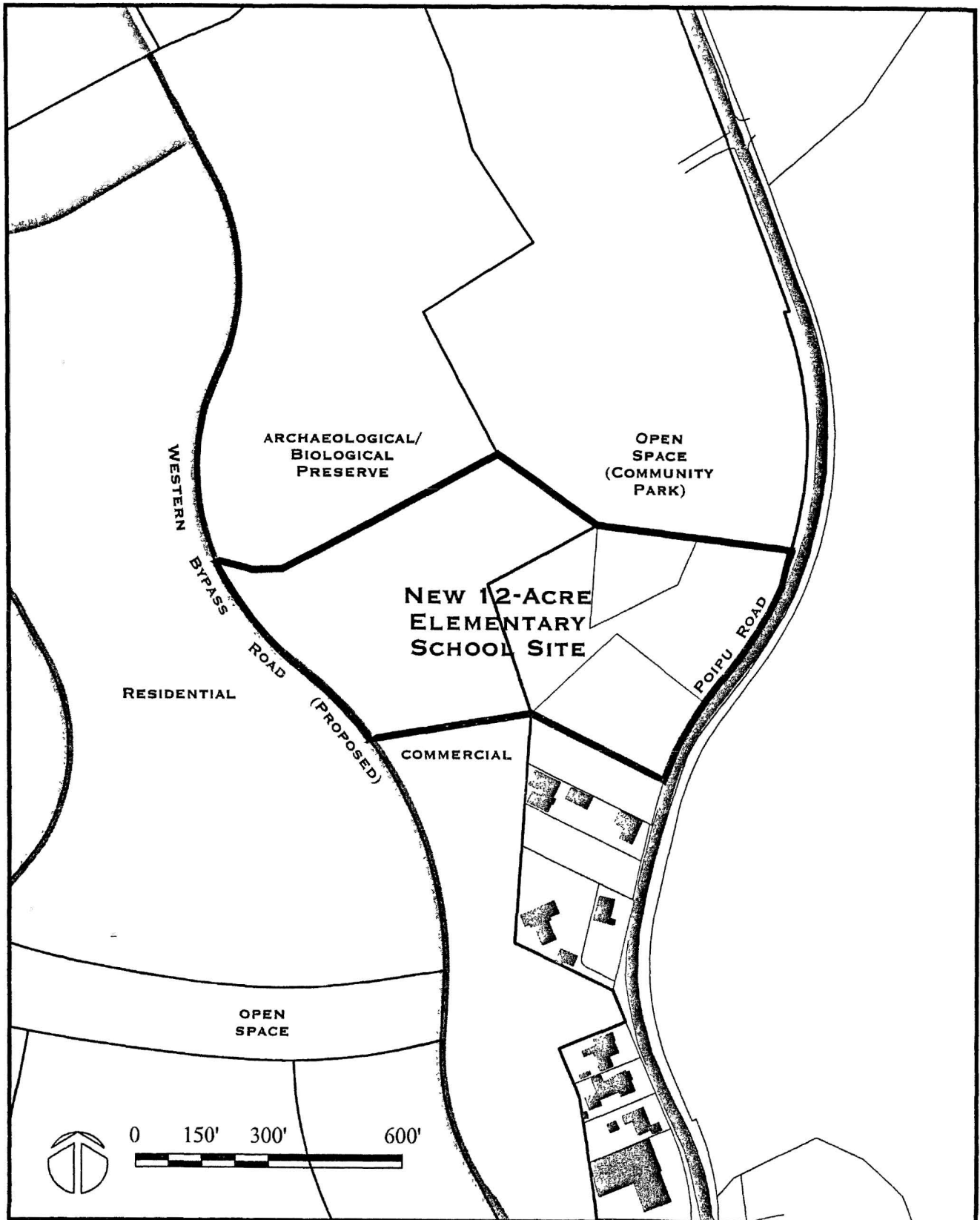
STATE OF HAWAII)
)
COUNTY OF Kauai) ss.

On this 25th day of January, 2005, before me personally appeared Richard A. Holtzman, President of KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.


Notary Public, State of Hawai'i

My commission expires: 11-14-2007

LS



**New Elementary School Site
Kukui'Ula**

Exhibit "B"

KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC
P.O. BOX 280 KOLOA, HAWAII 96756
TELEPHONE 808/742-6304 FACSIMILE 808/742-6378

February 9, 2005

Mr. Sanford Beppu
Facilities & Support Services Branch
Department of Education
State of Hawaii
P.O. Box 2360
Honolulu, Hawaii 96804

LAND USE COMMISSION
STATE OF HAWAII
2005 APR -6 P 2:05

RE: Kukui'ula Project, Koloa, Kauai
Request to Release New School Site Dedication Requirement

Dear Mr. Beppu:

Kukui'ula Development Company (Hawaii), LLC ("KDC Hawaii") and the State Department of Education (the "DOE") entered into an *Educational Contribution Agreement for Kukui'ula* dated November 23, 1999 as amended by the *First Amendment to Educational Contribution Agreement for Kukui'ula* dated January 28, 2005, (collectively referred to as the "Agreement"). The Agreement specifies certain land contributions by KDC Hawaii for the expansion and development of new elementary school facilities. The Agreement includes specific requirements for KDC Hawaii's dedication of two (2) sites: a) an approximately seven (7) acre site for the expansion of the existing Koloa Elementary School and b) an approximately twelve (12) acre site for a possible new elementary school, the locations of which are described in the Agreement. The Agreement also includes provisions for the possible payment of an fee in lieu of the dedication of the new twelve (12) acre school site,

In August of 2004, the County of Kauai approved Ordinance No. PM-2004-370, (*Bill No. 2099, Draft 2, A Bill For An Ordinance Amending Chapter 8, Kauai County Code 1987, Relating To Zoning Designations At Kukui'ula, Kauai; And Repealing Ordinance No. PM-323-95 And Ordinance No. PM-349-99*) granting County zoning designations for Kukui'ula (the "Project"). Condition No. 20 of Ordinance No. PM-2004-370 provides as follows:

EXHIBIT "C"

"20. *Within one (1) year of the effective date of this ordinance, the Applicant shall request a release from its agreement with the Department of Education and from the condition imposed by the Land Use Commission, both of which appear to require Applicant to give to the State Department of Education the approximately five-acre parcel along Poipu Road identified by Tax Map Key numbers TMK 2-6-04: 11, 18, and 63 for use as an elementary school site. The County shall exert its best efforts to support the Applicant in its request. Once released, this site shall be conveyed to the County or its assignee for development of a limited equity housing cooperative ("LEHC") project, if practicable, which shall give first priority to households containing at least one (1) person employed in the Koloa – Poipu area. The County agrees that the park dedication and environmental impact fee requirements for the LEHC have been met by the contributions of the Project. Except as stated below, the Applicant shall have no obligation with respect to the development of the subject site.*

- a) *The Applicant shall provide wastewater service to the LEHC and shall ensure that any wastewater connection fees, service fees or any similar fees for units in the LEHC shall be at rates substantially similar to those provided to the County's Paanau housing project, subject to the approval of the State of Hawaii Public Utilities Commission. For the purposes of this condition no. "20.," all units shall be considered "affordable housing".*
- b) *The Applicant shall not impose any community association, condominium association, association of apartment owners, or any other similar homeowner's association fees, dues, and any improvement district assessments stemming from or related to the project area as defined by this ordinance upon the LEHC or its members."*

Pursuant to Condition No. 20 of Ordinance No. PM-2004-370, KDC Hawaii is required by the County of Kauai to request the DOE's release of the requirement to dedicate the new elementary school site as specified in the Agreement. Accordingly, KDC Hawaii offers the following in support of this request.

Koloa Elementary School

In 1999, Koloa School had an enrollment of 390 students in Grades Kindergarten to 6th, with an enrollment capacity of 446 students. In 2000, the enrollment of Koloa School decreased to 263 students in Grades Kindergarten to 5th, in part due to the transfer of the 6th graders to the new Chiefess Kamakahalei Middle School in Puhi. Enrollment further declined in 2001 and 2002 to 245 and 210 students, respectively. The current 2003-2004 enrollment of Koloa School at 198 students in Grades Kindergarten to 5th indicates a further decline. The current capacity of Koloa School is 470 students.

The 1999-2009 actual and projected enrollment for Koloa School is as follows:

1999-2009 Actual and Projected Enrollment Koloa School										
Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	2004	2005	2006	2007	2008	2009
390	263	245	210	198	189	189	183	187	188	186
Source: DOE										

The DOE's projection for years 2004 through 2006 reflects a continuing decline in student enrollment. The enrollment projection increases slightly in years 2007 and 2008 and is projected to slightly decline in year 2009.

In further projecting student enrollment at Koloa School to year 2012, when the development of the Project is anticipated to stabilize, the projected enrollment for years 2010-2012 as shown below was calculated based on a corresponding three percent (3%) per year increase in population for the Koloa area as forecasted in the *Kauai Long-Range Land Transportation Plan* (May 1997, State Department of Transportation and County of Kauai Department of Public Works and Planning Department). The projections reflect a gradual increase in enrollment to year 2012.

Projected Enrollment for 2010-2012 Koloa School		
2010	2011	2012
192	198	204
Note: Assumes 3 percent rate of enrollment increase per year, which is consistent with the forecasted population established in the <i>Kauai Long-Range Land Transportation Plan</i> (May 1997, State Department of Transportation and County of Kauai Department of Public Works and Planning Department).		

Reduced Project Density

KDC Hawaii recently completed a two (2) year re-entitlement process to allow the implementation of a new master plan that will, among other things, limit the Project to no more than 1,500 market units. Conditions memorializing this limit on overall Project density have been included in both the State Land Use Commission's Decision and Order under Docket No. A93-696 and the County of Kauai's Ordinance No. PM-2004-370. This represents a more than 50 percent decrease in density from the 3,400-unit project previously planned.

Project Character

The Project is envisioned to become one of Hawaii's premiere resort-residential communities. The Project will feature a variety of amenities, including a Tom Weiskopf-designed 18-hole championship golf course and recreational lodge facility. As noted in applications before the County of Kauai, the anticipated prices of residential lots would start at about \$975,000 and residential units at about \$1.9 million. These prices are consistent with recorded sales of similar property within the Poipu region. Residential units at Koloa Estates, which abuts the northeast portion of the Project off of Poipu Road, have recorded sales at between \$0.8 million and \$1.6 million. These include single-family dwellings on one-half acre size lots.

Given the anticipated character of the Project, it is not expected to generate high public school enrollment. This is typical of other resort areas within the State, where part time residents (i.e. second home buyers) and retirees are predominant. These demographic groups exhibit low propensity to contribute to the demand for future public school facilities.

The DOE's standard for projecting elementary school student enrollment is 21 students per 100 new housing units. Using this standard, the projected enrollment for Koloa School with the Project is estimated below in two (2) scenarios. The first scenario assumes 100 percent primary housing occupancy of the Project units, which represents the most conservative estimate for calculating projected enrollment. The second scenario assumes a very conservative 35 percent reduction in housing occupancy of the Project units due to the resort and second home character of the Project.

Year 2012 Projected Student Enrollment Koloa Elementary School			
Primary Housing Occupancy ¹ Kukui‘Ula		Resort/Second Home Occupancy ² Kukui‘Ula	
Development	Projected Enrollment (No. of Students)	Development	Projected Enrollment (No. of Students)
Koloa Elementary School	204 ³	Koloa Elementary School	204 ³
Kukui‘Ula Project	315 ⁴	Kukui‘Ula Project	205 ⁵
Subtotal	519	Subtotal	409
60-Unit Affordable Housing (Paanau II)	13 ⁶	60-Unit Affordable Housing	13 ⁶
99-Unit Employee Housing ⁷ (Poipu Road)	21 ⁸	99-Unit Employee Housing ⁷	21 ⁸
100-Unit Affordable Housing ⁹ (LEHC)	21 ¹⁰	100-Unit Affordable Housing ⁹ (LEHC)	21 ¹⁰
Subtotal	55	Subtotal	55
Total	574	Total	464

¹ Assumes 100% primary housing occupancy of Project units.

² Assumes very conservative 65 percent housing occupancy of Project units at any given time due to resort and second home character of the Project.

³ Based on projected enrollment of approximately 204 students in year 2012 which corresponds to a projected 3 percent per year increase in population for the Koloa area from 2009 to 2012 (*Kauai Long-Range Land Transportation Plan*, May 1997 (State Department of Transportation in cooperation with County of Kauai Department of Public Works and Planning Department)).

⁴ Based on DOE's standard for projecting elementary student enrollment of 21 students per 100 new housing units. For the 1,500 units proposed for Kukui‘Ula, this equals 315 students (21 students x 1,500 units/100 units).

⁵ Based on DOE's standard for projecting elementary student enrollment of 21 students per 100 new housing units. Assuming 65% housing occupancy of the 1,500 units proposed for Kukui‘Ula, this equals 205 students (21 students x 975 units/100 units).

⁶ Based on DOE's standard for projecting elementary student enrollment of 21 students per 100 new housing units. For the 60-unit affordable housing units proposed for the 4-acre parcel, this equals 13 students (21 students x 60 units/100 units).

⁷ Based on proposed 99-unit Kukui‘ula employee housing project within an approximately 9.4-acre parcel identified as TMK: (4) 2-6-04: por. 19.

⁸ Based on DOE's standard for projecting elementary student enrollment of 21 students per 100 new housing units. For the proposed 99-unit employee housing project, this equals 21 students (21 students x 99 units/100 units).

⁹ Based on development of proposed County limited equity housing cooperative ("LEHC") project within a 5-acre parcel identified as TMKs: (4) 2-6-04: 11, 18 and 63 (per Condition No. 20 of Ordinance No. PM-2004-370).

¹⁰ Based on DOE's standard for projecting elementary student enrollment of 21 students per 100 new housing units. For the County's affordable housing project within the 5-acre parcel, which could include up to 100 units, this equals 21 students (21 students x 100 units/100 units).

Based on Koloa School's current capacity of 470 students, the projected enrollment with the Project (excluding affordable housing and employee housing) would exceed the School's capacity by 49 students under the first scenario and would be within the School's capacity under the second scenario. With the provision of affordable and employee housing, the projected enrollment with the Project would exceed the School's capacity by 104 students under the first scenario and would be within the School's capacity under the second scenario.

As previously noted, KDC Hawaii is also obligated to dedicate an approximately seven (7) acre area for the expansion of the existing Koloa Elementary School. This expansion area would be dedicated to the DOE prior to the new school site and would nearly double the size of the current school (7.8 acres). This expansion area would provide the opportunity for the DOE to increase the school's student capacity in the future, should this be warranted. The above analysis does not take into account the potential increase in student capacity of Koloa Elementary School due to the additional seven (7) acre expansion area.

Conclusion

As noted above, we believe there are compelling reasons that support the release of the new school site dedication requirement at this time. Accordingly, and pursuant to Condition No. 20 of County of Kauai Ordinance No. PM-2004-370, we respectfully request the DOE's consideration of this request. Please note that notwithstanding this request, KDC Hawaii intends to fulfill its contractual obligations under the above-described Agreement with the DOE, subject to any mutually agreeable modifications.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael J. Roberts', with a large, sweeping horizontal stroke across the middle.

Michael J. Roberts
Vice President

cc: Ms. Heidi Meeker, Department of Education, State of Hawaii
Mr. Peter Nakamura, County Clerk, County of Kauai
Mr. Ian Costa, Planning Department, County of Kauai
Mr. Anthony J. H. Ching, Land Use Commission, State of Hawaii
Mr. Benjamin Matsubara, Matsubara, Lee & Kotake

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LINDA LINGLE
GOVERNORPATRICIA HAMAMOTO
SUPERINTENDENTSTATE OF HAWAII
DEPARTMENT OF EDUCATION

P.O. BOX 2380

HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

March 21, 2005

Mr. Michael J. Roberts, Vice President
Kukui'ula Development Company (Hawaii), LLC
P.O. Box 280
Koloa, Hawaii 96756

LAND USE COMMISSION
STATE OF HAWAII
2005 APR -6 P 2:05

Dear Mr. Roberts:

Subject: Request to Release New School Site at Koloa, Kauai

The Department of Education (DOE) has received your letter dated February 9, 2005, requesting that the DOE release Kukui'ula Development Company (Hawaii), LLC (KDC Hawaii) from its agreement to provide a parcel along Poipu Road for an elementary school site.

The DOE estimates that a residential subdivision with 1,500 single-family homes would generate approximately 417 elementary, 215 middle school, 231 high school students. The DOE is following school-size guidelines that limit elementary school enrollment to 400 students. The DOE believes that Kukui'ula has the potential to generate enough students for its own elementary school. The project could also have a significant impact on the enrollment at Chiefess Kamakahelei Middle and Kauai High schools.

To meet the condition imposed by the State Land Use Commission under Docket No. A93-696, the DOE and KDC Hawaii have agreed that KDC Hawaii will provide 7.8 acres to Koloa Elementary School and 12 acres within the Kukui'ula project area. The agreement further states that the DOE has the option of selecting a fee-in-lieu of the 12-acre parcel at the time the 300th residential unit at Kukui'ula is constructed. We estimate that decision will be made around 2010.

By the time the first 20 percent of the homes are built in Kukui'ula, around 2010, the DOE will have a good sense of the number of students residing in the project. If the number is close to statewide averages, we will require an additional elementary school site. If the number of actual students in the first 300 homes is far below the average, we will assume that the balance of the project will have similar demographics and will select the fee-in-lieu of land per the agreement.

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AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

Mr. Michael J. Roberts

Page 2

March 21, 2005

The DOE is not willing to make the choice between land and fee-in-lieu of land at this time, prior to the start of any design, marketing, or construction of Kukui'ula. We feel that making our decision in 2010 is the right time to assure adequate school facilities for the students living in Kukui'ula.

With regard to your comment about the seven acres of KDC Hawaii land being provided to Koloa Elementary, while the new land would double the existing campus, the existing campus is far below the DOE minimum standard of 12 acres. It doesn't necessarily follow that increasing the acreage of the campus means the facility capacity would increase. The additional land could be used for playground and other non-classroom facilities which do not increase student capacity.

The DOE must respectfully decline your request to release a 12-acre elementary school site within the Kukui'ula project. We believe we have established an ideal time to make that decision, during the construction of the 300th unit at Kukui'ula.

If you have any questions, please call Rae Loui, Assistant Superintendent of the Office of Business Services, at 586-3444 or Heidi Meeker of the Facilities and Support Services Branch at 733-4862.

Very truly yours,



Patricia Hamamoto
Superintendent

PH:mp

c: Rae Loui, OBS
Daniel Hamada, CAS, Kapaa/Kauai/Waimea Complex Area

DEPT OF EDUCATION
FAC SUPP & SVC BR

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