

July 29, 2011

Mr. Orlando Davidson  
Executive Officer  
Land Use Commission  
State of Hawai'i  
Post Office Box 2359  
Honolulu, Hawai'i 96804-2359

Re: Annual Status Report  
Docket No. A04-747/Kamehameha Investment Corporation

Dear Mr. Davidson:

Based upon information that we have received from Petitioner, Kamehameha Investment Corporation ("KIC"), we submit herein an original and one (1) copy of an annual status report and will also be transmitting a PDF file of the subject report via email to Riley Hakoda of the Land Use Commission ("LUC").

Following is a brief description of the development history and the status of Petitioner's compliance with respective conditions, as contained in the LUC's Decision and Order dated August 1, 2005.

## **I. Development History and Status**

In July of 2008, KIC formed a joint venture through a limited liability company named Keauhou Resort Development Venture, LLC ("KRDV"). At that time, it was anticipated that the joint venture would proceed with the development of the Petition Area, as well as lands situated makai of the old Railroad right-of-way. However, the joint venture partnership was subsequently rescinded. Records at the Hawai'i Department of Commerce and Consumer Affairs reflect a Certificate of Cancellation dated April 28, 2009. The lands which comprise the Petition Area have since been transferred back to KIC.

As a result a number of factors, including the of the rescission and dissolution of KRDV; the current economic recession; the adoption of the Kona Community Development Plan (CDP), which provides incentives for certain development models and implements revised standards for infrastructure development; and recent disagreements with adjacent landowners and proposed developments, KIC is currently reviewing its master plan for the Petition Area in conjunction

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with areas makai of the Petition Area and other lands controlled by KIC and its affiliate entities situated within the Keauhou and Kahaluu areas.

## **II. Compliance with Conditions of the Decision and Order**

1. Affordable Housing. Petitioner shall provide affordable housing opportunities for residents in the State of Hawai'i in accordance with applicable affordable housing requirements of the County of Hawai'i. 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 Hawai'i.

**Status: Petitioner acknowledges this condition.**

2. Drainage Improvements. Petitioner shall prepare a drainage study of the Property and the recommended drainage system shall be constructed, meeting with the approval of the State and County agencies.

**Status: Petitioner acknowledges this condition.**

3. Transportation. Petitioner shall submit a revised TIAR for review and approval by the DOT and the DPW prior to submittal of a change of zone application with the County. The TIAR shall identify the local and regional traffic impacts attributable to the Project and recommended mitigation measures. The report shall also evaluate the existing and potential future developments in the Keauhou area. Based on an analysis of traffic-related impacts, Petitioner shall fund, design, construct, and/or make fair-share payments toward the construction of necessary local and regional roadway improvements necessitated by the Project in designs and schedules accepted by the DOT and the County of Hawai'i.

**Status: Petitioner acknowledges this condition.**

4. Water System Facilities and Improvements. Petitioner shall fund and construct adequate potable and non-potable water source, storage and transmission facilities and improvements as required by the DWS to accommodate the Project.

**Status: Petitioner acknowledges this condition.**

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5. Wastewater Facilities. Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined to be necessary by the County and the DOH.

**Status: Petitioner acknowledges this condition.**

6. Integrated Solid Waste Management Plan. Petitioner shall develop and shall implement or cause to be implemented a solid waste management plan in conformance with the Integrated Solid Waste Management Act, chapter 342G, HRS. The solid waste management plan shall be approved by the County of Hawai'i Department of Environmental Management.

**Status: Petitioner acknowledges this condition.**

7. Historic Preservation Mitigation Plan. Petitioner shall implement the mitigation plans contained in the BTP prior to any ground altering activities on the Property. Design plans shall be submitted to the SHPD prior to the development of specific mitigation measures to ensure that the burials and other sites recommended for preservation are adequately protected during future development. Petitioner shall confirm in writing to the LUC that the SHPD has found Petitioner's mitigation commitments, if any, to be acceptable and has determined that any historic preservation mitigation plan and archaeological data recovery sub-plan has been successfully implemented.

**Status: Petitioner acknowledges this condition. Upon the Department of Land and Natural Resources – State Historic Preservation Division's ("SHPD") approval of the design plans, Petitioner shall confirm in writing to the Commission SHPD's approval.**

8. Previously Unidentified Burial/Archaeological/Historic Sites. Without 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, pavings, 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 until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

**Status: Petitioner acknowledges this condition.**

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9. Public School Facilities. Petitioner shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis relating to the projected impacts of Petitioner's development upon regional public school facilities, as determined by and to the satisfaction of the DOE. Terms of the contribution shall be agreed upon in writing by Petitioner and the DOE prior to obtaining final subdivision approval.

**Status: Petitioner acknowledges this condition. An Education Contribution Agreement with the Department of Education ("DOE") was reached on August 29, 2006. A First Amended Education Agreement was approved by the Attorney General on June 25, 2010 and executed by Petitioner and the DOE. The County of Hawaii issued a Certificate of Occupancy for the portable classroom on March 15, 2011.**

10. Civil Defense. Petitioner shall fund and construct adequate solar-powered civil defense measures serving the Property as determines by the State of Hawai'i Department of Defense, Office of Civil Defense, and County Civil Defense Agency.

**Status: Petitioner acknowledges this condition.**

11. Air Quality Monitoring. Petitioner shall participate in an air-quality monitoring program for the Project as specified by the DOH.

**Status: Petitioner acknowledges this condition.**

12. Provisions of the Hawai'i Right to Farm Act. Petitioner shall notify all prospective buyers and/or lessees of the Property or any lot in the Project that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

**Status: Petitioner acknowledges this condition.**

13. Preservation of Access Rights. Petitioner shall preserve access rights of native Hawaiians who customarily and traditionally have used the Property for access to other areas for subsistence, cultural, and religious practices.

**Status: Petitioner acknowledges this condition.**

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14. Soil Erosion and Dust Control. Petitioner shall implement BMPs applicable to each proposed land use on the Property to reduce or eliminate soil erosion and groundwater pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines.

**Status: Petitioner acknowledges this condition.**

15. Water Conservation Measures. Petitioner shall implement water conservation measures and BMPs on the Property, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common areas landscape planting.

**Status: Petitioner acknowledges this condition.**

16. Energy Conservation Measures. Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the Project on the Property.

**Status: Petitioner acknowledges this condition.**

17. Updates to the Commission. In its annual report, Petitioner shall include updated information relating to:
- a. the Mitigation Plan for data recovery and preservation;
  - b. the BTP; and
  - c. the MOA between Petitioner and Na Ala Hele regarding the trail system.

The terms of the MOA shall be agreed upon in writing by petitioner and Na Ala Hele prior to obtaining final subdivision approval. Petitioner shall provide a copy of the fully executed MOA to the Commission.

**Status: A revised Mitigation Plan, which included the Data Recovery Plan, the Burial Treatment Plan, the Monitoring Plan and the Preservation Plan, was submitted to SHPD on October 18, 2004. SHPD responded by letter dated April 13, 2005 stating the following:**

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1. **Data Recovery Plan:** all of the requested changes from previous reviews had been adequately addressed; however, the letter offered additional comments on the implementation of the of the data recovery steps;
2. **Burial Treatment Plan:** the Burial Treatment Plan had been reviewed with Burial Site Program staff and revisions would be necessary;
3. **Monitoring Plan:** the changes requested previously had been incorporated and the plan was deemed adequate; and
4. **Preservation Plan:** requests several additional changes before the Preservation Plan can be approved by SHPD.

The Keauhou Historic Trail System is still conceptual at this point. However, it has met with the preliminary approval of the Na Ala Hele advisory committee, subject to the development of parking sites for hikers at the beginning, mid-point and end of the trail system, and final delineation of the actual trail routing. The development of the parking sites will be addressed upon final subdivision approval. The Department of Land and Natural Resources ("DLNR") also requires a surveyed description of the trail system and parking, which will be dedicated as part of the perpetual easement assigned to the State of Hawai'i. The dedication of the easement is expected to be completed in conjunction with the change of zone process, and subsequent subdivision of lots that will border the trail system.

18. **Flora and Fauna.** Petitioner shall preserve the `ohe makai on the Property in accordance with the recommended preservation measures. Petitioner shall not conduct any clearing and grubbing on the Property between the months of March through August to prevent any impact to the endangered Hawaiian Hoary Bat and the Hawaiian Hawk when they are breeding or caring for their young.

**Status:** Petitioner acknowledges this condition.

19. **Compliance with Representations to the Commission.** Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, of change to a more appropriate classification.

**Status:** Petitioner acknowledges this condition.

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20. Notice of Change to Ownership Interests. 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 Property, prior to development of the Property.

**Status: Petitioner acknowledges this condition.**

21. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP, and the Planning Department in connection with the status of the Project 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.

**Status: The subject report is intended to satisfy the annual report requirement.**

22. Release of Conditions Imposed by the Commission. 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 provisions of adequate assurance of satisfaction of these conditions by Petitioner.

**Status: Petitioner acknowledges this condition.**

23. Notice of Imposition of Conditions. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Commission in the reclassification of the Property; and (b) file a copy of such recorded statement with the Commission.

**Status: The Notice of Imposition of Conditions was recorded with the Bureau of Conveyances on August 26, 2005. It was filed with the Commission on or about October 31, 2005.**

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

**Status: Petitioner acknowledges this condition. The Certificate of Conditions was recorded with the Bureau of Conveyances on February 25, 2011.**

Law Offices of Yeh & Moore  
A Limited Liability Law Company

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Please contact me at 808-961-0055 if you have any questions or require any further information regarding these matters.

Very truly yours,

LAW OFFICES OF YEH & MOORE,  
A Limited Liability Law Company.



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THOMAS L.H. YEH  
Attorney for Petitioner

TLY:mb

cc: Kamehameha Investment Corporation  
County of Hawai'i Planning Department  
Office of Planning, State of Hawai'i