



August 16, 2006

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

Subject: 2006 Annual Report for the State Land Use Commission
Docket No. A93-696 Kukui'ula Development Company (Hawaii), LLC

Dear Mr. Ching,

Kukui'ula Development Company (Hawaii), LLC ("Petitioner") is pleased to submit to the State Land Use Commission (the "SLUC") its 2006 Annual Report pursuant to Docket No. A93-696.

Project Background and Land Use Entitlements

The SLUC approved reclassification of approximately 537.3 acres, identified as Increment I, from the State Land Use Agricultural District to the State Land Use Urban District on May 18, 1995 subject to forty-one (41) conditions as set forth in the SLUC Decision and Order (the "Original Decision and Order"). The Original Decision and Order further provided that the remaining 284.8 acres of the property, identified as Increment II, be incrementally reclassified pursuant to Section 15-15-78, Hawaii Administrative Rules ("HAR").

On March 25, 1998 Kukui'ula Development Company, Inc. ("KDCI") filed a Motion with the SLUC to amend the Original Decision and Order dated May 18, 1995. The Motion sought to (i) transfer approximately 77 acres of land from Increment II to Increment I, (ii) release and discharge the 10-acre portion of the property previously conveyed to the National Tropical Botanical Garden (the "NTBG") from the application of conditions imposed by the SLUC Original Decision and Order and (iii) delete or amend fourteen (14) conditions imposed in the Original Decision and Order. On June 22, 1998 by Supplemental Decision and Order (the "Supplemental Order") the SLUC approved the transfer of 77 acres from Increment II to Increment I subject to thirty-three (33) conditions as set forth in the Supplemental Order. The SLUC further released the 10-acre NTBG property from the application of the conditions of the Original Decision and Order.

On March 31, 2003, KDCI filed a Motion with the SLUC permitting KDCI to assign its interest in Docket No. A93-696 to KDC Hawaii. The SLUC approved said motion by order dated July 30, 2003.

On March 31, 2003, Petitioner filed a Motion with the SLUC to Amend the Original Decision and Order dated May 18, 1995 and the Supplemental Order dated June 22, 1998 to: (i) eliminate Increment II from the provisions of the Original Decision and Order and the Supplemental Order and to remove the remaining approximately 208 acres of land from Increment II and to transfer and include said approximately 208 acres of land into Increment I, (ii) reclassify said approximately 208 acres of land from State Land Use Agricultural District to State Land Use Urban District and (iii) delete or amend ten (10) conditions imposed in the Supplemental Order. The SLUC approved the Motion to Amend the Original Decision and Order dated May 18, 1995 and the Supplemental Order dated June 22, 1998, resulting in the reclassification of a total of approximately 783.676 acres of land from the State Land Use Agricultural District to the State Land Use Urban District under Docket No. A93-696. On August 8, 2003, the SLUC issued its Decision and Order (the "Revised Decision and Order") subject to thirty (30) conditions.

KDCI filed a General Plan Amendment with the County of Kauai (the "County") to re-designate 77 acres north of Kukui'ula Bay for resort use, as well as requisite County zoning and Visitor Destination Area amendments, in October of 1998. The General Plan Amendment included preparation of a Supplemental Environmental Impact Statement (SEIS) that was accepted by the County in September 1998.

Public hearings on these land use applications were jointly held in January and February 1999 before the County Planning Commission. In May 1999, the County Planning Commission unanimously voted to recommend approval of the applications, with conditions, to the County Council. The County Council conducted public hearings on the applications in July and August 1999, with final approval received in October 1999.

Petitioner filed a Petition For Zoning Amendment (the "Zoning Amendment") and a Petition For Amendment To Visitor Destination Area Designation (the "VDA Amendment") (collectively the "Petitions") with the County on July 30, 2003.

The County Planning Commission conducted public hearings related to the Petitions on October 14, 2003, November 25, 2003 and January 13, 2004. The County Planning Commission voted to recommend approval of the Petitions, with conditions, to the County Council on January 27, 2004. The County Council conducted a public hearing related to the Petitions on March 29, 2004. The County Council Planning Committee addressed the Petitions, including taking additional public testimony, at their regularly scheduled meetings on April 7, 2004, April 22, 2004, May 6, 2004, May 20, 2004, June 3, 2004, June 17, 2004, July 1, 2004 and July 15, 2004. The County Council Planning Committee voted to recommend approval of the Petitions, with conditions, to the full County Council on July 15, 2004. The County Council voted to approve the Petitions, with thirty-two (32) conditions, on July 22, 2004. The Mayor of the County of Kauai approved the Petitions on July 28, 2004. These were approved as Ordinance No. PM-2004-370 (Zoning Amendment) and Ordinance No. PM-2004-371 (VDA Amendment).

Joint Venture

In April 2002, KDC Hawaii, a Hawaii limited liability company was formed to undertake the development of Kukui'ula. KDC Hawaii is comprised of two members; KDC, LLC, a Hawaii limited liability company and DMB Kukui'ula, LLC, an Arizona limited liability company. KDCI and other related companies are members of KDC, LLC. DMB Kukui'ula, LLC is an affiliate of DMB Associates, Inc., ("DMB") an experienced developer of large, master planned resort and residential communities throughout the southwestern United States. Since 1984, DMB has pursued large-scale real estate development projects of the highest quality.

Alexander & Baldwin, Inc. ("ABI") and its subsidiary, McBryde Sugar Company, Limited ("McBryde"), have transferred all of their right, title and interest in the property to KDC Hawaii.

Project Master Planning Activities

Petitioner has continued the overall master planning process of Kukui'ula, adapting as required to the revisions mandated by both the SLUC and County approval processes. In addition, Petitioner has continued re-subdivision of the project area, filing an application for a preliminary large-lot subdivision with the County on February 20, 2004 which was approved on April 11, 2006, corrected and re-approved on July 11, 2006. As of July 30, 2006 Kukui'ula Residential Subdivision, Phase IIA comprising 35 buildable lots has been approved by the County and was recorded August 2, 2006. A map for Kukui'ula Residential Subdivision Phase I, comprising 88 buildable lots, is expected to receive final approval by September of 2006. Two additional small lot subdivision maps comprising 93 buildable lots have been filed with the County, and several more maps are planned to be filed by the end of 2007.

Petitioner has completed the development of two (2) potable groundwater wells in the area of the Piwai Reservoir north of the Kukui'ula project area, both of which have been approved by the State of Hawaii Department of Health (the "DOH") subject to ongoing conditions, and the County of Kauai Department of Water (the "DOW").

Furthermore, Petitioner is well into the process of developing construction documents related to a variety of off-site infrastructure including potable water storage tanks & transmission lines, a non-potable water transmission system, dry utility systems and roadway improvements. Petitioner has commenced construction of the offsite non-potable water system and the offsite potable water system. Petitioner is continuing the process of bidding the remaining portions of the offsite potable water system. Construction related to the on and offsite portions of the Western Bypass Road commenced in the Spring of this year and is expected to be completed by Spring of 2008. By end of year 2006 Petitioner expects to have the Major Project Road, Mass Grading and Drainage, and Subdivision improvements related to Parcel M1/M4 and Parcel Y under construction. Recreational facilities including the Resort Core, Golf Clubhouse, golf course and the 20-acre Community Park are expected to be under construction by early 2007. On-site infrastructure master planning continues with the preparation and submittal of associated construction documents.

Status of Activities Relating to Imposed Conditions

This annual report will confine itself to reporting on the status of conditions imposed under the Revised Decision and Order dated August 8, 2003. Listed below are each of the conditions imposed under the Revised Decision and Order and the status of activities pertaining to each respective condition.

Condition No. 1: Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii in accordance with applicable housing requirements of the County of Kauai. 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 the Petitioner and the County.

Status: To date, Petitioner has provided 176 affordable housing units in two (2) projects. These projects are described in more detail below.

Eleele Nani Subdivision Phase II:

This single-family residential project is located to the west of the Kukui'ula project area in Eleele, Kauai. The project comprises 146 single-family residential lots located on approximately 27 acres. Of the 146 total lots; 116 lots, 58 lots only and 58 lots with houses, were sold under County-approved affordable housing guidelines. Eligibility, prices, buy-back options and other conditions of sale of these 116 lots were established with the County housing authorities. The remaining 30 lots were sold at market prices. Lot sizes averaged between 6,000 – 8,000 square feet. The Petitioner's total investment in affordable housing units; including onsite infrastructure, offsite infrastructure and home construction; at Eleele Nani Phase II totaled approximately \$10 million.

The 58 houses and lot packages included three bedroom and two bath homes with double carports. A variety of models were offered, with home sizes ranging from 1,000 and 1,200 square feet. The project included the design and construction of all site utilities and roadways. Additionally, 38 lots were sold to eligible low/moderate income families at an average price of \$52,000 per lot and 20 lots were sold to the County at \$35,000 per lot specifically for low income households. The project was built and completed in 1993.

County's Paanau Housing Project:

In cooperation with the County of Kauai, the Petitioner conveyed 4.9 acres north of the Kukui'ula project area in Paanau to the County of Kauai for the development of 60 affordable multi-family rental units. This land was conveyed by deed dated October 7, 1991 and recorded in the Bureau of Conveyances on March 13, 1992. In addition to the land dedication, the Petitioner provided the County sewage hookups for these units to its Kukui'ula wastewater treatment plant free of charge. Construction of these affordable rental units was completed by the County in 1995.

Together, these two (2) projects resulted in 176 affordable housing units (Eleele Nani-116 units and Paanau-60 units).

In addition to the existing affordable housing units developed by KDCI, the County included Condition of Approval No. 21 to Ordinance No. PM-2004-370 addressing the rezoning of Kukui'ula and requiring the Petitioner to set aside and convey to the County an approximately 4-acre parcel adjacent to the existing Paanau Housing Project for future expansion by the County of the affordable Paanau Housing Project. The process to subdivide this parcel into a legal lot is currently underway. This parcel will be dedicated to the County upon completion of the subdivision and at the request of the County. Approximately 60 additional affordable rental units are proposed for this site. In addition, the Petitioner is required to provide sewage hookup for these 60 affordable units for which Petitioner will be entitled to an additional credit of 10 affordable units from the County.

Additionally, Condition No. 19 to County Ordinance No. PM-2004-370 further requires the Petitioner to provide a minimum of 75 affordable and "gap" income housing units for project employees and Kauai residents. A 10-acre site has been selected on the west side of Poipu Road across from the proposed community park. Application was made to the County of Kauai to reclassify this parcel from agriculture to urban and for rezoning to residential use. With the assistance of the County, Ordinances Nos. PM-2005-373 and PM-2005-374 were approved by the Kauai County Council on March 10, 2005 and signed by the Mayor of Kauai on March 17, 2005. Petitioner is currently continuing the planning and design related to the proposed affordable and "gap" income housing units, and anticipates commencing building construction by June 2008.

Condition No. 2: Petitioner shall initiate and fund a near shore water quality-monitoring program. The monitoring program shall be approved by the State Department of Health in consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Division of Aquatic Resources, Department of Land and Natural Resources. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the DOH in consultation with the above mentioned agencies, and the County Public Works Department. Petitioner shall coordinate this consultation process with the concurrence of the DOH.

Status: The Petitioner initiated a near shore water quality-monitoring program in 1991 as a requirement of a County issued grading permit. The monitoring program is ongoing, will continue through the completion of the construction of the project, and continues to be funded by the Petitioner. The program has established and continues to expand baseline data for future comparison.

Condition No. 3: Petitioner shall implement effective soil erosion and dust control measures during construction to the satisfaction of the State Department of Health and the County of Kauai.

Status: All engineering plans currently will provide for storm water pollution protection systems (SWPPS) and NPDES compliance. All of those requirements are being implemented at the time of construction. A project wide NPDES permit was obtained on February 8, 2006, and separate NPDES permits are being prepared, submitted and approved prior to construction of each job within the Project.

Condition No. 4: Petitioner shall produce 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 Kauai. The Plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County's landfills.

Status: The County has included as Condition of Approval No. 27 to Ordinance No. PM-2004-370 an expanded version of this SLUC Condition of Approval. The Petitioner has initiated discussions with the County Department of Public Works, Solid Waste Division concerning this condition. Petitioner prepared an Integrated Solid Waste Management Plan which includes provisions for construction debris disposal, green waste disposal, and recycling in order to reduce the flow of waste material to County facilities. Also included in this plan is the identification of a site for possible use as a construction debris disposal site. The Petitioner submitted the Integrated Solid Waste Management Plan to the County Department of Public Works for review and approval on March 21, 2006. The County Department of Public Works, Solid Waste Division is currently reviewing the Plan. Additionally, the Petitioner is concurrently working on an on-site construction debris reclamation plan to supplement the Integrated Solid Waste Management Plan.

Condition No. 5: Petitioner shall fund and construct adequate wastewater treatment transmission and disposal facilities, as determined by the State Department of Health and the County of Kauai Department of Public Works as necessary and appropriate to service the needs of the Project area.

Status: KDCI constructed a wastewater treatment plant to serve the entire Kukui'ula project area. The facility began operation in 1993 and has a current processing capacity of 1.2 million gallons per day. The facility currently serves the Paanau Housing Project, located near Koloa School, and the Koloa Estates residential subdivision that was completed in 1999. As part of the infrastructure system improvements for the Koloa Estates subdivision,, sewer lines, force mains and a pump station were constructed. As dwellings are constructed at Koloa Estates, they are connected to the wastewater treatment plant. Additional transmission and effluent disposal facilities will be constructed as needed throughout the development of the project area.

Petitioner has completed the design of a replacement Waste Water Treatment Plant ("WWTP") in order to produce effluent of "R-1" quality that can be utilized in the project irrigation systems, thus reducing the use of potable water. The replacement WWTP has

been designed to utilize the newest membrane technology in order to produce the best quality effluent. In June 2006, final design plans for the proposed WWTP were submitted to the State Department of Health for review and were approved on July 27, 2006. Additionally, other acceptable alternatives are being examined for the treatment and disposal of wastewater from the Project.

Condition No. 6: Petitioner shall comply with the recommendations of the State Department of Health, dated August 1994 (Version 5), and entitled "Guidelines Applicable to Golf Courses in Hawaii".

Status: Petitioner intends to comply with these guidelines in the future development of the Kukui'ula golf course.

Condition No. 7: Petitioner shall participate in an air quality-monitoring program as specified by the State Department of Health.

Status: Petitioner met with the DOH, Clean Air Branch concerning this condition. The DOH reviewed the Air Quality Report previously prepared for the Kukui'ula project area. The DOH noted that Kukui'ula is not anticipated to be a major source of air pollutants for which an air quality-monitoring program would be required. An updated air quality report is being prepared in anticipation of the start of grading in the Fall of 2006 and will be submitted to the DOH for review.

Condition No. 8: Petitioner shall provide its fair share of costs to fund and construct adequate civil defense measures to service the Property and surrounding area as determined by the State and County of Kauai civil defense agencies.

Status: In August 2000, Petitioner met with representatives of both the Kauai Civil Defense and State Civil Defense Departments concerning this condition. The agencies' primary concern was the tsunami hazard to future developments within the shoreline area. As a result of the meeting, two (2) sirens, properly located and engineered, have been required for the project area. A subsequent meeting was held with these agencies on April 28, 2004. A copy of a letter dated May 5, 2004 to Mr. Norman M. Ogasawara, Assistant Telecommunications Officer, State of Hawaii – Civil Defense Division was previously transmitted to the SLUC with the 2004 annual report. The County has included as Condition of Approval No. 26 to Ordinance No. PM-2004-370 an expanded version of this SLUC Condition of Approval.

On December 9, 2005, Petitioner discussed with Mr. Ogasawara and Mr. Clifford Ikeda the locations and design of the new sirens as well as a relocation site for an existing siren. As a result of this meeting, agreement was reached on both the design and location of the two sirens. The Petitioner will comply with this condition by installing the sirens in conjunction with adjacent construction. .

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-acre 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.

Status: KDCI and the DOE agreed to the terms of an Educational Contribution Agreement for Kukui'ula (the "Educational Contribution Agreement") dated November 23, 1999, a copy of which was previously transmitted to the SLUC by letter dated December 15, 1999. The Educational Contribution Agreement was amended by the First Amendment to Educational Contribution Agreement for Kukui'ula ("First Amendment") dated January 28, 2005, between the KDC Hawaii and the DOE. The First Amendment, provided for the assignment of the Educational Contribution Agreement to the Petitioner and included the "in-lieu fee" provision relating to the 12-acre second elementary school site. The First Amendment was previously transmitted to the SLUC by letter dated April 6, 2005.

Condition No. 10: Petitioner shall participate in the pro rata funding and construction of local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Kauai.

- (a) *Petitioner shall, prior to obtaining County Zoning, revise or supplement the Traffic Impact Assessment Report dated March 2003 for the review and approval of the Department of Transportation which shall include an analysis of the entire master planned development as required by the Department of Transportation.*

Status: The Petitioner will participate in the pro rata funding and construction of local and regional roadway improvements in consultation with the State Department of Transportation (the "DOT") and the County of Kauai. The County has included as

Condition of Approval No. 7. f) to Ordinance No. PM-2004-370, a similar version of this SLUC Condition of Approval. Furthermore, the Petitioner developed Supplement No. 1 to the Traffic Impact Report dated October 2003 and submitted a copy to the DOT on October 15, 2003. The DOT responded on December 22, 2003. Copies of this correspondence were previously transmitted to the SLUC with the 2004 annual report.

In addition to the above requirements, Petitioner has also actively supported the funding of a Koloa-Poipu Traffic and Circulation Study being prepared by Charlier Associates, Inc. on behalf of the Koloa Community Association. This study is intended to be utilized in conjunction with the transportation element of the Koloa-Poipu-Kalaheo Development Plan which is beginning the update process.

In conjunction with the County of Kauai, Petitioner has also agreed to fund the preparation of the National Environmental Policy Act ("NEPA") Environmental Assessment for the planned Northern Leg of the Western Bypass Road (between Koloa Road and Maluhia Road), which will complete the bypass loop around Old Koloa Town.

Condition No. 11: As determined by the County of Kauai, Petitioner shall make available recreational facilities which are developed within the Project, including available adequate golf tee times, for public play at rates which shall include Kama'aina rates.

Status: The County has included in its Condition of Approval No. 15. a) to Ordinance No. PM-2004-370 a requirement that the Petitioner develop, dedicate and maintain in perpetuity a 20-acre active regional/community park within Kukui'ula. In addition, the County included Condition of Approval No. 15. d) to Ordinance No. PM-2004-370 requiring the Petitioner to develop, dedicate and maintain in perpetuity an approximately 2-acre public park in the vicinity of Kukui'ula Bay. Finally, the County outlined in its Condition of Approval No. 17 to Ordinance No. PM-2004-370 the required Kukui'ula golf course kama'aina golf tee times and fees. The Petitioner will comply with these conditions of approval and intends to commence construction of the proposed golf course and the 20-acre Community Park in 2007. Kukui'ula Bay Park is expected to be completed by Spring 2009.

Condition No. 12: Petitioner shall fund and construct adequate water source, storage and transmission facilities and improvements to accommodate the proposed Project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Status: Petitioner has completed the development of two (2) potable water groundwater wells in the area of the Piwai Reservoir north of the Kukui'ula project area, both of which have been approved by the DOH and the DOW. Petitioner has completed plans to construct the headworks and transmission lines from the Piwai Wells to Kaumualii

Highway and that work is currently under construction. The plans for the Omao Road waterline have been approved and construction will commence in August 2006. Transmission lines to the project will be completed as part of the construction of the Western Bypass Road, which is currently under construction. Design of the water tanks is complete with construction anticipated to commence soon.

Condition No. 13: Petitioner shall work with the residents of Omao and the County of Kauai Department of Water Supply to resolve concerns regarding the Omao well(s).

Status: The DOH has determined that residents may continue to use septic systems within 1,000 feet of the Omao well, thereby resolving the residents' primary concern. The Petitioner does not currently intend to utilize the Omao well for potable water purposes, thus mitigating any impact to existing nearby residential septic systems. The Omao well will likely be used for backup irrigation only. The Petitioner will work with the DOW concerning the ultimate development and use of the Omao well.

Condition No. 14: Petitioner shall complete the following:

a. Ten significant historic sites within the Property identified by Petitioner's archaeological consultant not recommended for preservation shall be subject to archaeological data recovery work. An archaeological data recovery plan shall be submitted to the State Historic Preservation Division for approval, the successful execution of which plan shall be verified in writing by the Division prior to the start of land altering activities of those areas which are proximate to the historic sites and could adversely impact upon those historic sites.

b. Seven additional significant historic sites within the Property identified by Petitioner's archaeological consultant and recommended for preservation shall be preserved. A preservation plan shall be submitted to the State Historic Preservation Division for approval, prior to the start of land altering activities of those areas which are proximate to the historic sites and could adversely impact upon the historic sites.

c. Petitioner shall comply with all applicable statutory provisions and administrative rules regarding inadvertent burial finds within the Property.

Status: Archaeological Data Recovery Work has been completed and approved by the State Historic Preservation Division (the "SHPD") for the above referenced sites. This work included an "Archaeological Data Recovery Report for the Kukui'ula Bay Planned Community Phase II" dated September 1998, Revised August 1999 and approved by the SHPD on May 19, 2000 and "Archaeological Data Recovery Report for Five Archaeological Sites (50-30-10-1918 to 50-30-10-1921, 50-30-10-1923)" dated May 2003 and approved by the SHPD on August 6, 2003, a copy of which was previously transmitted to the SLUC with the 2004 annual report.

Preservation plans have been prepared and approved by the SHPD for the above referenced sites. These plans include the "Preservation Plan for Archaeological Sites 50-30-10-1903 and 50-30-10-1904" dated December 2000 and approved by the SHPD on January 18, 2001 and "Preservation Plan for Six Archaeological Sites 50-30-10-1912 to 50-30-10-1914, 50-30-10-1917, 50-30-10-3075 (A, B, C) and 50-30-10-3179" dated October 2001 and approved by the SHPD on November 5, 2001. Pursuant to the approved preservation plan, Sites 1903 and 1904 were carefully cleared under the supervision of the Kauai State Archaeologist, Nancy McMahon. Implementation of these preservation plans will occur prior to any construction activity affecting these sites.

The Petitioner has prepared a written protocol regarding inadvertent finds of burials, and is including this protocol with all contracts for work on site. This protocol was attached to our 2005 annual report.

Condition No. 15: Petitioner shall conduct a biological survey for terrestrial invertebrates (Kauai blind wolf spider and Kauai cave amphipod), and a study to determine the extent of the caves on the surface. The study shall include a buffer area of a minimum of 100 feet around the perimeter of the lava tube caves. The survey and study shall be completed prior to obtaining zoning approval from the County of Kauai. Petitioner shall consult with the U.S. Fish and Wildlife Service ("USFWS") regarding the content and completeness of both studies. Petitioner shall develop with the USFWS a conservation plan establishing specific conditions for the conservation of the cave animals and their habitat. Such conservation plan shall be legally enforceable in a court of law and will run with the land as an encumbrance on title. The plan shall be accepted and approved by the USFWS. The USFWS must also verify in writing to the Commission, the successful execution of the study, and implementation of the mitigation/conservation plan. Petitioner shall consult with the USFWS prior to any blasting, movement of heavy construction equipment, roadway construction, or grading which may impact terrestrial invertebrates.

Status: A Cooperative Agreement between the USFWS and the Petitioner was signed on September 27, 1995. A copy of this Cooperative Agreement was provided to the SLUC as part of Petitioner's March 25, 1998 Motion to Amend the Decision and Order (Petitioner's Exhibit No. 26). The purpose of the Cooperative Agreement was to restore and protect subterranean habitats of the Kauai cave wolf spider and the Kauai cave amphipod. Under the terms of the Cooperative Agreement, the USFWS completed an initial biological survey of the cave system and continues to monitor the cave system on a periodic basis. A copy of this Cooperative Agreement was provided to the SLUC as part of Petitioner's March 25, 1998 Motion to Amend the Decision and Order (Petitioner's Exhibit No. 26). Protective grating to secure the cave entrances was installed to limit access to the cave system per the conditions of the Cooperative Agreement. Additionally, the Petitioner consulted with the USFWS before construction of the Koloa Estates subdivision and will continue to do so for future nearby projects.

The Petitioner cooperated with the USFWS during their designation of critical habitat for the Kauai blind wolf spider and Kauai cave amphipod published in their Final Rule on April 9, 2003. In making its final determination of the critical habitat, the USFWS used the field surveys completed by Dr. Francis G. Howarth of the Bishop Museum, a consultant to the Petitioner. The Petitioner has agreed with the USFWS to accomplish permanent protection of the Kauai blind wolf spider and Kauai cave amphipod within the Kukui'ula project area by (i) preparing and recording, to the satisfaction of the USFWS, a conservation easement permanently precluding any future development of the preservation areas, and (ii) developing a long-term conservation management plan to guide the Petitioner in the on-going management of the preservation areas.

The existing Cooperative Agreement expired on September 27, 2005 with the acknowledgement of the USFWS that all of the terms of the Agreement had been fulfilled. Prior to the expiration of the Agreement, the USFWS and the Petitioner discussed a variety of alternatives related to the continuation of a formal relationship between the USFWS and the Petitioner, including an extension of the existing Agreement, an amendment to the existing Agreement, a new agreement and a memorandum of understanding ("MOU"). The USFWS determined that an MOU would be sufficient and indicated that it would take the lead in preparing an initial draft. Subsequently, the USFWS revised its position on the MOU and determined that the best method to ensure the protection of the Kauai blind wolf spider and Kauai cave amphipod within the Kukui'ula preserves, would be the recording of the above referenced conservation easement. The Petitioner is currently preparing the initial draft of this easement for review by the USFWS.

By letter dated March 2, 2006, Petitioner notified the USFWS of its intent to commence onsite construction at the Project. A copy of this letter along with a discussion of measures being undertaken to protect and conserve the Kauai blind wolf spider and Kauai cave amphipod was provided to the SLUC by letter dated March 2, 2006. By letter dated March 15, 2006, the SLUC acknowledged receipt of Petitioner's March 2, 2006 letter.

Condition No. 16: Petitioner, successors, agents, transferees, or assigns shall comply with any conservation agreement with the USFWS related to terrestrial invertebrates (Kauai blind wolf spider and Kauai cave amphipod).

Status: Petitioner will comply with the terms of the conservation easement, Cooperative Agreement and conservation management plan described in Condition No. 15 above.

Condition No. 17: The Project shall be limited to 1,500 units along with the various Project components.

Status: The County has included as Condition of Approval No. 2 to Ordinance No. PM-2004-370 a limitation of 1,500 units that shall include hotel rooms, single-family detached and attached dwellings and multi-family dwellings. The Petitioner is complying with this condition and will include restrictions in deeds to all buyers of the 1,500 unit limit.

Condition No. 18: As determined by the County of Kauai, bike paths and pedestrian walkways shall be provided by Petitioner within the Project.

Status: The roadway designed and constructed for the Koloa Estates subdivision, Lopaka Paipa Blvd., includes bike lanes and pedestrian walkways. Landscaping was provided along this roadway and at its intersection with Poipu Road. As part of its Condition of Approval No. 15. c) to Ordinance No. PM-2004-370 the County required the Petitioner to develop a comprehensive pedestrian and biking trail system throughout the Project. Petitioner has prepared a Trails Master Plan which has been submitted to the County of Kauai for review and approval. This plan will be implemented by the Petitioner in increments along with adjacent construction.

Condition No. 19: Petitioner shall (a) provide land for, and or access to, a site for the disposal of construction materials from the Project, or b) contribute a pro rata share in developing a disposal site, or (c) construct a facility in connection with the disposal site.

Status: The Petitioner has had discussions with the County Department of Public Works, Solid Waste Division regarding its plans for future construction of disposal sites and landfills. The Petitioner will continue to monitor the County's progress related to developing new disposal sites/landfills and the possibility of contributing a pro rata share to their development. Petitioner has prepared an Integrated Solid Waste Management Plan which includes provisions for construction debris disposal, green waste disposal, and recycling in order to reduce the flow of waste material to County facilities. Included in this plan is the identification of a site for possible use as a construction debris disposal site. The Petitioner has submitted the Integrated Solid Waste Management Plan to the County Department of Public Works, Solid Waste Division, on March 21, 2006 for its review and approval. Petitioner is also investigating on-site reclamation operations to minimize the amount of offsite debris disposal.

Condition No. 20: Petitioner shall resolve with the County the Petitioner's:

(i) contribution to pro rata share of improvements to Maluhia Road, including widening and realignments;

(ii) contribution to pro rata share of improvements to Po'ipu Road from Koloa Town to the Project site; and

(iii) timing of the construction of the westerly by-pass road to avoid congestion on Po'ipu Road, particularly through the Koloa Town area.

Status: The County has included as Condition of Approval No. 14 to Ordinance No. PM-2004-370 a requirement that the Petitioner commit to the expenditure of not more than six hundred thousand dollars (\$600,000.00) towards the cost of improvements to the roadway system serving the Koloa – Poipu region, including improvements to Maluhia Road and Poipu Road. Furthermore, the County has included as Conditions of Approval No. 7. c), d) and e) describing the Petitioner's responsibility to construct improvements related to the Western Bypass Road and its intersection with Koloa Road and requiring completion of said improvements within thirty (30) months after commencement of onsite construction of Phase I of the Project. Construction of the Western Bypass Road began in spring 2006. The Petitioner is also planning to facilitate the acquisition of the land required for the Northern Leg of the Western Bypass Road (between Koloa Road and Maluhia Road) and to assist in funding the preparation of the NEPA environmental assessment required for that future roadway.

Condition No. 21: Building setback lines shall be established along the rim of Lawa'i Kai Bay and or Lawa'i Valley at not less than 50 feet from the edge of the rim.

Status: Future buildings will be setback from Lawai Kai Bay and Lawai Valley as provided in this condition. In addition, the County has included Condition of Approval No. 5. d), to Ordinance No. PM-2004-370 that is an expanded version of this SLUC Condition of Approval. The Petitioner will comply with this condition by incorporating this requirement into the Petitioner's subdivision plans, design guidelines and standards for development in this portion of the project area.

Condition No. 22: Petitioner shall cooperate with the County of Kauai in implementing a program for shoreline land acquisition for park and or hazard mitigation purposes as may be undertaken by the County.

Status: In January 2001, KDCI undertook a beach nourishment project at the crescent beach located between the Kukui'ula boat launch ramp and Lawai Road. The project included the removal of scrub vegetation, debris, loose rocks and the placement of 500 cubic yards of sand on the beach. These improvements were implemented in fulfillment of County requirements to enhance the beach for public use. As stated earlier, the County included Condition of Approval No. 15. d) to Ordinance No. PM-2004-370 requiring the Applicant to establish a twenty (20) foot wide lateral public beach access easement along the Kukui'ula Bay shoreline as well as developing, dedicating and maintaining in

perpetuity an approximately 2-acre public park in the vicinity of Kukui'ula Bay. Furthermore, the County included Condition No. 15. e) to Ordinance No. PM-2004-370 requiring the Petitioner to contribute not more than \$500,000.00 to mitigate impacts to shoreline recreation resources including, but not limited to, acquisition of beach accesses and Poipu Beach Park expansion and improvements. In partial compliance with the shoreline improvements requirements, Petitioner has designed and is planning to construct by 2008, a 20-car parking lot in the Boyden's pond area off of Lawai Road. The Petitioner will comply with these conditions.

Condition No. 23: An agreement between Petitioner and the County of Kauai shall be formulated that covers the elements which Petitioner will be participating in contributing its pro rata share toward items that are determined to provide regional and or islandwide benefits (excluding items which service the Project) for which Petitioner shall be credited against County requirements affecting the Project.

Status: Pursuant to this condition, the Petitioner expects to work with the County to determine its pro rata share participation in improvements/contributions of a regional or islandwide nature and to reconcile these against the County's current requirements for the project.

Condition No. 24: As permitted by law, Petitioner shall provide employment opportunities in the project to give preference to those persons who have been or will be displaced by the withdrawal of sugarcane lands.

Status: To the extent legally permissible, the Petitioner intends to give preference to displaced sugar workers for future employment opportunities. McBryde Sugar Company, Limited, an affiliate of KDCI, implemented a comprehensive program to assist displaced sugar workers with the closure of its sugar operations in 1996. This program included, among other things, opportunities for job training and independent farming. Additionally, the Petitioner has utilized local Kauai contractors and materials suppliers in the development and construction of the Koloa Estates subdivision, as well as for its prior construction work at the project.

The initial construction contracts for offsite water and road facilities have been broken into manageable sizes in order to encourage the participation of local contractors, and were publicly bid. The contractors and the Petitioner will continue to use reasonable efforts to utilize local Kauai contractors and materials suppliers in the development and construction of the Project whenever possible.

Condition No. 25: Petitioner shall develop the Project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may

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Condition No. 25: Petitioner shall develop 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.

Status: The Kukui'ula project area has been developed to date in substantial compliance with prior representations made to the SLUC. The Petitioner will continue to comply with this condition.

Condition No. 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 prior to the development of the Property.

Status: The SLUC was informed of the intent of KDCI to transfer all right, title and interest in the Kukui'ula project area to KDC Hawaii and that transfer was completed on March 31, 2005. Additionally, KDCI previously provided the SLUC prior notice to sell individual residential lots within the 32-lot Koloa Estates project. As part of the ongoing development process, Petitioner is proceeding with subdivision, as well as other regulatory approvals required for the sale of property to individual purchasers. Petitioner intends to offer for sale 35 lots in Kukui'ula Residential Subdivision Phase IIA and 88 lots in Kukui'ula Residential Subdivision Phase I to individual purchasers before the end of 2006.

Condition No. 27: Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or has been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Status: This report is submitted in response to and in compliance with this condition.

Condition No. 28: The Land Use 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.

Status: Previously, the SLUC, by the Supplemental Order dated June 22, 1998, granted the release and discharge of the lands comprising the National Tropical Botanical Gardens' Visitor Center from the operation of the conditions of the Decision and Order dated May 18, 1995. Also, by order dated May 24, 1999, the SLUC granted the release and discharge of lands comprising the Koloa Estates subdivision from the operation of the conditions of the Decision and Order dated May 18, 1995, as amended by the Supplemental Order dated June 22, 1998.

Petitioner may file future motions with the SLUC for the release of conditions for other portions of the project area.

Condition No. 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 herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

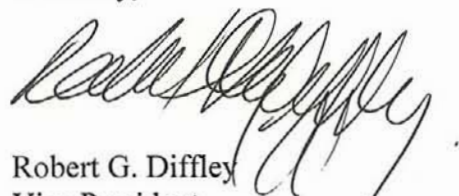
Status: On May 25, 1995, a statement that the Kukui'ula project area was subject to conditions imposed in the Original Decision and Order was recorded with the Bureau of Conveyances as Document Number 95-069813 and a copy of such statement was filed with the SLUC. Further, as noted in Condition 30 below, Petitioner has recorded the conditions imposed by the SLUC with the Bureau of Conveyances.

Condition No. 30: Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

Status: The Declaration of Conditions dated July 28, 1998 setting forth the conditions imposed by the SLUC in the Supplemental Order recorded with the Bureau of Conveyances as Document Number 98-118338 were revoked pursuant to the Revocation and Cancellation of Conditions dated November 3, 2003 and recorded with the Bureau of Conveyances as Document Number 2003-244115 on November 5, 2003. Also on November 5, 2003, the Declaration of Conditions dated August 8, 2003 setting forth the conditions imposed by the SLUC in the Revised Decision and Order was recorded with the Bureau of Conveyances as Document Number 2003-244116. Copies of these documents were filed with the SLUC on December 1, 2003.

I hope you find the report responsive to your needs. If you need any further information regarding this project or our progress, please do not hesitate to contact me.

Sincerely,



Robert G. Diffley
Vice President
Development & Construction

cc: State Office of Planning
County of Kauai Planning Department