

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS

REVOCABLE PERMIT NO. SP0406

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 25th day of October 2012, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and Lanihuli Community Development Corporation, a Hawai'i non-profit corporation, hereinafter called the "Permittee," whose mailing address is PO Box 305, Lā'ie, HI. 96762. The parties agree that commencing on the 1st day of September, 2012, ("commencement date"), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, those certain parcels of public land (and any improvements located thereupon) situate at Kahuku Section, Mālaekahana State Recreation Area, Lā'ie (Ko'olauloa), O'ahu, tax map key no., TMK: (1) 5-6-001: Parcels 45-47, 49, 51, 54-65, as indicated on the map attached hereto labeled as Exhibit A, and made a part thereof, containing an approximate area of 31.945 acres, more or less, which parcel is hereinafter referred to as the "Premises".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the Premises for the following specified purposes only:
The operation, management and maintenance of public grounds, including the Minimum Improvements as hereinafter defined, and recreational facilities for Malaekahana State Recreation Area (Kahuku Section) including tent camping sites, cabin, comfort stations yurt and grass shack rentals. An inventory list of structures is attached as Exhibit B and made a part hereof. Only the structures listed in Exhibit B may be used on the Premises. At a minimum, Permittee shall operate the existing office, caretaker's residence and security guard's dwelling (the "Minimum Improvements"). Permittee may also operate park related programs and activities provided Permittee has prior written approval from the Division of State Parks and said programs and activities comply with all applicable governmental regulation.
2. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent in a sum equal to five percent (5%) of the Adjusted Gross Receipts, as hereinafter defined, from the operation the Premises, each and every month.

Adjusted Gross Receipts shall mean the total amount received or realized by, or accruing to, the Permittee from all sales and from authorized uses including all

rentals from the operation of a campground and lodging as described above, including those through vending machines and other coin-operated devices, and for campsite rentals, cabin rentals, yurt and grass shack rentals and for the use or rental of any other type of facility for cash or credit, or for services, materials, and other merchandise made pursuant to the privileges authorized in this Permit, less deductions for the current month for Hawai'i state general excise taxes and transient accommodations taxes provided:

1. That the amount(s) deducted are the actual amounts paid and owed by Permittee to the state of Hawai'i; and,
2. That the gross receipts are clearly stated in the reports as described herein below.

The Permittee shall report the full amount of all gross receipts and any deductions thereto in a form or format acceptable to the Division of State Parks as described in Exhibit D attached hereto and made a part hereof, showing in accurate detail the amount of its gross receipts and Adjusted Gross Receipts, together with the monthly rent no later than the 25 day of each month following the month in which the gross receipts were received.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the 25th day of the month following the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

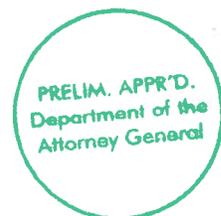
3. Upon execution of this Permit, deposit with the Board an amount equal to FOUR THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS (\$4,167.00), in cash, as security for the faithful performance of all of these terms and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder. In lieu of a cash deposit as described above, Permittee may procure and deposit with the Board, at its own cost and expense, a good and sufficient surety bond within ten (10) days from the effective date of this Permit, and thereafter keep in full force and effect during the term of this Permit, conditioned upon the full and faithful observance and performance by Permittee of all the terms, conditions, and covenants of this Permit, in an amount equal to FOUR THOUSAND ONE HUNDRED SIXTY-

SEVEN DOLLARS (\$4,167.00). This bond shall provide that in case of a breach or default of any of the terms of this Permit, covenants, conditions, and agreements, the full amount of the bond shall be paid to the State as liquidated and ascertained damages and not as a penalty. Any such surety bond shall be subject to the review and approval of the Division of State Parks and the Office of the Attorney General and shall be made by a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawai'i.

4. At the Permittee's own cost and expense, keep any government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the DLNR. In the event of loss, damage, or destruction of those improvements, the DLNR shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.

Permittee is not, however, required to provide and maintain fire insurance for government owned structures not used in the operation of the Premises provided Permittee secures said structures as described below and further provided the structures are not Minimum Improvements. Should Permittee choose not to operate government-owned structures under this section, Permittee shall provide DLNR 30 days prior written notice and shall disconnect all utilities and secure the structure. Any structures not properly insured pursuant to this section shall not be used for any purpose.

5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
7. Repair and maintain all buildings or other improvements now or hereafter on the Premises. Permittee shall not be responsible to repair and maintain buildings or structures which are secured and not being used provided Permittee complies with the terms of section 4 above.



8. Consult with the Division of State Parks and obtain the prior written consent of the Division of State Parks before altering, excavating, grading the land, or removing trees. Permittee must obtain the consent of the Board in writing before making any significant improvements. A significant improvement is an improvement which alters the structural integrity, alters the exterior appearance, involves plumbing and/or electrical work, or results in an expense of greater than \$1,000.00. Permittee shall not install or bring on to the Premises any structures in addition to those on the attached list labeled Exhibit B regardless of whether or not they are portable structures or permanent or temporary structures, unless approved in writing by the Board.
9. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
10. Pay all charges, assessments, or payments for electricity, water or other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
 - a. It is agreed that the water supplied by the Board of Water Supply, Account #1162097-1027768 shall be paid monthly on a pro-rata basis, 60% paid by Permittee and 40% paid by the State
11. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
12. At all times with respect to the Premises, use due care for public safety.
13. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the DLNR. The insurance shall cover the entire Premises, including all, buildings, improvements, grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Permittee.

Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Permittee to

provide the State with copies of the insurance policy (s) that are or were in effect during the permit period.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required.

The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance certificate (s) shall be mailed to:
State of Hawaii - Department of Land and Natural Resources
Division of State Parks, Room 310, 1151 Punchbowl Street, Kalanimoku Building
Honolulu, Hawaii 96813

14. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including attorney's fees and expenses incurred by or imposed on the State.
15. The Permittee shall pay all costs, including attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate on February 9, 2013, unless earlier revoked as provided below, and provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall

have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.

2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, structures installed or constructed by Permittee, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.
6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. Permittee recognizes the Premises are located in a State park and that day use of the park is allowed for parking and beach access by members of the public. Permittee shall not prevent or restrict public access to the public during park hours unless approved by the Division of State Parks in writing. The Board

reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.

8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or

elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
15. Permittee shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
16. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
17. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's

mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.

18. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons and each of them jointly and severally.
19. Permittee shall comply with DLNR's large capacity closure plan as approved by the United State Environmental Protection Agency dated March 29, 2012 (Exhibit C, attached herein and made a part hereof), and with the interim sanitation facility plans, as approved by the State Department of Health (DOH), by the continued provision of at least twelve (12) portable toilets with cleaning and servicing and pumping frequency as directed by DLNR and by the closure of all unapproved individual wastewater systems. All costs related to the operation of portable toilets shall be paid for by Permittee and must be maintained pursuant to DOH regulation. Permittee shall not use, or attempt to use or connect any apparatus or plumbing system to the existing cesspools identified for closure as Large Capacity Cesspools unless approved by the State Parks and the DOH. Failure to comply with EPA requirements may result in substantial fines and/or penalties and may result in the termination of this Permit.
20. The Permittee shall contact and seek approval from DLNR of any plans, design and construction of any sanitation facility improvements, individual wastewater system improvements and/or construction and any gray water disposal systems prior to the required submittal to DOH. All submittals must comply with DOH submittal requirements.
21. Permittee understands that pursuant to Section 171-13 Hawaii Revised Statutes, no person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.
22. The Permittee shall keep on file a schedule of business hours, days open, a rate sheet of prices charged and submit monthly patronage and income reports to the Division of State Parks as follows:

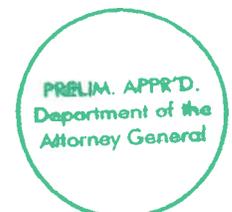
Division of State Parks
Property Management
1151 Punchbowl Street, Rm 310
Honolulu, HI 96813

The monthly reports and payments shall be submitted in the form or format in Exhibit D, (see Paragraph 2) to the Division of State Parks without notice or demand, on or before the twenty-fifth day of the month following the month for

which the report is applicable. The first monthly report shall be made upon execution of this revocable permit. The Division of State Parks shall provide a report form to Permittee, and Permittee shall, upon request, submit supplemental reports or other data should the Division of State Parks deem it necessary to reconcile and audit gross receipts.

- 23 LWCF compliance. Funding for the acquisition and/or improvements for this park was obtained pursuant to Section 6(f)(3) of the Land and Water Conservation Fund Act (LWCF). As a condition of this funding, the State is responsible for compliance and enforcement of LWCF requirements.
24. Permittee shall, within 14 calendar days of the effective date of this Permit submit to the Division of State Parks a list of all of Permittee's agents and employees who live on the Premises and their respective duties and shall notify the Division of State Parks within 7 days of any changes to the list.

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IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By *William J. Aila, Jr.*
WILLIAM J. AILA, JR.
Chairperson of the Board of Land and Natural Resources

Approved by the Board of Land and Natural Resources at its meeting held on August 10, 2012

STATE

LANIHULI COMMUNITY DEVELOPMENT CORPORATION, a Hawai'i non profit corporation

APPROVED AS TO FORM:

William J. Wynhoff
William J. Wynhoff
Deputy Attorney General

By *Craig Chapman*
Its *pres.*

Dated: *10/11/12*

And by _____

Its _____
(Individual)

PERMITTEE



STATE OF HAWAII)
) SS.
CITY • COUNTY OF Honolulu)

On this 23rd day of October, 2012, before me personally appeared Craig Chapman and _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



S. Ann Allred
Notary Public, State of Hawaii

My commission expires: 07-09-16

Document Date: <u>not dated</u> of Pages. <u>22</u>
Notary Name: S. Ann Allred First Circuit
Doc. Description: <u>Revocable Permit</u>
<u>S. Ann Allred</u> <u>10/23/12</u> Notary Signature Date

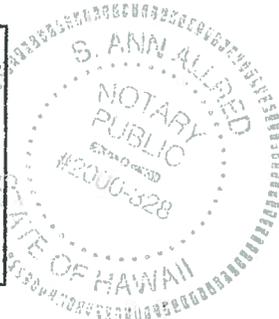


Exhibit B- Structure Inventory

Structure Inventory
 Revocable Permit No.
 Permittee:
 Date

SP0406
 Lanihuli Community Development Corporation
 9/1/2012

<u>Structure ID</u>	<u>Structure Description</u>	<u>Number of Units</u>	<u>Owner</u>	<u>Status</u>
MSRAKS1	Cabin 1 - Office/Residence	1	DLNR	Used for office and residence for staff
MSRAKS2	Cabin 2	1	DLNR	Active Rental
MSRAKS3	Cabin 3	1	DLNR	Active Rental
MSRAKS4	Cabin 4	1	DLNR	Closed (unsafe)
MSRAKS5	Cabin 5	1	DLNR	Closed (unsafe)
MSRAKS6	Cabin 7 fka Cabin 6&7	1	DLNR	Active Rental No longer duplex
MSRAKS7	Security Manager's Residence	1	DLNR	Used as residence for security staff
MSRAKS8	Manager's Residence	1	DLNR	Used as residence for manger
MSRAKL1	Grass Shacks	10	LANI	Active Rental
MSRAKL2	Eco Cabin Single	1	LANI	Active Rental
MSRAKL3	Eco Cabin Duplex	1	LANI	Active Rental
MSRAKL4	Thatched Hale/Yurt	5	LANI	Active Rental - Tutu's Hale area
MSRAKL5	Ali'i Thatched Hale	1	LANI	Active Rental
MSRAKL6	Hale Nui	1	LANI	Grass shack with deck
MSRAKL7	Tutu's Hale Complex (includes 5 yurts)	5	LANI	Active rental
MSRAKL8	Surf Camp Bunkroom	1	LANI	Active rental
MSRAKL9	Employee Residence	2	LANI	Employee/Guest Housing
MSRAKL10	Yurt near office	1	LANI	Employee Use
MSRAKL11	Additional Yurts Mauka of Cabin 7	2	LANI	Proposed Rental

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Exhibit C – EPA and DOH Letters



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

March 29, 2012

William J. Aila, Jr., Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Dear Chairperson Aila:

I am writing in response to your letter of March 5, 2012 which provides an updated large capacity cesspool (LCC) closure plan for Malaekahana Kahuku Section, Oahu and revised LCC closure schedule for Waiapanapa State Park, Hana, Maui. Thank you for submitting this information.

Malaekahana Kahuku Section

Whereas EPA's initial inventory survey identified five LCCs at this location, your submittal documents a total of seven LCCs. We updated our inventory to reflect the additional two LCCs. Your submittal further contains documentation confirming actions to disconnect four LCCs such that they are no longer in use. DLNR will eliminate, properly plug and abandon, or convert these LCCs by April 30, 2012.

Regarding the three remaining LCCs, you provided documentation that these cesspools are no longer "large capacity" by EPA's criteria. Although these cesspools no longer meet the criteria that would require their closure, please be aware that future modifications to the buildings served by these cesspools could result in them returning to a non-compliant status, thereby subjecting DLNR to EPA enforcement. To the extent you anticipate these facilities will continue to be used in the long-term, it would be advantageous to replace these cesspools with state-approved septic systems. Such action would provide an added environmental benefit at this site, and also remove any future LCC compliance concerns.

Waiapanapa State Park

You provided an updated schedule for closing the six LCCs at this site by August 2014. Although this schedule is expedited over the one submitted in November 2011, it will still result in an additional 2.5 years of non-compliance with the LCC regulations. While EPA understands that this extended timeframe for closing the LCCs is due in part to Maui County's Special Management Area (SMA) permitting process, we encourage DLNR to make every effort to expedite proper LCC closure. Moreover, should there be a reduction in timing for any particular step in the process (e.g., if an SMA permit waiver is granted), then EPA expects DLNR to meet an earlier final closure date at this site.

Required LCC Closure Documentation

For any LCCs that are closed/converted by DLNR, EPA requires specific documentation for our records. The documentation that we need to confirm the proper plugging/abandonment of the LCC and demonstrate state approval of alternative wastewater systems is described below.

Printed on Recycled Paper



Plugging and Abandoning LCCs

In order to demonstrate that an LCC has been properly plugged and abandoned, DLNR will need to submit the appropriate backfilling documentation.

If a cesspool's inflow was less than 1,000 gallons per day, the enclosed backfilling report should be filled out and submitted to Kate Rao, LCC Program Coordinator.

If a cesspool's inflow was 1,000 gallons per day or more, please contact the Hawaii Department of Health (DOH), UIC Program at (808) 586-4258 to obtain the "Application for Backfilling an Injection Well Cesspool" or you can download a copy of the application at www.hawaii.gov/health/environmental/water/water/sdwb/uic/uicprog.html.

DOH IWS Approval to Use

If you convert an LCC to a DOH approved individual wastewater system (IWS), including instances where the cesspool is utilized as a seepage pit, please submit the DOH approval-for-use letter.

As I noted during our meeting in December, EPA is not extending the formal deadline by which you were required to comply with federal regulations. All LCCs were required to be closed by April 2005 (see 40 C.F.R. §144.88). Operation of an LCC after that date is a federal violation which may subject you to enforcement and penalties. However, your efforts to properly close the LCC in accordance with your proposed plans and schedules are relevant to EPA's consideration of any potential enforcement action.

I would appreciate if your staff could continue to provide regular updates on the LCC closures to Ms. Kate Rao of our office. If you have any questions, please contact me at 415-972-3971, or your staff may contact Ms. Rao at 415-972-3533 or via email at rao.kate@epa.gov.

Sincerely,



David Albright
Manager, Ground Water Office

Enclosure

cc: Russell Kumabe, DLNR
Sina Pruder DOH WWB (w/o enclosure)
Chauncey Hew, DOH SDWB (w/o enclosure)

PRELIM. APPR'D.
Department of the
Attorney General

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 10, 2012

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KALUKUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCE
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
FRUITSPRING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Acting Chief
Wastewater Branch
Environmental Management Division
Hawaii State Department of Health
919 Ala Moana Boulevard, Room 309
Honolulu, HI 96814

Dear Acting Branch Chief:

Subject: Property at Malaekahana State Recreation Area (Kahuku Section)
TMKs: (1) 5-6-001: 45, 46, 47, 49, 51, 55, 56, 57, 59, 60, 61, 62, 64, and 65

This is to transmit the attached revised Affirmative Action Plan ("Plan"), refer to Attachment A, based upon discussions between the Wastewater Branch, Department of Health ("WWB" or "DOH") and the Division of State Parks ("Parks") and the Engineering Division ("Engineering"), Department of Land and Natural Resources ("DLNR" or "Department").

We request your review and approval of our proposed revisions to the Plan. Our proposals include a new comfort station, a new individual wastewater system ("IWS") and four (4) double-toilet composting facilities.

DLNR's Compliance Efforts

On April 8, 2009, DOH issued its notice of violations for ten (10) wastewater systems that the current operator has been operating without the required approvals. On the same date, the United States Environmental Protection Agency ("EPA") issued their notice of violations for five (5) large capacity cesspools ("LCC") in the property. Subsequent discussions between WWB and DLNR staff confirmed three (3) unapproved IWS and five (5) large capacity cesspools ("LCC") in the subject property. Upon further investigations, DLNR staff discovered two additional LCCs totaling the number of LCCs at seven (7).

On April 27, 2009, DLNR submitted the Plan to DOH that intended to address both EPA and DOH violations. In May 2009 and subsequent discussions between WWB and DLNR staff, DOH concurred with the Plan and its timeframes. EPA staff accommodated DLNR's timeframes as all proposed IWS compliance also addressed the LCC closures. EPA reiterated that they did not formally approve the timeframes but found the milestone dates reasonable in addressing the respective violations.

Addressing EPA Violations

DLNR has started on closure compliance of the seven (7) LCCs. DLNR submitted a closure compliance plan that included disconnections, formal closures and injection well conversion measures, refer to Attachment B – LCC closure compliance to EPA. They acknowledged our efforts and concurred with our plan for closure compliance by April 30, 2012, refer to Attachment C - EPA's attached letter dated March 29, 2012. Any LCCs not converted to injection wells will be back-filled pursuant to DOH and EPA requirements.

EPA advised DLNR, though not required by regulation, to eventually replace the cesspools serving the buildings in the area. As funding will allow, we will plan the eventual replacement of the cesspools serving the structures in this park section with an appropriate IWS. We concur with EPA that this is a proper measure to implement our stewardship for the area.

Addressing DOH Violations

Since DOH's approval of the Plan in May 2009, DLNR has completed several of the milestones in the Plan such as:

1. **April 30, 2009:** select a licensed Engineer.
2. **June 30, 2009:** conduct a site visit with Engineer, detail the scope of work, negotiate fees, and execute an agreement to complete an assessment.
3. **September 30, 2009:** complete a topographic survey of existing structures, cesspools, above ground wastewater systems, and other pertinent items on site. Complete a thorough assessment of existing wastewater systems and provide recommendations for management measures and design, including large capacity cesspool closures. Submit the Engineering Assessment to the Wastewater Branch for review and approval.
4. **October 15, 2009:** address Wastewater Branch comments and re-submit for review and approval.

Due to unforeseen delays in State funding, the other timeframes have lagged and DLNR will not be able to meet the completion deadline of April 30, 2013, as defined by the Plan. In 2009, we intended on improving the three (3) unapproved IWS's but after further assessment, we decided to abandon and replace these unapproved systems with new facilities that include a new comfort station IWS and three (3) double-toilet composting facilities. We believe replacement of the existing unapproved and non-compliant facilities installed by the current operator is the only feasible option to ensure our responsibility for public health and safety as well as compliance with Federal and State environmental and accessibility regulations. Another impediment has been the uncertainty of management of the park and the tenure of the current operator.

Our revisions to the Plan include extending design completion and review by DOH to April 30, 2013 and construction start to April 30, 2014. An additional timeframe was added to complete the environmental assessment (EA) process and the City and County of Honolulu's SMA permit process and approval. We will expedite these activities and seek earlier completions.

In light of funding and management issues affecting our compliance with the Plan, DOH has accommodated us by allowing the use of portable toilets during compliance efforts. We request that DOH allow DLNR to continue the use of portable toilets as an option during our compliance activities in the revised Plan. Once the new comfort station IWS comes on line, we will discontinue the use of the portable toilets. We would like to note the possibility of a new operator during the period DLNR completes the Plan, if that happens, we will coordinate the implementation of the Plan and its requirements.

PRELIM. APPR'D.
Department of the
Attorney General

Acting Wastewater Branch Chief
Page 3 of 3

Summary

In summary, we request the following:

1. Review and approval of the revised Plan as described in Attachment A.
2. Continue the use of portable toilets during the design and construction of a new comfort station and IWS. We will discontinue the use of these facilities when the new system is completed and comes on line.
3. If the above are approved, please forward an acknowledgement of DOH's approval of the items stated above.

Should you have any questions, please contact Russell Kumabe, at (808) 587-0305.

Sincerely yours,



Daniel S. Quinn
Administrator
State Parks

attachments

c: Kate Rao
Chauncey Hew
Chairperson
Carty Chang
Gordon Chong
Craig Chapman



ATTACHMENT A 4-25-2012

AFFIRMATIVE ACTION PLAN revised April 18, 2012

Facility: Maleakahana State Recreation Area – Kahuku Section
TMKs: (1) 5-6-001:45, 46, 47, 49, 51, 55, 56, 57, 59, 60, 61, 62, 64, and 65

Reference: Wastewater Branch letter to Division of State Parks dated April 8, 2009 and staff consultation on February 1 and 15, 2012.

In accordance with order number 6 of the referenced letter and our subsequent consultations in 2012, we hereby submit a revised affirmative action plan. The below dates anticipate when the described actions will be completed.

1. **April 30, 2009:** select a licensed Engineer.
2. **June 30, 2009:** conduct a site visit with Engineer, detail the scope of work, negotiate fees, and execute an agreement to complete an assessment.
3. **September 30, 2009:** complete a topographic survey of existing structures, cesspools, above ground wastewater systems, and other pertinent items on site. Complete a thorough assessment of existing wastewater systems and provide recommendations for management measures and design, including large capacity cesspool closures. Submit the Engineering Assessment to the Wastewater Branch for review and approval.
4. **October 15, 2009:** address Wastewater Branch comments and re-submit for review and approval.
5. **October 2009 through May 2011:** seek design and construction funds from the 2010 and 2011 State Legislature, funding secured pursuant to Act 164, SLH 2011.
6. **October 14 – 20, 2011:** Governor's approval for release of funds.
7. **December 27, 2011:** Design Consultant selected and contract processing initiated.
8. **April 12, 2012:** conduct a site visit with design Consultant, detail the scope of work, negotiate fees, and execute an agreement to complete design documents.
9. **September 2012 – April 2013:** EA/EIS preparation and approval and City and County SMA permitting approval.
10. **September 1, 2012:** submittal of composting toilet specifications and locations to DOH for review and approval to construct.
11. **October 1, 2012:** installation of four (4) double-toilet composting toilet facilities, and DOH approval to operate.
12. **April 30, 2013:** submit design documents to Wastewater Branch for review and approval.
13. **May 31, 2013:** address Wastewater Branch comments and resubmit for approval.
14. **September 30, 2013:** complete design documents.
15. **November 30, 2013:** go to printers, advertise, and open bids.
16. **January 31, 2014:** evaluate low bid and execute construction contract.
17. **April 30, 2014:** begin construction.
18. **Up to six (6) months to one (1) year for construction completion, depending upon construction costs and design scope.**

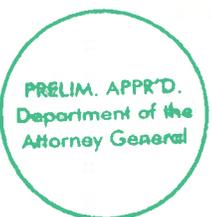


Exhibit D – Monthly Payment Remittance Form



CAMPGROUND REVOCABLE PERMIT - MONTHLY REPORT
 State of Hawai'i, Department of Land and Natural Resources, Division of State Parks
 Malaekahana State Recreation Area Kahuku Section (MSRA)
 Lanihuli Community Development Corporation



RP Contract No.: SP0406

Reporting Period (Month)

20_____

The percentage payment is due within 25 calendar days after the close of each month.

Permittee:
 Lanihuli Community Development Corporation
 PO Box 305
 Lā'ie, Hawai'i 96762
 Phone No. 808 _____
 Email: _____

Mail original of this statement with payment to:
 Division of State Parks Property Management
 Department of Land and Natural Resources
 P.O. Box 621
 Honolulu, HI 96809

Checks made payable to:
 DLNR - Division of State Parks

Programs operated:

(If none, please indicate so.)

	Revenue	
1. Gross Receipts from Campsites	\$ _____	<p>CERTIFICATION:</p> <p>I certify that this statement is, to the best of my knowledge and belief, a true and correct declaration of all receipts for the period stated pursuant to the terms, covenants and conditions of the contract to which this statement applies.</p> <p>Authorized Signature</p> <p>_____</p> <p>Title: _____</p>
2. Gross Receipts State Owned Cabins	\$ _____	
3. Gross Receipts Yurts/Hale Grass Shacks Tutu's Hale	\$ _____	
4. Gross Receipts from Van Camp Type Rentals	\$ _____	
5. Gross Receipts from Surf Camp and all other receipts	\$ _____	
6. Total Gross Receipts	\$ _____	
7. Authorized Deductions:		
GET \$ _____		
TAT \$ _____		
Total Deductions: \$ _____		
8. Adjusted Gross Receipts (6-7)	\$ _____	
9. Percentage Fee: 5% of all Adjusted Gross Receipts	\$ _____	
10. Amount of payment (Amount Enclosed)	\$ _____	Date: _____



CAMPGROUND AND LODGING REVOCABLE PERMIT
MONTHLY REPORT

SP0406 Lanihuli Community Development Corporation

MONTH: _____ YEAR: _____

	<i>Days Occupied</i>	<i>No. of Guests</i>	<i>Ave Rental Rate</i>	<i>Gross Receipts</i>	<i>Average Stay</i>	<i>Occupancy (%)</i>	<i>Unit Nights</i>
Tutu's Hale							
State Owned Cabins							
Eco-Cabins							
Yurts							
Grass Shacks							
Surf Camp Rental							
Campsites							
Van Camp							
Other Revenue							
Totals							

