

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the )  
 )  
PUBLIC UTILITIES COMMISSION )  
 )  
Instituting a Proceeding to )  
Investigate North Shore )  
Wastewater Treatment, L.L.C. )  
and its Predecessors-in-Interest, )  
including Kuilima Resort Company.)  
\_\_\_\_\_ )

DOCKET NO. 05-0238

RECEIVED  
2005 SEP 22 A 9:39  
DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

ORDER NO. 22045

Filed Sept. 21, 2005  
At 8 o'clock A.M.

Karen Higashi.  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.  
K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the	)	
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Wastewater Treatment, L.L.C.	)	
and its Predecessors-in-Interest,	)	
including Kuilima Resort Company.)	)	

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NOTICE OF ALLEGED VIOLATIONS, ORDER TO SHOW  
CAUSE AND ABATEMENT, AND NOTICE OF HEARING

The commission, pursuant to its general and investigative powers, opens this investigation of NORTH SHORE WASTEWATER TREATMENT, L.L.C. ("NSWT") and its predecessor-in-interest, KUILIMA RESORT COMPANY ("KRC"). Unless directed otherwise, NSWT is ordered to: (1) immediately cease and desist from charging ratepayers its initial tariff wastewater rates; and (2) revert to the wastewater rates charged by KRC prior to the transfer of the wastewater operations to NSWT. NSWT and KRC shall appear before the commission and show cause as to why the commission should not suspend NSWT's initial tariff rates on a permanent basis, and to address the issues identified in Section I of this Order.

I.

Investigation

As previously described by the commission in Docket No. 04-0298, with respect to NSWTT, its affiliates, and predecessors-in-interest, including KRC:

North Shore Wastewater Treatment, L.L.C.

A.

Predecessor and Ownership Interests

NSWT is a newly formed Delaware limited liability company authorized to do business in the State of Hawaii ("Hawaii" or the "State"). NSWTT's sole member is Turtle Bay Holding, L.L.C., a Delaware limited liability company. Turtle Bay Holding, L.L.C., is also the ninety-nine (99) per cent general partner of Kuilima Resort Company ("KRC"), a Hawaii general partnership.

KRC is the current owner of the Hotel at Turtle Bay Resort, the Turtle Bay Resort Golf Club, and certain surrounding properties on the North Shore of Oahu. KRC also owns all of the land within the proposed service area, and is the current provider of wastewater service to the developed areas.

B.

Service Territory

NSWT seeks the commission's approval to provide wastewater service to the Hotel at Turtle Bay Resort, the Turtle Bay Golf Club, the Kuilima East and Kuilima West condominiums, the proposed Ocean Villas condominium project presently under construction, and approximately three hundred (300) acres of resort zoned lands that are planned for development within the next ten (10) years. A map of NSWTT's proposed service territory is attached as Exhibit A to its Application.

The City and County of Honolulu ("City"), Board of Water Supply, provides the water service to the users situated within NSWTT's proposed service territory.

C.

Initial Wastewater Treatment Plant

A wastewater treatment plant was constructed in the early 1970's ("initial plant") to serve the improvements for the then master-planned Kuilima Resort, which commenced operations in 1972. The Kuilima Hotel, a golf course, and club house opened soon thereafter. In addition, the nearby Kuilima East and Kuilima West condominium projects were completed around 1972 by a separate developer, unrelated to the original developer of the Kuilima Resort. Both condominiums were served by the initial plant.

In 1988, Kuilima Development Company, the then owner and developer of the Kuilima Resort, deeded the Turtle Bay improvements and properties to KRC. KRC then: (1) updated the master plan for developing the resort; and (2) obtained approval to construct up to five (5) hotels (comprised of up to 2,000 rooms) and 2,000 resort condominiums.

In conjunction with the future developments, KRC constructed a new treatment plant at a cost in excess of ten (10) million dollars, circa 1991 (the "treatment plant" or "1991 treatment plant"). When the treatment plant was placed into service, KRC retired and removed from service the initial plant.

Following the issuance of a CPCN to NSWT, KRC will convey title of the treatment plant to NSWT, and KRC will cease to provide wastewater service.

D.

Wastewater Treatment Plant

NSWT intends to own the treatment plant, which is located at 57-091 Kamehameha Highway, across from the Hotel at Turtle Bay Resort. All sewage generated within the proposed service area will be collected and processed at the treatment plant.

. . . . .



F.

#### Monthly Land Lease Charge

KRC presently charges the Kuilima East and Kuilima West condominiums a monthly land lease amount that covers the lease of the land, collection and treatment of wastewater, landscape maintenance, and maintenance of the common areas. The current monthly land lease charge ranges from \$40 to \$66 per unit, depending on the size of the unit. KRC intends to eliminate from the monthly land lease charge the portion that is related to wastewater collection and treatment, once NSWTT initiates wastewater service.

G.

#### Proposed Initial Wastewater Rates

Following the commission's issuance of a CPCN, KRC will: (1) transfer ownership of the treatment plant to NSWTT; and (2) retain ownership of the effluent disposal facilities. The collection and transmission mains, representing remaining plant from the 1972 time frame, will be transferred to NSWTT at no cost. The lift station, force main, and treatment plant will be transferred to NSWTT at the original cost, less accumulated depreciation "through December 31, 2004[,]" which is the assumed date for the approval of the Application and the commencement of operations of [NSWTT]."

. . . . .

H.

#### Rate Base Treatment

NSWTT represents that because nearly all of the initial plant's improvements are retired and removed from service, fully depreciated, or were contributed plant, none of these improvements are included in NSWTT's proposed rate base. Thus, in calculating its Initial Rates, NSWTT has only included the costs of the new treatment plant constructed in 1991, reduced by the amount of accrued depreciation.

Presently, the treatment plant "is operating at approximately 28% of plant capacity, with only about 28% of units permitted to be constructed under the revised master plan actually built to

date." NSW'T's Initial Rates, therefore, "are based on a rate base of 30% of the net plant in service." NSW'T projects that the full build-out of the properties located in its proposed service territory will occur within the next ten (10) years, when it anticipates that the treatment plant will be operating at close to one hundred (100) per cent of its capacity.<sup>1</sup>

On June 14, 2005, the commission approved: (1) NSW'T's Application for a certificate of public convenience and necessity ("CPCN") to provide wastewater service within the Kahuku area, island of Oahu;<sup>2</sup> and (2) NSW'T's initial rate structure and wastewater charges, as agreed-upon between NSW'T and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), the parties in Docket No. 04-0298.<sup>3</sup> NSW'T did not request to increase the wastewater rates or charges assessed, and no public hearing or contested case proceeding was requested or held.

Following the commission's issuance of NSW'T's CPCN, the Association of Apartment Owners ("AOAO" or "AOAOs") for the Kuilima Estates West and Kuilima Estates East were notified by

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<sup>1</sup>Docket No. 04-0298, *In re North Shore Wastewater Treatment, L.L.C.*, Decision and Order No. 21864, filed on June 14, 2005, at 2 - 5 and 9 - 11 (footnotes, text, and citations therein omitted). According to NSW'T, Oaktree Capital Management, LLC is the manager of Turtle Bay Holding, L.L.C. and NSW'T. See NSW'T's responses to PUC-IR-101, dated August 24, 2005 (IC-05-103) and August 26, 2005 (IC-05-119).

<sup>2</sup>NSW'T's Application for a CPCN, Exhibits "A" through "G", Verification, and Certificate of Service, filed on October 5, 2004.

<sup>3</sup>Docket No. 04-0298, Decision and Order No. 21864, filed on June 14, 2005; and Order No. 21905, filed on July 1, 2005.

NSWT of the wastewater rates NSWNT intends to charge the respective AOAOs. In response, both AOAOs filed informal complaints with the commission (IC-05-103 and IC-05-119, respectively),<sup>4</sup> superseded by a Petition to Reopen Docket No. 04-0298 and to Defer the Effective Date of [the] Tariff Rates Approved in Decision and Order No. 21864 (the "Petition").<sup>5</sup>

The information set forth in the informal complaints, related filings, and the Petition, raises numerous issues that merit further investigation. For example, the commission, in its review of IC-05-103 and IC-05-119, posed the following questions to NSWNT:

In PUC Docket No. 04-0298, *In re North Shore Wastewater Treatment, L.L.C.*, NSWNT explained that: (1) KRC charged a monthly land lease amount to cover the lease of the land, collection and treatment of wastewater, landscape maintenance,

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<sup>4</sup>IC-05-103, dated July 21, 2005, from the Kuilima Estates West AOA; commission's letter, dated July 22, 2005; NSWNT's response, dated August 8, 2005, to IC-05-103; Consumer Advocate's response, dated August 11, 2005, to IC-05-103; commission's information requests, dated August 12, 2005; Consumer Advocate's letter, dated August 12, 2005; NSWNT's letter, dated August 22, 2005; NSWNT's responses, dated August 24, 2005, to the commission's information requests; and commission's letters, dated August 26 and 29, 2005.

IC-05-119, dated August 5, 2005, and filed on August 9, 2005, from the Kuilima Estates East AOA; commission's letter and information requests, dated August 12, 2005; NSWNT's responses, dated August 26, 2005, to the commission's information requests; and commission's letter, dated August 29, 2005.

<sup>5</sup>Petition filed on August 26, 2005 by the Kuilima Estates West AOA and Kuilima Estates East AOA. The respective AOAOs are jointly represented by their attorney of record who filed the Petition. On September 15, 2005, Petitioners' attorney filed a written Verification in support of the Petition, in response to the commission's directive.

and maintenance of the common areas; (2) the monthly land lease charge ranged from \$40 to \$66 per unit, depending on the size of the unit; and (3) KRC intends to eliminate from the monthly land lease charge the portion that is related to wastewater collection and treatment, once NSWT initiates wastewater service.<sup>6</sup> NSWT was unable to identify or segregate what portion of the KRC-assessed monthly land lease amount is related to the collection and treatment of wastewater.<sup>7</sup>

Kuilima Estates West AOA

- A. Complainant [Kuilima Estates West AOA] identifies a monthly sewerage rate of \$1,041, since 1998, indicating apparent segregation between the monthly land lease amount and the portion related to wastewater collection and treatment. Please respond.
- B. Please explain how the monthly sewerage rate of \$1,041 was calculated by KRC.
- C. Complainant [Kuilima Estates West AOA] characterizes the monthly sewerage rate NSWT intends to assess, at \$12,000 per month, as a rate increase, when compared to the monthly sewage rate of \$1,041 charged by KRC. Please respond.<sup>8</sup>
- D. Please explain how the monthly sewerage rate of \$12,000 was calculated by NSWT.

PUC-IR-102, dated August 12, 2005, in IC-05-103 (footnotes and text therein included). See also PUC-IR-102, dated August 12, 2005, in IC-05-119.

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<sup>6</sup>Docket No. 04-0298, *In re North Shore Wastewater Treatment*, L.L.C., Decision and Order No. 21864, filed on June 14, 2005, Section II(F), at 9.

<sup>7</sup>Docket No. 04-0298, *In re North Shore Wastewater Treatment*, L.L.C.: (1) NSWT's Application, Exhibit D, at 5 - 6; (2) NSWT's response to CA-IR-22; and (3) NSWT's response to CA-SIR-14(b).

<sup>8</sup>See Hawaii Revised Statutes ("HRS") § 269-1, "Public Utility," Paragraph 1(A), in Act 164, 2005 Session Laws of Hawaii; and Act 59, 1974 Session Laws of Hawaii.

Kuilima Estates East AOA

- A. Complainant [Kuilima Estates East AOA] identifies a monthly sewage rate of \$865, since 1998, indicating apparent segregation between the monthly land lease amount and the portion related to wastewater collection and treatment. Please respond.
- B. Please explain how the monthly sewerage rate of \$865 was calculated by KRC.
- C. Complainant [Kuilima Estates East AOA] characterizes the monthly sewerage rate NSWT intends to assess, at \$9,865 per month, as a rate increase, when compared to the monthly sewage rate of \$865 charged by KRC. Please respond. (See HRS § 269-1, "Public Utility," Paragraph 1(A), in Act 164, 2005 Session Laws of Hawaii; and Act 59, 1974 Session Laws of Hawaii.)
- D. Please explain how the monthly sewerage rate of \$9,865 was calculated by NSWT.

PUC-IR-102, dated August 12, 2005, in IC-05-119 (footnotes 1 and 2 and text therein omitted).

NSWT's responses to PUC-IR-102, filed on August 24, 2005 (IC-05-103) and August 26, 2005 (IC-05-119), respectively, do not address the commission's concerns.<sup>9</sup> Namely:

1. Whether the provision of wastewater service by NSWT's predecessors-in-interest, including KRC, without a CPCN or commission authority violates applicable regulatory law, including but not necessarily limited to: (A) HRS § 269-1, "Public Utility," Paragraph 1(A), in Act 164, 2005 Session Laws

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<sup>9</sup>See also Kuilima Estates West AOA's and Kuilima Estates East AOA's Petition.

of Hawaii; (B) Act 59, 1974 Session Laws of Hawaii; (C) HRS § 269-7.5; and (D) HRS § 269-16.<sup>10</sup>

2. Whether NSWT's initial wastewater rates, as approved by the commission in Docket No. 04-0298, constitute a *de facto* rate increase, thus requiring: (A) a public hearing and notice thereof, including notice by KRC or NSWT to the consumers,

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<sup>10</sup>The phrase "regulatory law," as defined in HAR § 6-68-4, includes HRS chapter 269 and the commission's applicable rules and orders.

The phrase "public utility," as defined in HRS § 269-1(A), includes "[a]ny person insofar as that person owns or operates a private sewer company or sewer facility." This definition of "public utility" took effect on May 28, 1974, by Act 59, 1974 Session Laws of Hawaii ("Act 59").

The purpose of Act 59 "is to regulate the rates and charges for sewerage services provided by a private person." Act 59, Section 1. Act 59, as promulgated, "permit[s] the commission to regulate the rates charged by such person and afford the consumers an opportunity to be heard with regard to such charges." House Stand. Comm. Rpt. No. 640-74, on S.B. No. 2118-74, in 1974 House Journal, at 800 - 801. "Under this new system, the consumers will be given reasons for any rate increases." Senate Stand. Comm. Rpt. No. 587-74, on S.B. No. 2118-74, in 1974 Senate Journal at 978 - 979; and Senate Stand. Comm. Rpt. No. 777-74, on S.B. No. 2118-74, in 1974 Senate Journal at 1048.

HRS § 269-7.5 governs the commission's issuance of CPCNs to public utilities, unless otherwise exempted by HRS § 269-7.5, subsection (c). See also HRS §§ 269-7(b) and 269-28(c). HRS § 269-16(a) and (b) mandates that all rates, charges, and rules made, charged, or observed by any public utility be: (1) just and reasonable; and (2) filed with and authorized by the commission. See also HRS § 269-12(b).

consistent with HRS §§ 269-12(c) and 269-16(b) and (c); and (B) a contested case proceeding, to the extent applicable under HRS § 269-16.<sup>11</sup>

3. Whether any of the alleged violations by KRC or NSWT of regulatory law constitute willful conduct.

4. Whether to impose any penalties, sanctions, or other regulatory action, including the modification, suspension, or revocation of NSWT's CPCN.

5. Any other issues of regulatory law that may arise during the course of the commission's investigation.

The commission, through its general and investigative powers, opens this investigation of NSWT and its predecessor-in-interest, KRC.<sup>12</sup> As part of its investigation, the commission, at the outset, takes official administrative notice of the filings in IC-05-103, IC-05-119, and Docket No. 04-0298, including the Petition.<sup>13</sup> Said filings are incorporated by reference as part of the docket record in this investigation.

NSWT and KRC have the right to be present and represented by legal counsel in this investigative proceeding.

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<sup>11</sup>In general, a contested case proceeding is not required: (1) when the public utility seeking a rate increase has annual gross revenues of less than \$2 million, and the applicable conditions set forth in HRS § 269-16(f) apply; or (2) when the proceeding is otherwise waived by the parties.

<sup>12</sup>See HRS §§ 269-6, 269-7, 269-8, 269-10, and 269-15(a); Hawaii Administrative Rules ("HAR") § 6-61-71; and HAR §§ 6-68-1(a), 6-68-2(1), and 6-68-14(a). The commission reserves the right to identify and name additional respondents.

<sup>13</sup>Copies of IC-05-103, IC-05-119, and the Petition are attached to this Order as Exhibits 1, 2, and 3.

The commission names the Consumer Advocate, Kuilima Estates West AOA, and Kuilima Estates East AOA, as additional parties to this proceeding (collectively with NSW and KRC, referred to as the "Parties"). In addition, interested persons have the opportunity to file, within twenty (20) days from the date of this Order, motions to intervene or participate in the commission's investigation, pursuant to HAR § 6-61-57(3)(B).

## II.

### Show Cause and Notice of Hearing

The commission orders as follows:

1. NSW and KRC are ordered to appear before the commission to show cause as to why the commission should not suspend or abate NSW's initial tariff rates on a permanent basis, and to address the issues identified in Section I, above.<sup>14</sup> The date, time, and location of the hearing are specified in Ordering Paragraph No. 4, below (the "hearing").

2. NSW and KRC shall file written testimonies and exhibits with the commission addressing the issues identified in this Order. At the hearing, NSW and KRC, at their option, may: (A) present additional evidence, including testimonial evidence; and (B) cross-examine any witnesses who may be called.

3. Kuilima Estates West AOA, Kuilima Estates East AOA, and the Consumer Advocate may appear at the hearing: (A) to provide the commission with any additional information or evidence, including testimonial evidence, relating to the

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<sup>14</sup>See HAR § 6-68-14.



commission's investigation of the issues identified in Section I of this Order; and (B) may cross-examine any witnesses who may be called. That said, the commission specifically cautions the AOAOs that the hearing is part of the commission's investigation, and is **not** a public hearing under HRS §§ 269-16(b) and (c).

4. Following the filing of NSWT's and KRC's written testimonies and exhibits, the commission will hold a prehearing conference. The commission will notify the Parties of the date, time, and location of the prehearing conference.

### III.

#### Abatement

HAR § 6-61-14(d) states:

(d) The order to show cause may include an order of abatement that requires the respondent to cease and desist from any present or future violations of the regulatory law or commission orders.

- (1) The abatement order may be entered on the commission's initiative or by agreement between the commission and respondent, with or without a finding of a specific violation; and
- (2) Failure to comply with a commission abatement order is a violation of the regulatory law separate from any underlying violation.

NSWT had the opportunity to, but did not, address the commission's concerns. See Section I, above.

The commission, by this Order, suspends the implementation of NSWT's initial tariff wastewater rates, pending the completion of the commission's investigation. Unless directed otherwise, NSWT is ordered to: (1) immediately cease and

desist from charging ratepayers its initial tariff wastewater rates; and (2) revert to the wastewater rates charged by KRC prior to the transfer of the wastewater operations to NSWT.

NSWT shall promptly: (1) inform its ratepayers in writing of the commission's Order to cease and desist, and reversion to the wastewater rates previously charged by KRC, pending the completion of the commission's investigation; (2) file the appropriate revised rate schedule; and (3) file proof of NSWT's compliance thereto.

#### IV.

##### Orders

###### THE COMMISSION ORDERS:

1. An investigation is instituted on the commission's own motion to examine NSWT and KRC.

2. NSWT, KRC, the Consumer Advocate, Kuilima Estates West AOA, and Kuilima Estates East AOA are named as parties to this proceeding.

3. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B), with copies served on each of the parties identified in Ordering Paragraph No. 2, above. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's *Rules of Practice and Procedure*.

4. NSWT and KRC are ordered to appear before the commission on October 26, 2005, 9:00 a.m., at the commission's hearing room (465 South King Street, Room B3, Honolulu, Hawaii) to show cause as to why the commission should not suspend or abate NSWT's initial tariff rates on a permanent basis, and to address the issues identified in Section I, above. If necessary, the hearing will continue on October 27, 2005.

5. No later than October 11, 2005, NSWT and KRC shall file written testimonies and exhibits with the commission, with copies served upon the other Parties, addressing the issues identified in this Order. At the hearing, NSWT and KRC, at their option, may: (A) present additional evidence, including testimonial evidence; and (B) cross-examine any witnesses who may be called.

6. Kuilima Estates West AOA, Kuilima Estates East AOA, and the Consumer Advocate may appear at the hearing: (A) to provide the commission with any additional information or evidence relating to the commission's investigation of the issues identified in Section I of this Order; and (B) may cross-examine any witnesses who may be called.

7. NSWT, KRC, Kuilima Estates West AOA, Kuilima Estates East AOA, and the Consumer Advocate may be represented by legal counsel in this investigative proceeding. In lieu of legal counsel, if applicable: (A) an individual may appear on said individual's behalf; (B) a partner may represent a partnership; and (C) an officer or authorized employee of a

corporation, trust, or association may represent the corporation, trust, or association.

8. The implementation of NSW's initial tariff wastewater rates is suspended, pending the completion of the commission's investigation. Unless directed otherwise, NSW is ordered to: (A) immediately cease and desist from charging ratepayers its initial tariff wastewater rates; and (B) revert to the wastewater rates charged by KRC prior to the transfer of the wastewater operations to NSW.

9. NSW shall promptly: (A) inform its ratepayers in writing of the commission's abatement Order to cease and desist, and reversion to the wastewater rates previously charged by KRC, pending the completion of the commission's investigation; (B) file the appropriate revised rate schedule; and (C) file proof of NSW's compliance thereto, no later than September 30, 2005.


10. Unless ordered or directed otherwise, the failure to comply with this Order shall constitute a violation of regulatory law separate and apart from any underlying violation.

DONE at Honolulu, Hawaii SEP 21 2005.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

NSWT.cs

IC-05-103

NOTE: Internal PUC e-mail  
addresses redacted.

EXHIBIT 1

Hawaii\_PUC/DBF/StateHIUS  
07/21/2005 08:39 AM

cc

bcc

Subject Fw: Copy of a Letter to the Chairman of the PUC From  
Kuilima Estates West

— Forwarded by Hawaii\_PUC/DBF/StateHIUS on 07/21/2005 08:42 AM —



Cozytino@aol.com  
07/21/2005 06:18 AM

To Hawaii.PUC@hawaii.gov

cc cheryl.s.kikuta@dcca.hi.gov

Subject Copy of a Letter to the Chairman of the PUC From Kuilima  
Estates West

For your information the letter below to  
Chairman Caliboso, Hawaii PUC, was mailed today:

**Kuilima Estates  
West**

**Mr. Carlito P. Caliboso July 20, 2005  
Chairman,  
Hawaii State Public Utilities Commission,  
465 South King St., First Floor,  
Honolulu, HI 96813**

**Subject: The Over 1,000% Sewerage Rate Increase for the Kuilima Estates West.**

**Aloha Mr. Chairman:**

**I am writing on behalf of the 200-tax paying, voting families of the Association of Apartment Owners of Kuilima Estates West to protest the subject increase in our monthly sewerage rate granted by the Public Utilities Commission (PUC) to the recently formed North Shore Wastewater Treatment, LLC (NSWT).**

**For your information Kuilima Estates West (KEW) is located on over 17 acres of leased land on the Turtle Bay Resort. The Turtle Bay Resort is owned by Oaktree Capital Management, LLC, a multi-billion dollar, privately held, venture capital mainland company that acquired the 880-acre resort complex in 1998. We are currently in negotiations with one of Oaktree's principals for the purchase of our**

fee. The North Shore Wastewater Treatment, LLC (NSWT) is a wholly owned subsidiary of Oaktree. Mr. Hy Adelman, Oaktree's top executive at the Turtle Bay Resort, is also the Chief Executive of the NSWT, LLC.

Under our agreement with Oaktree we have been paying them \$1,041 per month since 1998 for handling our sewerage. Moreover, as an Association we pay the Hawaii Water Authority separately for all water consumed by all of our owners. I'm sure you can understand our dismay and disbelief when our Managing Agent received a call on July 11, 2005, from Mr. Adelman, acting in his capacity as the Chief Executive of the NSWT, to inform us that our monthly sewerage rate would increase on August 1st by a factor of 12, to \$12,000 per month. We were surprised that Oaktree had quietly formed the NSWT and that they had applied to the PCU for an operational permit and new rates. At this juncture it is important to remember that Oaktree, with it's army of accountants, is a for profit company, and that not once since 1998 had they sought to increase our monthly sewerage fee.

We find it hard to understand how new sewerage rates could be approved by the PUC or for that matter the Division of Consumer Advocacy without first determining what the consumer is currently paying and comparing that to the proposed rates to determine if an increase is fair or not. We consider an over 1,000% increase to be outrageous and we ask that you reconsider the new rate for our property.

Please understand that collectively we, here at Kuilima Estates West, had no idea that the NSWT, LLC had been formed and that they were applying to the PUC for a wastewater operating permit and new rates. We request that you delay the implementation of the new sewerage rates until we here at KEW have an opportunity to present the facts to the PUC.

Mahalo for your consideration of our request.

Respectfully,

(Signed)

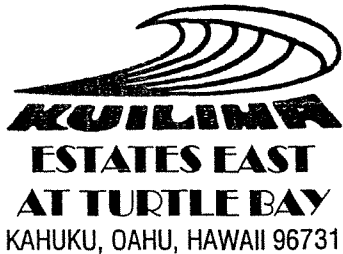
Michel Costino  
President,  
Board of Directors,  
Association of Apartment Owners,  
Kuilima Estates West,  
57-101 W. Kuilima Lp., #24W,  
Kahuku, HI 96731  
Tel: (808) 782-5248

**cc: Hawaii State Senator Clayton Hee, 23rd District**  
**Hawaii State Representative Michael Magaoay, 46th District**  
**Dept. of Commerce & Consumer Affairs, Div. Of Consumer Advocacy**



(IC-05-119)

EXHIBIT 2



August 5, 2005

Mr. Carlito Caliboso, Chairman  
Hawaii Public Utilities Commission  
465 S. King St., Suite 103  
Honolulu, HI 96813

2005 AUG -9 A 10:30  
PUBLIC UTILITIES  
COMMISSION

FILED

Re: Wastewater Treatment Rate Increase - Kuilima Estates East Condominium

Dear Mr. Caliboso,

I am writing to you at the suggestion of our attorney Joyce Neeley and on behalf of the 167 tax paying owners/families of the Association of Apartment Owners of Kuilima Estates East. We want to lodge a complaint and express our collective objections to the excessive increase – over 1000% per month! - in our Association's monthly sewage fee that the Hawaii Public Utilities Commission approved on June 17, 2005 to the newly created North Shore Wastewater Treatment, L.L.C. (NSWT).

To familiarize you, the Kuilima Estates East condominium (KEE) is situated on almost 15 acres of leasehold property (originally Campbell Estate) on Oahu's North Shore. We have 15 residential buildings that total 168 units, a relatively small pavilion which has a small kitchen and the resident manager's office, and a separate maintenance shed. The land beneath KEE and the Kuilima Estates West Condominium (KEW) and the Turtle Bay Resort is currently owned by Oaktree Capital Management, LLC, a privately held venture capital company that acquired the complex in 1998. We are currently in negotiations with Oaktree for the purchase of the leased fee interest. The North Shore Wastewater Treatment, LLC (NSWT) is a wholly owned subsidiary of Oaktree. Mr. Hiram (Hy) Adelman, Oaktree's authorized representative at the Turtle Bay Resort, is also the Chief Executive of the NSWT, LLC.

Under our agreement with Kuilima Resort Co. we have been paying a monthly fee of \$865 since 1998 for wastewater treatment. KEE pays the Board of Water Supply separately for all water consumed by all of our owners. I'm sure you can understand our shock and disbelief when our Managing Agent received a letter dated July 7, 2005 from Mr. Adelman, the Authorized Representative of the NSWT, to inform us that our monthly sewage rate would increase on August 1st by \$9,000 per month or over 1000%, to \$9865. We were not aware that Oaktree had formed the NSWT and that they had applied to the HPUC for an operational permit and new rates. At this point I should remind you that Oaktree is a "for profit" company, and that KEE is not. It is interesting to note that Oaktree has never sought to increase our monthly sewage fee.

It is difficult to digest the formula about how new sewage rates were determined for KEE and how these rates could be approved by the HPUC or for that matter any other agency without first determining what the consumer is currently paying and comparing that to the proposed rates to determine if an increase is fair or not. We consider an over 1,000% increase to be not only shameful but totally out of line and we ask that you reconsider the new rates for our property.

Mr. Carlito Caliboso, Chairman  
Hawaii Public Utilities Commission

August 2, 2005

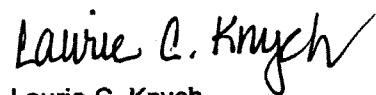
Page Two

Please understand that until around June 23<sup>rd</sup>, we had ONLY a possible agenda item for our June 30<sup>th</sup> BoD meeting. Mr. Adelman – also an owner at KEE - contacted the property manager assigned to our association to advise that he wanted to attend our June 30<sup>th</sup> Board Meeting to discuss sewage fees. He did not show. Again, we here at Kuilima Estates East had no idea that the NSWT had been formed and that they had applied to the HPUC for a wastewater operating permit and new rates. Nobody asked to see copies of our water bills. We were not given the opportunity to be heard.

We request that you delay the implementation of the new sewage rates until we here at KEE have an opportunity to present the facts to the HPUC.

Thank you for your consideration of our request.

Respectfully,



Laurie C. Knych  
President, Board of Directors  
Association of Apartment Owners of Kuilima Estates East  
57-120 Lalo Kuilima Way, #32  
Kahuku, HI 96731

Ph: 293-5761

PUBLIC UTILITIES  
COMMISSION

2005 AUG - 9 A 10:30

FILED

cc: Hawaii State Senator Clayton Hee, 23rd District  
Hawaii State Representative Michael Magaoay, 46th District  
Dept. of Commerce & Consumer Affairs, Div. Of Consumer Advocacy  
Honolulu Councilmember Donovan Dela Cruz

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	DOCKET NO. 04-0298
NORTH SHORE WASTEWATER	)	
TREATMENT, L.L.C.	)	
	)	
For a Certificate of Public Convenience	)	
Necessity Pursuant to Section 269-7.5,	)	
HRS, to Provide Sewage Treatment	)	
Service for the Turtle Bay Resort at	)	
<u>Kahuku, Oahu</u>	)	
	)	
In the Matter of the Informal Complaint	)	IC-05-103
<u>Of Kuilima Estates West AOA</u>	)	
	)	
In the Matter of the Informal Complaint of	)	IC-05-119
<u>Kuilima Estates East AOA</u>	)	

PUBLIC UTILITIES  
COMMISSION

2005 AUG 26 P 4: 02

FILED

A PETITION TO REOPEN HPUC DOCKET NO. 04-0298

and

A PETITION TO DEFER THE EFFECTIVE DATE OF TARIFFED  
RATES APPROVED IN HPUC D & O NO. 21864

with

SUPPLEMENTAL POINTS AND EXHIBITS (A-G) IN SUPPORT OF PETITIONS

William W. Milks  
Law Office of William W. Milks  
Suite 977 ASB Tower  
1001 Bishop Street  
Honolulu, Hawaii  
(808) 526-3923  
(808) 523-2088 (facsimile)  
[energylaw@hawaii.rr.com](mailto:energylaw@hawaii.rr.com)

Attorney for

Kuilima Estates East AOA  
Kuilima Estates West AOA

In the Matter of the Application of	)	
	)	DOCKET NO. 04-0298
NORTH SHORE WASTEWATER	)	
TREATMENT, L.L.C.	)	
	)	
For a Certificate of Public Convenience	)	
Necessity Pursuant to Section 269-7.5,	)	
HRS, to Provide Sewage Treatment	)	
Service for the Turtle Bay Resort at	)	
<u>Kahuku, Oahu</u>	)	
	)	
In the Matter of the Informal Complaint	)	IC-05-103
<u>Of Kuilima Estates West AOA</u>	)	
	)	
In the Matter of the Informal Complaint of	)	IC-05-119
<u>Kuilima Estates East AOA</u>	)	

COME NOW two Associations of condominium owners (AOAO) namely Kuilima Estates East AOA (KEE AOA) and Kuilima Estates West AOA (KEW AOA), by and through their attorneys, William W. Milks and Joyce Neeley, pursuant to Subchapters 5 and 6, 6 HAR 61, seeking relief from recently approved rates for wastewater services provided by North Shore Wastewater Treatment, LLC. (NSWT). NSWT is a member-owned limited liability company, wholly owned by Turtle Bay Holding, LLC. Oaktree is the manager of both Turtle Bay Holding LLC and NSWT.

Because the rates for sewer service increased approximately 900-1100 percent, without proper notice to either KEE AOA and KEW AOA and without the requisite public hearing and contested case hearing, the recently approved rates were reviewed and approved by means of deficient processes and procedures.

Even if the processes and procedures were to be deemed appropriate for a de-facto utility, the end result is defective because condominium rates were not set at a

reasonable level; also, when compared to the rates for services NSWTT provides to other classes of customers, the condominium category of service has rates that are so discriminatory as to be illegal.

Legal and factual support for the following forms of relief are set forth in the analysis which follows:

1. Deferral of the effective date of the recently-approved wastewater rates of NSWTT until such time as the Commission has the benefit of a properly developed evidentiary record upon which it can make an informed decision; and
2. Re-open HPUC Docket No. 04-0298, consistent with the right the Commission properly reserved to itself, for the purpose of developing a full and forthright evidentiary record.

## **I. INTRODUCTION**

The May 23, 2005 “Stipulation in Lieu of Further Discovery” in HPUC Docket No. 04-0298, which the Commission approved on June 14, 2005, lacked essential facts and critical analysis essential for the Commission to make an informed determination of what constitutes reasonable waste water rates for NSWTT’s customers. The rates approved by this Commission constitute inequitable treatment for the two AOA’s, which pay for utility services for the 368 residential units. A small amount of additional discovery in Docket No. 04-0298 would have readily revealed how unfairly NSWTT’s rate proposal impacts NSWTT’s condominium owners.

The two AOA’s appear to require less than two percent of the purported capacity of NSWTT’s processing facility, but the approved rates will require the AOA’s to pay more than fifty percent (50%) of NSWTT’s total regulated revenues. This disparity

appears to be largely attributable to four factors. The following contributed to the inequitable result to condominium owners in HPUC Docket No. 04-0299:

1. Presumably unintentional, but false and misleading statements of fact, made by the Applicant.
2. Inadequate discovery of critical facts necessary to establish a reasonable revenue requirement and reasonable rate relationships.
3. Inadequate analysis of a fundamental fact basic to any rate review: quantifying the service area's demand for wastewater service.
4. A hasty determination of the non-applicability of the well-established operative presumption that a developer's costs of construction of a wastewater facility are to be recovered from the initial purchasers of the parcels to be developed.

Each of the above listed failures reverts back to the source problem:

Applicant obtained little or no usage data from consumers. It appears from a reading of the "Stipulation" entered into by the parties in Docket 04-0298 that little, if any, data on actual water usage ever was incorporated into the Applicant's analysis. The use of an unquantified demand (in terms of either potable water or waste water (i.e. "EU" or equivalent units) to determine (a) customer demand, (b) plant utilization, (c) cost allocations, (d) revenue recovery, and ultimately, (e) rates, predetermined on inequitable result.

NSWT failed to present a case based on reliable facts. The Consumer Advocate failed to avail itself of facts in the possession of users. And the Commission did not have the benefit of essential facts, and analysis presented as evidence where witnesses

and their testimonies were subjected to cross examination and rebuttal evidence. The “Stipulation” we have here exemplifies why the pertinent statute requires a contested case evidentiary hearing.

The specific provision of the statute (i.e. Subsection 269-16 (b), Haw. Rev. Stat) is quite explicit, albeit applicable to rate increases. The AOA’s contend herein – and support their contention with exhibits showing a long history of regular payments for “monthly sewer fee” – that the rates proposed by NSW’T were not initial rates proposed by NSW’T but rather were increases in rates. In fact, the manager of NSW’T had increased the monthly charge to the KEE AOA in late 2001.<sup>1</sup>

## **II. PRAYERS FOR RELIEF**

HPUC Decision and Order 21864 in HPUC Docket 04-0298 was issued June 14, 2005. The time for any legal appeal has passed. And neither of the AOA’s was a party to Docket 04-0298. But being untimely and being non-parties is understandable and excusable: neither of the AOA’s received any notice of the proceeding. The AOA’s first learned of the existence of NSW’T and the increase in the sewer rate, by means of a letter from NSW’T telling them of the increase long after the allowed time to petition to intervene and participate as parties to the proceeding. But no statutory provision and no Commission rule prevents the Commission from reopening the proceeding to revisit certain issues determined in that proceeding. Facts and circumstances compel such action. If the Commission elects not to reopen the proceeding, then the two AOAs choose to proceed with the informal complaint process.

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<sup>1</sup> Refer, Exhibit A, Page 2 of 3. Also, on October 1, 2003 Oaktree Comptroller made a call, inquiring about the payments due.

The Commission's Decision and Order No. 21864 concludes:

"10. This docket is closed, unless ordered otherwise

by the commission" (Emphasis added; D &O, p. 30)

It is now appropriate to "order otherwise": The revenue requirement misses the mark of reasonableness by a large margin; using the unexplained and unquantified EU as a means to measure demand for sewer service and the processing plant's capacity is erroneous on its face.

The assignment of 50.53 percent of revenue requirement to the residential category of customers who are using 7% to 10% of the utilized plant (and less than 2% of the plant as built) is inherently unfair (Refer, infra, Pact). The Commission must order the docket to be re-opened to examine all issues related to (a) certification, (b) rate level, (c) rate design, and (d) tariff rules.

In re-opening the case, the Commission must allow both the KEE AOA and the KEW AOA to participate in some meaningful fashion. This can be properly done -- procedurally-- by consolidating the re-opened Docket No. 04-0298 with the Informal Complaints No. 05-103 and 05-119.

Until such time as the Commission makes final determinations in the re-opened Docket 04-0298 and IC-05-103 and IC 05-119, Applicant should be ordered to continue sewer service at the long-established rates.

The proposal to defer the effective date of the new rates is fair to Applicant because Applicant in HPUC Docket No. 04-0298, in failing to meet its burden of proof, should not have prevailed in the first instance. If NSWTC were to argue that initial rates need not be justified, such argument is not only erroneous, the argument is irrelevant: what



purport to be “initial rates” are, in actuality, a 900% increase in long-standing, well-established rates paid by each of the AOA’s for several years. It was alleged by Applicant that payments for sewer service by each of the AOA’s was embedded in the land lease rental and that such amount had to be extracted from the monthly amount paid by each of the AOA’s. That is not the case: a specific amount was paid by each AOA, each month, in addition to the land lease rent<sup>2</sup>, was regularly recorded<sup>3</sup>, and the amount was actually increased by Oaktree, starting November, 2001, to add the state’s general excise tax to the established rate.<sup>4</sup> So deferring the effective date of the recently approved rates is fair, legal, and otherwise appropriate.

### **III. NSW’T’S “INITIAL RATES” WERE INCREASES TO LONG-ESTABLISHED SEWER RATES OF A DE FACTO PUBLIC UTILITY**

Both of the Kuilima AOAOs take the position that the sewer rates for condominiums approved in D & O No. 21864 were not “initial rates”<sup>5</sup> but increases in established, long-standing rates charged by a defacto public utility. The Commission’s order states that NSW’T will generate revenues to cover its operation costs from “an established customer base.” (D & O, at 15 emphasis added). That revenue base was generated from long-time customers of the defacto public utility, namely KRC. The rates proposed by NSW’T may have been the initial rates of NSW’T, but the rates recently approved were increases to the established rates of KRC, the previous owner of NSW’T’s

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<sup>2</sup> Exhibit B is an individual owner’s sublease which states that sewer fees are not to be an expense to the Lessor, Sublessor, or Assignor.

<sup>3</sup> Exhibit A-A record of the monthly payments.

<sup>4</sup> Oaktree was the purchaser of Kuilima Resort Company (“KRC”) and manager of NSW’T.

<sup>5</sup> The phrase “initial rates” appear numerous times in the decision, but other statement makes it clear that other lower rates were in effect prior to the “initial rates.”

facility. Therefore, the one-time notice in an island-wide publication and the absence of a public hearing fail to conform to the statutory notice and hearing requirements of Sections 269-12 and 16, Haw. Rev. Stat.

Of greater import than inadequate notices and the failure to conduct a public hearing, is failure to comply with the statutory requirement regarding increases in the rates charged by public utilities, be they defacto or de jure:

“A contested case hearing shall be held in connection with any increase in rates and such hearing should be proceeded by a public hearing as prescribed in Section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase.”

(at 269-16 (b), Haw. Rev. Stat. Emphasis added.) While parties may stipulate to sets of “facts”, principles, computation, etc., the Commission has the non-waivable statutory responsibility to conduct two hearings – a contested case hearing and a public hearing -- to ensure that the interests of consumers in rate proceedings are heard in a meaningful fashion.

The two AOA's seek meaningful mitigation of what the commission purports to be initial rates, approved in D & O No. 21864. The AOA's challenge the finding that the rates called initial rates were in fact the initial rates charged to the AOA's, and further challenge that the rates approved were reasonable. Even assuming the rates approved to be reasonable, the AOA's are seeking mitigation due to the magnitude of the increase of the rates, and consequences of the rate increase. Again, assuming the approved rates to be reasonable, the implementation of the increases could have been phased in over an extended period of time, allowing the AOA's board of

directions to formalize the necessary assessments and to appropriate funds to meet the ten-fold increase in a single expense.

The provisions of Subsection 269-16 (F) Haw. Rev. Stat. would appear to apply, allowing the commission to determine the reasonableness of proposed rates “without unduly burdening the utility company and its customers.” Even in instances where special rules might apply, a public hearing (described in Section 269-12 (c), Haw. Rev. Stat.) is still required, where “consumers or patrons of the public utility may present testimony to the Commission concerning the increase. The public hearing should be preceded by proper notice as prescribed in Section 269-12.” (Refer, Sub-section 269-16 (f)(1)-(3), Haw. Rev. Stat.).

**IV. SEVERAL FUNDAMENTAL RATE STRUCTURE**  
**ISSUES REMAIN TO BE RESOLVED BEFORE RATES CAN**  
**BE DETERMINED TO BE REASONABLE**

Whatever amount is ultimately determined to be a reasonable revenue requirement, the manner in which that revenue requirement is allocated (a) to various classes of customers, and (b) to customers within a particular class, is the paramount issue to be resolved for NSWV and its handful of customers.

The demand for NSWV’s service is indirectly related to potable water purchased from the BWS. Thus, the amount of potable water purchased by NSWV customers is the best available indicator of the demand for NSWV’s service.

Each of the AOA's has several water meters.<sup>6</sup> And the data from the meters provides critical facts missing from this particular wastewater case. KEW AOA has eight water meters measuring its water consumption. It also has three full-time landscapers. Thus, much of the water KEW AOA purchases is not part of the demand for NSW's services. But taking KEW AOA's total monthly usage for the past eighteen months, KEW AOA used an average of 1,495.80 thousand gallons per month, or 49,861 gpd. (round to 50 thousand gpd). Based on KEW AOA's 200 residential units, that equates to 250 gallons per unit -- a relatively low level of water consumption. This is attributable, in part, to part-time residents, less than full occupancy of certain units in the rental pool, etc. Presumably, KEE AOA's usage, with 168 residential units is quite similar.

The parties to HPUC Docket No. 04-0298 have stipulated that "most of the wastewater is generated by the hotel, restaurants, and related resort facilities."<sup>7</sup> Having so concluded, it is unfathomable how the parties could stipulate that 50.53% of the \$650,000 total revenue requirement (i.e. \$328,305) was to be the responsibility of to the condominium category.

Assuming as correct the assertion that the processing facility's capacity is 4.24 million gpd, and the facility is currently processing waste water equal to 28% of the facility's capacity, then the parties' agreement that the hotel and related facilities are the major user is correct: of the 1,187,200 gallons of wastewater being processed daily, (i.e. the "28%" of the total capacity of the plant), the hotel and related facilities is placing

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<sup>6</sup> The parties HPUC Docket No. 04-0298 have stipulated to the contrary. It appears from efforts expended to date that KEE has 23 water meters.

<sup>7</sup> Stipulation, P. 16.

92.25% of the current demand on the facility (i.e. 1,187,200 gpd minus 250 gpd/unit x 368 units)/1,187,200). Why the condominium class is required to pay more than half of all costs is inexplicable.

Another relevant point: since rates are prospectively applied, the wastewater demand of the OceanView condominium project (currently under construction)<sup>8</sup> should have been included but apparently was not.<sup>9</sup> Whether Ocean View was included or not, it appears that the AOA's of KEE and KEW create less than 10 percent of the current demand on the wastewater processing facility but have been assigned more than 50 percent of the revenue requirement.

The cause of the breakdown in searching for reasonable rates is attributed to several pieces of misinformation and partial truths, misapplied:

- The EU's (equivalent units) are wholly un-reliable as a surrogate measure for customers' water usage and their waste water discharge.
- The EU is also a poor indicator for projecting the total future demand of the built-out resort complex. The estimate for the current utilization of the plant (i.e., the stipulated 30%) is probably inaccurate; if so, the revenue requirement has no basis in fact. To its credit, the Consumer Advocate asserts that "there is no way to independently verify the accuracy of the EU's."<sup>10</sup>

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<sup>8</sup> Stipulation, p.7.

<sup>9</sup> D & O, Exhibit C, Schedule 8.

<sup>10</sup> Stipulation p. 10.

- To its discredit, the Consumer Advocate proceeded to rely on the EU<sup>11</sup> for two key components of any rate case: (a) measuring the utilization of the plant and (b) designing the rates.
- The statement of there being no reliable means to measure potable water is disingenuous: the volume of water used by the hotel can be measured from just one meter.<sup>12</sup> Also, the water consumption of the AOA's was obtainable by means of a few phone calls.

**V. THE STIPULATED REVENUE REQUIREMENT IS EXCESSIVE  
AND THUS UNREASONABLE FOR RATE MAKING PURPOSES**

As stated, the principal problem is faulty rate design, which failure is due to a paucity of relevant facts. But there are glaring deficiencies in calculating NSW's revenue requirement as well. The AOA's cite three items to illustrate the oversights.

First, NSW will have no employees.<sup>13</sup> All work is to be performed by contracted service providers: "The entire operations for NSW will be handled by Aqua Engineers, Inc."<sup>14</sup> The added profits and taxes paid by vendors are passed on to NSW. In turn, NSW passes the added costs on to NSW's customers, after adding on its profit and its taxes. But no rate making adjustments are made for all of these double costs. The Aqua/NSW contract has not even been executed.

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<sup>11</sup> Stipulation, pp. 10-11

<sup>12</sup> Stipulation, at pp. 10-11

<sup>13</sup> Stipulation, p. 5.

<sup>14</sup> Exhibit E July 7, 2005 letter of NSW to KEE.

Secondly, contractor Aqua Engineers is being paid to maintain the entire plant,<sup>15</sup> more than 300% the size currently needed. No rate making adjustments appear to have been made to ensure reasonableness with regard to a 1.5 mgpd facility that is needed and not a 4.2 mgpd facility that exists.

Thirdly, even the \$2,000.00 monthly accounting service expense, on its face, seems out of line: There are fewer than a handful of customers to record payments for and fewer than a handful of monthly payments to be made by NSW. Any costs associated with the data collection tasks assigned to the accounting firm would be expenses disallowed as being abnormal expenses for rate making purposes. Thus, even this accounting expense as small as it is at \$24,000 annually -- merits a prudent rate making adjustment.

## VI. CONCLUSION

The long-standing monthly sewer fees paid by KEE AOA and KEW AOA may no longer be fully compensatory. An increase in the sewer rates may be in order. But Applicant NSW has a legal obligation to fully justify any rate it proposes, whether the rates be "initial rates" or increases in long-existent rates.

The rate justification that Applicant proposed, and Consumer Advocate reviewed, and the Commission approved, need to be revisited. By any standard of reasonableness, the annual revenue requirement of \$328,305 assigned to the condominiums is excessive. If the recent increases recently adopted by the City and County Board of Water Supply were applicable (Refer Exhibit F), the AOA's sewer rates would be approximately one-third of NSW's tariffed condominium rate.

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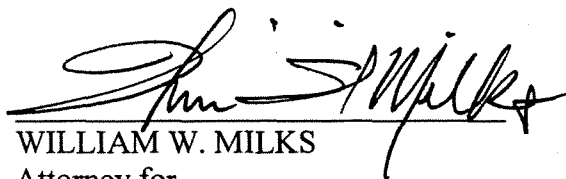
<sup>15</sup> Stipulation, p. 5.

If water consumption were to be the standard by which to evaluate NSWTS sewer rates, the AOA's should pay approximately eight percent of a reduced revenue requirement, or one-eighth<sup>16</sup> the amounts approved in D & O No. 04-0298.

At the present time, no one can state with authority what NSWTS's condominium rates should be. The foregoing analysis only demonstrates that Applicant's proposal was not well-justified and should not have been agreed to or approved by any public body. The process needs to begin again, even if its to be accomplished under the provisions of Subsection 269-16(F), Haw. Rev. Stat.

Fortunately, the Commission had the fore sight to reserve the right to re-open HPUC Docket No. 04-0298. Good cause has now been demonstrated to re-open the proceeding. In fairness to those adversely affected, the Commission must exercise the right it expressly reserved, re-open the docket, and order Applicant, Consumer Advocate, and the two AOA's to develop a complete record of fact and sound rate making principles, to ensure the Commission that it has a proper record upon which it can render an informed decision.

DATED: Honolulu, Hawaii, August 26 2005.



WILLIAM W. MILKS  
Attorney for  
Kuilima Estates East AOA  
Kuilima Estates West AOA

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<sup>16</sup> \$649,723 x 80% x 8% = \$41,580



### EXHIBIT LIST

<u>EXHIBIT</u>	<u>NO. OF PAGES</u>	<u>TOPIC</u>
A	3	DOCUMENTATION OF PAYMENT OF MONTHLY SEWER FEE
B	4	LEASE PROVISIONS – SEWAGE DISPOSAL COSTS SEPARATE
C	1	D & O NO. 21864, P. 18 – SUMMARY SHEET SHOWING CONDOS REVENUE REQUIREMENT
D	1	D & O NO. 21864, EXHIBIT C, SCH. 3 EQUIVALENT UNIT FACTORS
E.	1	HY ADELMAN LETTER DATED JULY 7, 2005
F	3	C & C HONOLULU BOARD OF WATER SUPPLY SEWER RATES
G	6	1989 LAND USE COMMISSION ORDER

General Ledger Detail Report  
Project 045: KUII MA ESTATES EAST  
From 01/2003 To 08/2005

Accounts Between 71350-00-763 and 71350-00-763 Excluding Zero Activity Accounts

Tran Date	Src	Transaction Description	Batch #	Debit Amount	Credit Amount	Balance
71350-00-763		71350-763 Sewer Common				
Beginning Balance						0.00
02/01/03	AP	KUI02 MO SEWER FEE	000033	864.53	0.00	864.53
03/01/03	AP	KUI02 MO SEWER FEE	000044	864.53	0.00	1,729.06
04/01/03	AP	KUI02 MO SEWER FEE	000056	864.53	0.00	2,593.59
05/01/03	AP	KUI02 MO SEWER FEE	000079	864.53	0.00	3,458.12
06/01/03	AP	KUI02 MO SEWER FEE	000082	864.53	0.00	4,322.65
07/01/03	AP	KUI02 MO SEWER FEE	000096	864.53	0.00	5,187.18
08/01/03	AP	KUI02 MO SEWER FEE	000122	864.53	0.00	6,051.71
09/01/03	AP	KUI02 MO SEWER FEE	000130	864.53	0.00	6,916.24
10/01/03	AP	KUI02 MO SEWER FEE	000158	864.53	0.00	7,780.77
11/01/03	AP	KUI02 MO SEWER FEE	000176	864.53	0.00	8,645.30
12/01/03	AP	KUI02 MO SEWER FEE	000178	864.53	0.00	9,509.83
12/31/03	GL	2003 Year-End Closing Entry	000209	0.00	9,509.83	0.00
01/01/04	AP	KUI02 MO SEWER FEE	000212	864.53	0.00	864.53
02/01/04	AP	KUI02 MO SEWER FEE	000237	864.53	0.00	1,729.06
03/01/04	AP	KUI02 MO SEWER FEE	000261	864.53	0.00	2,593.59
04/01/04	AP	KUI02 MO SEWER FEE	000274	864.53	0.00	3,458.12
05/01/04	AP	KUI02 MO SEWER FEE	000294	864.53	0.00	4,322.65
06/01/04	AP	KUI02 MO SEWER FEE	000296	864.53	0.00	5,187.18
07/01/04	AP	KUI02 MO SEWER FEE	000328	864.53	0.00	6,051.71
08/01/04	AP	KUI02 MO SEWER FEE	000334	864.53	0.00	6,916.24
09/01/04	AP	KUI02 MO SEWER FEE	000362	864.53	0.00	7,780.77
10/01/04	AP	KUI02 MO SEWER FEE	000378	864.53	0.00	8,645.30
11/01/04	AP	KUI02 MO SEWER FEE	000393	864.53	0.00	9,509.83
12/01/04	AP	KUI02 MO SEWER FEE	000405	864.53	0.00	10,374.36
12/31/04	GL	2004 Year-End Closing Entry	000420	0.00	10,374.36	0.00
01/01/05	AP	KUI02 MO SEWER FEE	000423	864.53	0.00	864.53
02/01/05	AP	KUI02 MO SEWER FEE	000425	864.53	0.00	1,729.06
03/01/05	AP	KUI02 MO SEWER FEE	000456	864.53	0.00	2,593.59
04/01/05	AP	KUI02 MO SEWER FEE	000470	864.53	0.00	3,458.12
05/01/05	AP	KUI02 MO SEWER FEE	000483	864.53	0.00	4,322.65
06/01/05	AP	KUI02 MO SEWER FEE	000499	864.53	0.00	5,187.18
07/01/05	AP	KUI02 MO SEWER FEE	000524	864.53	0.00	6,051.71
08/01/05	AP	KUI02 MO SEWER FEE		864.53	0.00	6,916.24
Begin Balance:		0.00	Net Change: 6916.24	26,800.43	19,884.19	6,916.24
Grand Total:				26,800.43	19,884.19	6,916.24

General Ledger Detail Report  
Project 045: KUILIMA ESTATES EAST  
From 01/01/95 To 12/31/02  
Accounts Between 640400 and 640400

Tran Date	Src	Reference	Description	Activity
640400	10			
01/13/99	DAP	103347	KUILIMA RESORT COMPANY	830.00
02/11/99	DAP	105823	KUILIMA RESORT COMPANY	830.00
03/09/99	DAP	107604	KUILIMA RESORT COMPANY	830.00
04/21/99	DAP	110925	KUILIMA RESORT COMPANY	830.00
05/14/99	DAP	113038	KUILIMA RESORT COMPANY	830.00
06/08/99	DAP	115013	KUILIMA RESORT COMPANY	830.00
07/13/99	DAP	117738	KUILIMA RESORT COMPANY	830.00
08/12/99	DAP	120322	KUILIMA RESORT COMPANY	830.00
09/08/99	DAP	122174	KUILIMA RESORT COMPANY	830.00
10/07/99	DAP	124506	KUILIMA RESORT COMPANY	830.00
11/09/99	DAP	127231	KUILIMA RESORT COMPANY	830.00
12/07/99	DAP	129158	KUILIMA RESORT COMPANY	830.00
01/11/00	DAP	131795	KUILIMA RESORT COMPANY	830.00
02/08/00	DAP	134223	KUILIMA RESORT COMPANY	830.00
03/07/00	DAP	136131	KUILIMA RESORT COMPANY	830.00
04/11/00	DAP	139031	KUILIMA RESORT COMPANY	830.00
05/09/00	DAP	141391	KUILIMA RESORT COMPANY	830.00
05/22/00	DAP	141391	156447-VD CK 141391 DTD 5/09/0	830.00
05/22/00	DAP	142135	706292-VD CK 142135 DTD 5/22/0	-1,000.00
05/22/00	DAP	142135	KUILIMA RESORT CO	1,000.00
05/22/00	DAP	142137	KUILIMA RESORT CO	830.00
06/08/00	DAP	143590	706292-MONTHLY SEWER FEE	830.00
07/12/00	DAP	145944	706292-MONTHLY SEWER FEE	830.00
08/08/00	DAP	147996	706292-MONTHLY SEWER FEE	830.00
09/12/00	DAP	150315	706292-MONTHLY SEWER FEE	830.00
10/11/00	DAP	152426	706292-MONTHLY SEWER FEE	830.00
11/07/00	DAP	154337	706292-MONTHLY SEWER FEE	830.00
12/14/00	DAP	156548	706292-MONTHLY SEWER FEE	830.00
01/11/01	DAP	158406	706292-MONTHLY SEWER FEE	830.00
02/08/01	DAP	160228	706292-MONTHLY SEWER FEE	830.00
03/13/01	DAP	162290	706292-MONTHLY SEWER FEE	830.00
03/29/01	DAP	163297	706292-MONTHLY SEWER FEE	830.00
04/26/01	DAP	165184	706292-MONTHLY SEWER FEE	830.00
05/30/01	DAP	167316	706292-MONTHLY SEWER FEE	830.00
06/27/01	DAP	168965	706292-MONTHLY SEWER FEE	830.00
07/30/01	DAP	170876	706292-MONTHLY SEWER FEE	830.00
08/30/01	DAP	172804	706292-MONTHLY SEWER FEE	830.00
09/27/01	DAP	174419	706292-MONTHLY SEWER FEE	830.00
10/30/01	DAP	176433	706292-MONTHLY SEWER FEE	830.00
11/28/01	DAP	178141	706292-MONTHLY SEWER FEE	864.53
12/27/01	DAP	179914	706292-MONTHLY SEWER FEE	864.53
01/30/02	DAP	182020	706292-MONTHLY SEWER FEE	864.53
02/27/02	DAP	183755	706292-MONTHLY SEWER FEE	864.53
03/28/02	DAP	185529	706292-MONTHLY SEWER FEE	864.53
04/29/02	DAP	187433	706292-MONTHLY SEWER FEE	864.53
05/30/02	DAP	189073	706292-MONTHLY SEWER FEE	864.53
06/20/02	DAP	190257	706292-MONTHLY SEWER FEE	864.53
07/30/02	DAP	301821	706292-MONTHLY SEWER FEE	864.53
08/29/02	DAP	303401	706292-MONTHLY SEWER FEE	864.53
09/26/02	DAP	304931	706292-MONTHLY SEWER FEE	864.53

Tax ADDE  
Request by  
Oaktree

General Ledger Detail Report  
Project 045: KUULIMA ESTATES EAST  
From 01/01/95 To 12/31/02  
Accounts Between 640400 and 640400

Tran Date	Src	Reference	Description	Activity
10/31/02	DAP	306847	706292-MONTHLY SEWER FEE	864.53
11/26/02	DAP	307899	706292-MONTHLY SEWER FEE	864.53
12/26/02	DAP	309675	706292-MONTHLY SEWER FEE	864.53
Net Change:				41,153.42
Grand Total:				41,153.42

Title Guaranty Escrow Services, Inc.

AFTER RECORDATION, RETURN TO:

Escrow Services, Inc.

RETURN BY: MAIL ( ) PICKUP (✓)

KUILIMA ESTATES EAST GROUND SUBLEASE

THIS INDENTURE made this 15<sup>th</sup> day of March, 19 76, by and between DEL E. WEBB CORPORATION, an Arizona corporation, PIC REALTY CORPORATION, a Delaware corporation, and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, doing business as INSCON DEVELOPMENT COMPANY, a joint venture, hereinafter called "Sublessor", and EARL BEAUFORD BOLVIN, and MARILYN NANCY BOLVIN, husband and wife.

whose residence and post office address is 3947 Lynn Drive, Anchorage, Alaska 99504

hereinafter called "Sublessee";

W I T N E S S E T H :

WHEREAS, the land hereinafter described together with the improvements thereon has been submitted to a Horizontal Property Regime known as KUILIMA ESTATES EAST (the "project"), pursuant to Chapter 514, Hawaii Revised Statutes; and

WHEREAS, Sublessor is transferring to Sublessee all of Sublessor's right, title and interest in and to Apartment 34 in the project, and in and to an undivided percentage interest in the common elements of the project other than the land, by way of an Apartment Assignment; and

WHEREAS, the Sublessor intends to sublease an undivided percentage interest in the land included in the

EXHIBIT B 1 of 4  
PAGES

Any person acquiring the subleasehold estate in consideration of the extinguishment of the debt secured by such mortgage or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Sublessee by this sublease only during the period such person has possession or ownership of the subleasehold estate.

10. USE. Sublessee will not at any time during said term keep or allow to be kept on said land any livestock, poultry or rabbits.

11. SEWAGE DISPOSAL. Sublessee will at his proportionate share of the expense by the Association and at no expense to Lessors or Sublessor, dispose of all sewage produced on said land, including industrial waste materials, in a manner approved by all governmental authorities having jurisdiction thereof and in compliance with all applicable laws, ordinances, rules and regulations.

12. LIABILITY INSURANCE. Sublessee will at his proportionate share of the expense by the Association effect and maintain during the whole of said term comprehensive general liability insurance covering all the ground sublessees with respect to the land and naming Lessors and Sublessor as additional assureds, in a responsible insurance company authorized to do business in Hawaii, with minimum limits of not less than \$300,000 for injury to one person and \$1,000,000 for injury to more than one person in any one accident or occurrence and \$100,000 for property damage, and from time to time upon receipt thereof cause to be deposited promptly with

ORDINATION REQUESTED BY:

File Guaranty Escrow Services, Inc.

ER RECORDATION, RETURN TO:

URN BY: MAIL ( ) PICKUP ( )

KUILIMA ESTATES EAST APARTMENT ASSIGNMENT

THIS INDENTURE made this 15<sup>th</sup> day of March,  
19 76, by and between DEL E. WEBB CORPORATION, an Arizona  
corporation, PIC REALTY CORPORATION, a Delaware corporation, and  
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corpo-  
ration, doing business as INSCON DEVELOPMENT COMPANY, a joint  
venture, hereinafter called "Assignor", and EARL BEAUFORD BOLVIN,  
and MARILYN NANCY BOLVIN, husband and wife.

whose residence and post office address is 3947 Lynn Drive, Anchorage,  
Alaska 99504

hereinafter called "Assignee";

W I T N E S S E T H :

WHEREAS, the land hereinafter described together  
with the improvements thereon has been submitted to a  
Horizontal Property Regime known as KUILIMA ESTATES EAST (the  
"project"), pursuant to Chapter 514, Hawaii Revised Statutes;  
and

WHEREAS, the Assignor is subleasing an undivided  
percentage interest in the land included in the project to  
the Assignee; and

WHEREAS, Assignor intends to transfer to Assignee  
all of Assignor's right, title and interest in and to

EXHIBIT B 3/

such mortgage may take possession of and rent said premises, and upon foreclosure thereof may sell and assign the Assignee's interest hereunder; provided, however, that every assignment of Assignee's interest other than a mortgage shall contain the written undertaking of the assignee to perform all obligations of Assignee hereunder, and that upon execution of any assignment or mortgage a true copy thereof shall be delivered promptly to Lessors and Assignor. Any person acquiring Assignee's interest hereunder in consideration of the extinguishment of the debt secured by such mortgage or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Assignee hereunder only during the period such person has possession or ownership of the premises.

9. USE. Assignee will not at any time during said term keep or allow to be kept within said apartment or the project any livestock, poultry or rabbits.

10. SEWAGE DISPOSAL. Assignee will at his proportionate share of the expense by the Association and at no expense to Lessors or Assignor, dispose of all sewage produced on said premises, including industrial waste materials, in a manner approved by all governmental authorities having jurisdiction thereof and in compliance with all applicable laws, ordinances, rules and regulations.

11. FIRE INSURANCE. Assignee will at his proportionate share of the expense by the Association at



base, rate of return, then revenues, for the test year (Parties' Schedules 1 to 10):

Operating Expenses (Schedules 1, 2, and 4)

Operating Contract - Aqua	\$251,500
Chemicals	\$7,000
Electricity	\$51,000
Water	\$7,000
Materials and Supplies	\$5,000
Customer Billing and Collection	\$6,000
Accounting Services	\$24,000
Kuulima Resort Administrative	\$18,000
Communications	\$1,200
Travel	\$600
Office Supplies	\$600
Legal and Regulatory	<u>\$4,400</u>

Total Operating Expenses \$376,300

Depreciation Expense \$117,134  
(Schedules 1, 2, and 10)

Taxes Other Than Income \$41,485  
(Schedules 1 and 2)

Operating Income \$114,804

Income Taxes \$27,942  
(Schedules 2 and 5)

Net Operating Income \$86,862

Average Rate Base \$981,230  
(excluding excess capacity)  
(Schedules 1 and 7 through 10)

Rate of Return 8.85%  
Revenues (Schedules 1, 2, and 3)

Condominium	\$328,305
Hotel	\$258,282
Commercial	<u>\$63,136</u>

Total Revenues \$649,723 (rounded)

50.53  
39.75  
9.72  
100.00

NORTH SHORE WASTEWATER TREATMENT  
TEST YEAR ENDED DECEMBER 31, 2005

EXHIBIT "C"  
SCHEDULE 3

ANNUAL REVENUE CALCULATION

Line #	Description	[1]	[2] Equivalent Unit Factor	[3] Number of Units	[4] Number of Equivalent Units	[5] Revenue Per EU	[6] Revenue		[7]
							Monthly	Annual	
1	Residential		1.0	0	0.0	\$ 47.83	\$ -		0
	<u>Condominiums</u>								
	Kullma East								
2	----Studio and 1 Bedroom Units	One Bathroom	1.0	72	72.0	\$ 47.83	3,444		41,325
3	----1 Bedroom Units	Two Bathrooms	1.5	88	132.0	\$ 47.83	6,314		75,763
4	----2 Bedroom Units	Two Bathrooms	1.5	8	12.0	\$ 47.83	574		6,888
	Kullma West								
5	----Studio and 1 Bedroom Units	One Bathroom	1.0	112	112.0	\$ 47.83	5,357		64,284
6	----1 Bedroom Units	Two Bathroom	1.5	24	36.0	\$ 47.83	1,722		20,683
7	----2 Bedroom Units	Two Bathroom	1.5	48	72.0	\$ 47.83	3,444		41,325
8	----3 Bedroom Units	Two Bathroom	2.0	16	32.0	\$ 47.83	1,531		18,367
	Ocean Villas								
9	----1 Bedroom Units	One Bathroom	1.0	10	10.0	\$ 47.83	478		5,740
10	----2 Bedroom Units	Two Bathroom	1.5	0	0.0	\$ 47.83	-		-
11	----3 Bedroom Units	Two Bathroom	2.0	37	74.0	\$ 47.83	3,539		42,473
12	----4 Bedroom Units	Two Bathroom	2.0	10	20.0	\$ 47.83	957		11,479
13									
	<u>Hotel</u>								
14	----Rooms		1.0	357	357.0	\$ 47.83	17,075		204,904
15	----Junior Suites		1.0	24	24.0	\$ 47.83	1,148		13,775
16	----Suites		1.5	3	4.5	\$ 47.83	215		2,583
17	----Cottages		1.5	43	64.5	\$ 47.83	3,085		37,020
	<u>Commercial</u>								
18	----Restaurant -- Palm Terrace		20.0	1	20.0	\$ 47.83	957		11,479
19	----Restaurant -- Twenty One Degrees		20.0	1	20.0	\$ 47.83	957		11,479
20	----Restaurant -- Banquet Service		20.0	1	20.0	\$ 47.83	957		11,479
21	----Restaurant -- Lei Lei's		20.0	1	20.0	\$ 47.83	957		11,479
22	----Bar -- Pool		10.0	1	10.0	\$ 47.83	478		5,740
23	----Bar -- Bay Club		10.0	1	10.0	\$ 47.83	478		5,740
24	----Snack Bar at Beach		5.0	1	5.0	\$ 47.83	239		2,870
25	----Golf Course Locker Room		5.0	1	5.0	\$ 47.83	239		2,870
26	TOTAL			860	1132		\$ 54,144		\$ 649,723
				368	468				

NSW Stipulation 4-15-05.xls  
NOIIRev\_Sum (P1..A160)

57.2% 42.8% 41.3% 58.7%

EXHIBIT D  
PAGE 11

North Shore Wastewater Treatment, L.L.C.  
57-091 Kamehameha Highway  
Kahuku, Hawaii 96809

July 7, 2005

Board of Directors C/O Certified Management  
Kuilima Estates East at Turtle Bay Resort  
3179 Koapaka Street  
Honolulu, Hawaii 96819

Attn.: Board of Directors C/O Certified Management,

Re: Certification of North Shore Wastewater Treatment, L.L.C.

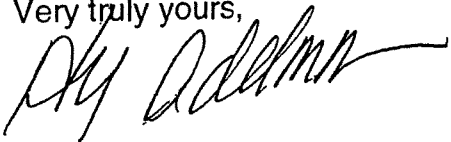
On June 17, 2005, the Public Utilities Commission of the State of Hawaii ("HPUC") approved North Shore Wastewater Treatment, L.L.C.'s ("NSW") application for a Certificate of Public Convenience and Necessity to provide wastewater treatment services within the Turtle Bay Resort and certain surrounding areas. As a regulated utility, the provision of wastewater treatment services is subject to the NSW Rules and Regulations, which were also approved by the HPUC. These Rules and Regulations include the rates that NSW will charge for services. For your easy convenience, we are attaching a copy of NSW's approved Rules and Regulations.

Starting August 1, 2005, NSW will begin billing for wastewater treatment services on a monthly basis. Based on the formula established in the Rules and Regulations, the estimated monthly wastewater treatment charge that will be assessed to the Association is approximately \$9,470.64 plus tax.

The entire operations for NSW will be handled by Aqua Engineers, Inc., the largest wastewater plant operator in the State of Hawaii. Trouble calls or other operational matters should be directed to Aqua at 3560 Koloa Road, Kalaheo, Hawaii 96741. Billing inquiries should be directed to Aqua's business office at (800) 346-4034.

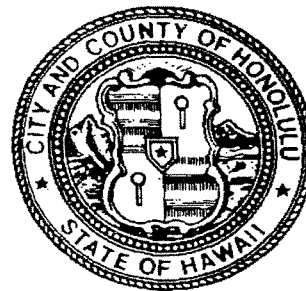
We look forward to serving you. Please contact Aqua Engineers at 800-346-4034 if you have any questions concerning this letter.

Very truly yours,



Hy Adelman

Department of Environmental Services  
City & County of Honolulu



**NEW SEWER SERVICE CHARGES AS OF:**  
**July 1, 2005**

**RESIDENTIAL SEWER RATES:**

Residential sewer rates consist of two (2) parts, a base charge and a sewer usage charge. The **base charge** represents fixed expenses associated with operating and maintaining the municipal sewer system. The base charge is \$31.06 per unit per month for single family/duplex residences. For multiple units, the base charge is \$21.75 per unit per month.

The **sewer usage charge** is based on your water consumption. Each customer is given two (2) deductions: a "lifeline allowance" and a water use credit.

**"Lifeline Allowance"** - For the first 2,000 gallons of water used each month, a household must pay only the base monthly charge. There is no extra charge for those customers who use only up to 2,000 gallons a month. This provides a "lifeline" of basic service, designed to assist "low users" of the system and people on a fixed income.

**Water Use Credit** - The City has determined that about 18% of the water used by a household goes to watering yards or plants, washing cars or other non-sewage uses. That amount is subtracted from the amount of water you use beyond the first 2,000 gallons each month.

The total sewer service charge reflects the cost to collect and treat an average 82 percent of the water used that goes back into the sewer system in the form of wastewater flow. These charges are computed to make them as fair as possible, with a "pay-for-what-you-use" philosophy.

**NON-RESIDENTIAL SEWER CHARGES:**

Non-residential users are charged a service fee based on their metered water consumption. This charge reflects the cost to collect and treat an average return of 80 percent of the water used that goes back into the sewer system in the form of wastewater flow.

If you have any questions or need further information, please write us at Department of Environmental Services, Office of Administrative Support, 1000 Uluohia Street, Suite 308, Kapolei, Hawaii 96707, or call us at 523-4408.

**Residential Sewer Service Charges**

	<b>FY 2006</b> <b>As of</b> <b>07/01/05</b>	<b>FY 2007</b> <b>As of</b> <b>07/01/06</b>	<b>FY 2008</b> <b>As of</b> <b>07/01/07</b>	<b>FY 2009</b> <b>As of</b> <b>07/01/08</b>	<b>FY 2010</b> <b>As of</b> <b>07/01/09</b>	<b>FY 2011</b> <b>As of</b> <b>07/01/10</b>
<b><u>Single family and duplex</u></b>						
Monthly base charge	\$31.06	\$34.17	\$37.59	\$41.34	\$45.48	\$50.03
Monthly usage charge:						
First 2,000 gallons of metered water	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Charge per 1,000 gallons of metered water over 2,000 gallons	\$ 1.31	\$ 1.44	\$ 1.59	\$ 1.75	\$ 1.92	\$ 2.11
<b><u>Single Family and duplex not served by city water system</u></b>	\$42.06	\$46.27	\$50.90	\$55.99	\$61.58	\$67.74
<b><u>Multi-unit dwellings served by city water</u></b>						
Monthly base charge	\$21.75	\$23.93	\$26.32	\$28.95	\$31.84	\$35.03
Monthly usage charge:						
First 2,000 gallons of metered water	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Charge per 1,000 gallons of metered water over 2,000 gallons	\$ 1.31	\$ 1.44	\$ 1.59	\$ 1.75	\$ 1.92	\$ 2.11
<b><u>Multi-unit dwelling not served by city water</u></b>	\$29.44	\$32.38	\$35.62	\$39.18	\$43.10	\$47.41

**Non-residential Sewer Service Charges****Domestic Strength Wastewater****Metered water usage**

9,000 gallons or less/month

Monthly base charge

Charge per 1,000

More than 9,000 per month

Charge per 1,000 gallons

\$27.94	\$30.73	\$33.80	\$37.18	\$40.90	\$44.99
\$ 0.16	\$ 0.18	\$ 0.20	\$ 0.22	\$ 0.24	\$ 0.26
\$ 3.11	\$ 3.42	\$ 3.77	\$ 4.14	\$ 4.56	\$ 5.01

**Metered Wastewater Discharge**

7,000 gallons or less/month

Monthly base charge

Charge per 1,000 gallons

More than 7,000 per month

Charge per 1,000 gallons

\$27.94	\$30.73	\$33.80	\$37.18	\$40.90	\$44.99
\$ 0.20	\$ 0.22	\$ 0.24	\$ 0.27	\$ 0.29	\$ 0.32
\$ 3.90	\$ 4.29	\$ 4.72	\$ 5.19	\$ 5.71	\$ 6.28

**Extra Strength Wastewater**Charge per 1,000 gallons of water use  
0.857 + 0.143 (SSm)/200 XCharge per 1,000 gallons of wastewater discharge  
0.857 + 0.143 (SSm)/200 X

\$ 3.11	\$ 3.42	\$ 3.77	\$ 4.14	\$ 4.56	\$ 5.01
\$ 3.90	\$ 4.29	\$ 4.72	\$ 5.19	\$ 5.71	\$ 6.28

(Rev 07/05)

**SEWER SERVICE CHARGES**  
(Effective July 1, 2005)

RESIDENTIAL	RATES
<b>USERS SERVED BY CITY WATER SYSTEM:</b>	
<b>Single Family/Duplex MONTHLY Charge:</b>	
Base Charge per unit	\$31.06
Usage Charge per 1,000 gallons	
1st 2,000 gallons per unit (only base charge applicable)	Base Charge
Per 1,000 gallons in excess of 2,000 (reduce consumption by 18% irrigation factor)	\$1.31
<b>Multiple Unit MONTHLY Charge:</b>	
Base Charge per unit	\$21.75
Usage Charge per 1,000 gallons	
1st 2,000 gallons per unit (only base charge applicable)	Base Charge
Per 1,000 gallons in excess of 2,000 gallons (reduce consumption by 18% irrigation factor)	\$1.31
<b>USERS NOT SERVED BY CITY WATER SYSTEM:</b>	
Single Family/Duplex MONTHLY Charge	\$42.06
Multiple Unit MONTHLY Charge	\$29.44

**EXAMPLE:**

Typical Single Family MONTHLY Charge (4 persons and 13,000 gallons water consumption):

- a. Monthly Base Charge = \$31.06
- b. Usage Charge (No Charge 1<sup>st</sup> 2,000 gallons):  
 13,000 gallons – 2,000 gallons = 11,000 gallons  
 11,000 gallons x 82% (reduce consumption by 18% water irrigation factor) = 9,020 or 9,000 gallons  
 9,000 gallons x \$1.31 per 1,000 gallons = \$11.79
- c. Total MONTHLY Charge = \$31.06 + \$11.79 = **\$42.85 or \$85.70 for a typical two (2) MONTH BILL**

**NOTE: THE SEWER SERVICE CHARGES ON YOUR BOARD OF WATER SUPPLY BILL FOR RESIDENTIAL ACCOUNTS USUALLY REFLECT A TWO (2) MONTH BILLING PERIOD.**

NON-RESIDENTIAL	RATES
<b>METERED WATER</b>	
<b>9,000 gallons or less per MONTH</b>	
Base Charge per MONTH	\$27.94
Usage Charge per 1,000 gallons	\$0.16
<b>More than 9,000 gallons per MONTH</b>	
Usage Charge per 1,000 gallons	\$3.11
<b>METERED WASTEWATER</b>	
<b>7,000 gallons or less per MONTH</b>	
Base Charge per MONTH	\$27.94
Usage Charge per 1,000 gallons	\$0.20
<b>More than 7,000 gallons per MONTH</b>	
Usage Charge per 1,000 gallons	\$3.90
<b>EXTRA STRENGTH</b>	
<b>Metered Water:</b>	
(Formula) x Usage Charge	\$3.11
<b>Metered Wastewater:</b>	
(Formula) x Usage Charge	\$3.90

Rev. 07/05

**EXHIBIT F 9/1**

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
KUILIMA DEVELOPMENT COMPANY )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for Approximately )  
236 acres at Kahuku, Koolauloa, )  
Oahu, Hawaii, Tax Map Key Nos.: )  
5-6-03: 37, 43, portion of 40, )  
portion of 41, portion of 42, )  
and portion of 44, 5-7-01: )  
portion of 33 )  
\_\_\_\_\_ )

DOCKET NO. A85-595

KUILIMA DEVELOPMENT  
COMPANY

FILED  
JUN 15 1985  
HONOLULU  
HAWAII

ORDER TO AMEND  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER

EXHIBIT 6.10

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A85-595
KUILIMA DEVELOPMENT COMPANY )	
To Amend the Agricultural Land Use )	KUILIMA DEVELOPMENT
District Boundary into the Urban )	COMPANY
Land Use District for Approximately )	
236 acres at Kahuku, Koolauloa, )	
Oahu, Hawaii, Tax Map Key Nos.: )	
5-6-03: 37, 43, portion of 40, )	
portion of 41, portion of 42, )	
and portion of 44, 5-7-01: )	
portion of 33 )	
_____ )	

ORDER TO AMEND  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER

Kuilima Resort Company, a Hawaii partnership and successor to Kuilima Development Company (hereinafter referred to as "Petitioner") filed a Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order on January 10, 1989, pursuant to Section 15-15-70, Hawaii Administrative Rules, to amend condition number eight of the Findings of Fact, Conclusions of Law and Decision and Order dated March 27, 1986 which reclassifies approximately 236 acres from the Agricultural District to the Urban District in Docket Number A85-595/Kuilima Development Company. The Land Use Commission (hereinafter referred to as "Commission"), having considered Petitioner's motion and affidavit, testimony and evidence presented at its February 7, 1989 meeting, and there being no

**EXHIBIT** *G*<sub>2/10</sub>



objections from the City and County of Honolulu, Department of General Planning or the Office of State Planning, makes the following findings of fact:

FINDINGS OF FACT

1. On March 27, 1986 the Commission issued its Findings of Fact, Conclusions of Law and Decision and Order granting said Docket Number A85-595/Kuilima Development Company (referred to as "Decision and Order").

2. Condition number eight of the Decision and Order required Kuilima Development Company to develop and operate a private sewage treatment plant. At that time the City and County of Honolulu had originally been unsure as to whether it would accept Petitioner's proposed wastewater treatment plant for dedication as a public facility.

3. Subsequently, Kuilima Development Company revised its plans for the treatment plant to provide for a public facility that the City and County of Honolulu would deem acceptable.

4. On June 8, 1987, the Commission approved a Special Use Permit (Docket No. SP87-363) to establish a wastewater treatment facility in which several references were made to the construction of a public wastewater treatment facility. Said facility would be dedicated to the City and County of Honolulu, and condition number two of the Special Use Permit order made reference to a "dedicated" wastewater facility.

5. Petitioner requests that condition number eight of said Decision and Order be amended to require the development of a public sewage treatment plant to be consistent with the Special Use Permit order and Petitioner's current plans.

6. Petitioner's requested amended condition eight would read as follows:

"Petitioner shall develop and operate a public sewage treatment plant and related infrastructure to accommodate the sewage demand of the Kuilima Resort Expansion".

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, the Commission finds upon the preponderance of the evidence and testimony presented that the proposed amendment to condition eight of the Decision and Order is reasonable and is non-violative of Chapter 205-2, Hawaii Revised Statutes, as amended.

#### ORDER

IT IS HEREBY ORDERED that condition number eight of the Findings of Fact, Conclusions of Law and Decision and Order dated March 27, 1986 filed in Docket Number A85-595/Kuilima Development Company, is hereby amended to read as follows:

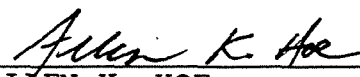
"8. Petitioner shall develop a sewage treatment plant and related infrastructure to County standards to accommodate the sewage demand of the Kuilima Resort Expansion".


DOCKET NO. A85-595 - KUILIMA DEVELOPMENT COMPANY

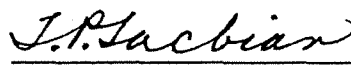
Done at Honolulu, Hawaii, this 15th day of March 1989,  
per motions on February 7, 1989 and March 9, 1989.

LAND USE COMMISSION  
STATE OF HAWAII

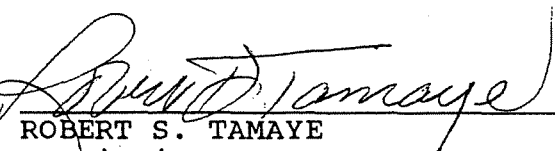
By   
RENTON L. K. NIP  
Chairman and Commissioner

By   
ALLEN K. HOE  
Commissioner

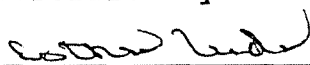
By   
FREDERICK P. WHITTEMORE  
Commissioner


By   
TEOFILO PHIL TACBIAN  
Commissioner

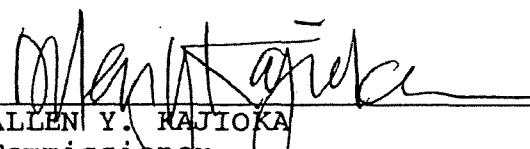
Filed and effective on  
March 15, 1989

By   
ROBERT S. TAMAYE  
Commissioner

Certified by:

  
Executive Officer

By   
TORU SUZUKI  
Commissioner

By   
ALLEN Y. KAJIOKA  
Commissioner

In the Matter of the Petition of	)	DOCKET NO. A85-595
	)	
KUILIMA DEVELOPMENT COMPANY	)	KUILIMA DEVELOPMENT
	)	COMPANY
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District for Approximately)	)	
236 acres at Kahuku, Koolauloa,	)	
Oahu, Hawaii, Tax Map Key Nos.:	)	
5-6-03: 37, 43, portion of 40,	)	
portion of 41, portion of 42,	)	
and portion of 44, 5-7-01:	)	
portion of 33	)	
	)	

I hereby certify that a copy of the Order to Amend Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. DONALD A. CLEGG, Chief Planning Officer  
Department of General Planning  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

CERT. JAN NAOE SULLIVAN, ESQ., Attorney for Petitioner  
TAKEYAMA & SULLIVAN  
1188 Bishop Street, Suite 3404  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 15th day of March 1989.

**EXHIBIT G**

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Petitions of KEE & KEW AOA's upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P.O. BOX 541  
Honolulu, Hawaii 96809

HY ADELMAN  
NORTH SHORE WASTEWATER TREATMENT, L.L.C.  
57-091 Kamehameha Highway  
Kahuku, Hawaii 96731

MICHAEL H. LAU, ESQ.  
KENT D. MORIHARA, ESQ.  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, Hawaii 96813

Counsel for NORTH SHORE WASTEWATER TREATMENT, L.L.C.

  
WILLIAM W. MILKS

DATED: August 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22045 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

(Certified Mail No. 7002 2030 0006 6798 7494)

HY ADELMAN  
NORTH SHORE WASTEWATER TREATMENT, L.L.C.  
57-091 Kamehameha Highway  
Kahuku, HI 96731

(Certified Mail No. 7002 2030 0006 6798 7500)

MICHAEL H. LAU, ESQ.  
KENT D. MORIHARA, ESQ.  
ISHIKAWA MORIHARA LAU & FONG LLP  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

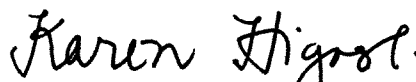
Counsel for NORTH SHORE WASTEWATER TREATMENT, L.L.C. and  
KUILIMA RESORT COMPANY

(Certified Mail No. 7000 0600 0027 7123 1266 )

WILLIAM W. MILKS, ESQ.  
LAW OFFICE OF WILLIAM W. MILKS  
Suite 977, ASB TOWER  
1001 Bishop Street  
Honolulu, HI 96813

Counsel for KUILIMA ESTATES WEST AOAO and KUILIMA ESTATES  
EAST AOAO

(Certified Mail No. 7000 0600 0027 7123 1303)

  
\_\_\_\_\_  
Karen Higashi

DATED: September 21, 2005