

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawaii 96813

August 10, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawai'i

O'ahu

SUBJECT:

Status on Attempts to Negotiate a Revocable Permit with Lanihuli Community Development Corporation for a Six (6) Month Term in Accordance with Board Action Directed at its January 27, 2012 Meeting (Agenda Item E-2) and Request for Approval for the Issuance of a Revocable Permit to Lanihuli Community Development Corporation for a Period of Six (6) Months on the Condition that Within Ten 10 Days of the Date of This Submittal, All Outstanding Compliance Issues are Resolved Regarding Wastewater Compliance and Fire and Extended Coverage Insurance, and if the Compliance Measures are Not Corrected, Request for Approval for the Issuance of a Six (6) Month Revocable Permit for a to be Determined Entity for the Operation of Public Recreational Facilities at the Kahuku Section, Mālaekahana State Recreation Area, Lā'ie (Ko'olauloa), O'ahu, TMK: (1) 5-6-001: Parcels 45-47, 49, 51, 54-65.

REQUEST:

Approval to issue a six (6) month revocable permit (RP) to Lanihuli Community Development Corporation (LCDC) provided compliance measures are corrected and if compliance measures are not corrected, approval for the issuance of a RP to a to be determined entity to operate the Property for the public recreation purposes including the operation of campsites, rental cabins and day use park facilities.

LEGAL REFERENCE:

Sections 171-55 and other applicable sections of chapter 171, Hawaii revised Statutes, as amended.

LOCATION:

Kahuku Section, Mālaekahana State Recreation Area (MSRA), Lā'ie, Ko'olauloa, O'ahu, identified by Tax Map Key: (1) 5-6-001: Parcels 45-47, 49, 51, 54-65(the "Property")

ITEM E-1

AREA:

31.945 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: R-5

TRUST LAND STATUS:

The land was acquired after 1959.

CURRENT USE STATUS:

The Property is encumbered by Executive Order 3928 setting aside control and management for the Department of Land and Natural Resources, Division of State Parks (DSP). The Property is occupied by Lanihuli Community Development Corporation (LCDC) which formerly held Revocable Permit, SP0201. That permit has expired and Board action at its January 27, 2012 meeting (Agenda Item E-2) authorized the issuance of a six (6) month revocable permit which expired on July 26, 2012. LCDC currently occupies the Property without any written Board authorization.

CHARACTER OF USE:

Transient use of public recreational facilities including cabin rental, campground rentals and a public, day use beach park.

PROPERTY CHARACTERISTICS:

Utilities:	The Property is served by an existing water line which serves the entire Kahuku section. The occupant pays sixty (60%) percent of the water charges billed to the State Parks. Electrical service is separately metered and billed directly to the operator.
Existing Authorized Improvements:	Cabins, residences, office space.
Legal access to property:	Staff has verified that there is legal access to the property off of Kamehameha Highway.
Encumbrances:	Encumbered by Executive Order 3928 setting aside for control and management of the Department of Land and Natural Resources, Division of State Parks.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

DSP believes the request to enter into a Revocable Permit in the interim, prior to an award of lease through the Request for Qualifications/Request for Proposals RFQ/RFP process and the negotiation of a lease, will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

Due to a long standing and complicated tenure and occupation by LCDC of the Property for approximately 18 years, (summarized in the January 27, 2012, Board submittal) and the subsequent state and federal wastewater violations as described in previous submittal, staff has been working closely with the LCDC to correct the compliance issues as directed by the Board at its January 27, 2012 meeting. The compliance issues centered around several areas including insurance, payment of the water bill and outstanding violations of Federal and State wastewater regulation. The Board's direction was that subsequent to the correction of these compliance issues, the issuance of a 6 month RP was authorized. In short, DSP has been unable to reach an agreement with LCDC under the terms of the Board's directives and Office of the Attorney General requirements. There remain two compliance issues: First, the continued unpermitted operation of Individual Wastewater System (IWS) #1 and two, the failure to provide and maintain fire and extended coverage insurance as required for holders of DLNR's RP's.

Summary on Compliance action for EPA and DOH violations - Malaekahana, Kahuku as of July 30, 2012

The Hawai'i Department of Health (DOH) issued its notice of violations to DLNR on April 8, 2009 that involved ten (10) unapproved wastewater systems on the Property. DOH required its approval to construct an IWS pursuant to Section 11-62-08 (b), HAR, and its approval to operate the constructed system pursuant to Section 11-62-08 (f), HAR. The notice of violations stated that neither regulation was complied with. To address these violations, DLNR proposed and DOH approved a compliance action plan which allowed DLNR to bring the facilities into compliance by April 30, 2012. DLNR, with DOH concurrence, revised the number of unapproved systems to three (3) systems, and the number of LCCs to seven (7).

The EPA issued its notice of violations to DLNR on the same date, April 8, 2009, that involved five (5) Large Capacity Cesspools (LCC's) on the Property. The violations were pursuant to the prohibition of all LCCs as of April 5, 2005. An LCC is defined as serving multiple dwellings and for non-residential facilities possessing the capacity to service 20 or more persons a day. Operating a LCC after this date does not comply with Federal regulations and exposes State Parks to enforcement action and fines. The EPA has allowed DLNR to comply with the LCC closures using the DOH compliance action plan dates, but reiterated that it can impose enforcement action against DLNR and/or operator of the facilities at any time. Upon further field investigations, DLNR had added two (2) LCCs, with EPA's acknowledgement, which is consistent with the seven (7) LCCs in the DOH disclosure.

State Parks obtained funding from the 2011 State Legislature for the design and construction of a new comfort station and IWS and install composting toilets for additional sanitary service needs. During late 2011 - early 2012, DLNR retained a consultant to design park improvements including the comfort station, IWS and cabin improvements. DLNR assures that it will seek and comply with all required approvals and permits.

The Board directed State Parks to work with the operator to address the respective violations at its meeting on January 27, 2012. In February 2012, DLNR met with DOH and disclosed that it could not meet the April 30, 2012 deadline to start construction of compliance improvements. DLNR clarified it received funding for a new comfort station and IWS and proposed revisions to the compliance plan. To initiate compliance measures, DLNR required the operator to close its comfort stations being served by the unapproved IWS systems. DLNR also sought and received DOH approval to utilize portable toilets in this park area till April 2012 to provide the operator with restroom options to meet compliance deadlines.

State Parks requested and DOH approved a revised compliance action plan to extend DLNR's compliance on May 4, 2012. The revised compliance plan will require DLNR to start construction of the new comfort station and IWS by April 30, 2014. In addition, DLNR was required to cease the use of IWS #1, serving the eco-cabins, by July 26, 2012, and install its proposed composting toilets by October 1, 2012. DOH did approve the use of portable toilets till April 30, 2014, while DLNR is implementing its compliance to the action plan.

During February through June 2012, DLNR and the operator have implemented compliance actions to address the DOH and EPA violations, refer to the tables in Exhibit B. We note that the operator has submitted and received approval of its gray water systems in June 2012, that DOH expressed concerns with, which included the installation of composting toilets for the eco-cabins. The operator, to date, has cooperated and worked with DLNR staff on addressing the EPA and DOH violations although IWS#1 is currently being used in violation of the affirmative action timeline and DOH regulation.

For the EPA LCC violations, all violations have been addressed. DLNR will seek acknowledgement from EPA when it submits its bi-annual report on compliance with LCC closures in July 2012. In regards to the DOH violations, IWS #1 is the only outstanding violation, where DLNR proposed and DOH concurred with its closure by July 26, 2012. DLNR will work with the operator on this compliance. On July 31, 2012, DSP issued a notice to LCDC that the continued use of IWS#1 beyond July 26, 2012 is a violation of DOH regulation and the affirmative action timeline. This action continues to place DLNR in violation of DOH regulation, exposes the Department to enforcement action and potential fines and renders the ability to issue an RP untenable.

Cabins

In addition to the wastewater issues, there are issues associated with the condition of the existing cabins on site.

DSP has consulted with the State Historic Preservation Division (SHPD) regarding potential options for the remaining historic cabins and SHPD agrees that although historic, these structures possess little historic integrity. SHPD indicated a willingness to approve a proposal to demolish, replace, or rehabilitate, and recommends that any replacement or rehabilitation maintain the same scale and style of structure as the current plantation style cabins. They will not require adherence to Secretary of Interior's standards if they are rehabilitated.

Under their regulations, SHPD cannot issue approval of a project in "concept" - rather they need to be presented with a proposed project with a design before DSP is authorized to proceed with any action on the cabins. Using Capital Improvement Project (CIP) funds, DSP is working with a consultant to come up with a design/construction plan for repair or replacement of one of the existing cabins, which will serve as a model to be duplicated as appropriate for rehabilitation of the other existing cabins. Those plans, when refined, will be submitted to SHPD for review and approval to comply with 6E.

Gray Water Systems

In support of establishing compliant composting toilet and gray water system upgrades proposed by LCDC, DSP staff prepared the required 6E compliance documents (request for determination, Archaeological Monitoring Plan) and has submitted these plans SHPD for review and approval in early July. LCDC has not achieved Chapter 6E compliance for previous unauthorized improvements to the cabins and property, and the need for this compliance has been previously explained to LCDC.

Fire Insurance

On June 1, 2012 DLNR engineering staff inspected the condition of the state owned cabins and determined that two cabins, due to their deleterious condition, be closed to public use until such time that renovation could be implemented. However, the balance of the State owned structures that are in use by the LCDC for management of the Property and those rented by the public for recreational purposes must be insured for fire and extended coverage as dictated by past practices and policy recommendations of the Attorney General. On March 2, 2009, the Kawanakoa Cabin – a house structure with arguably the most historic integrity burned down, allegedly due to a faulty electrical system. This structure was uninsured by LCDC and as such has resulted in a loss of a valuable public resource.

DSP Plans

The Board has previously granted approval for DSP to proceed with the RFQ/RFP process for the issuance of a long term lease for the Property. Due to the long-standing and aforementioned unresolved issues with wastewater treatment, it is clear that in order to provide a future lessee with an opportunity to not only rent cabins, but to also provide public recreational camping, approved sanitation facilities must be constructed. Also, due to the years of inadequate cabin maintenance, these structures must be given a systematic rehabilitation that is sustainable and follows specific guidelines and architectural standards. DSP was fortunate to receive the following Capital Improvement funds during the 2011 legislature that will support this action.

Current status of Improvements for the Malaekahana Kahuku section

DSP is planning the design and construction of improvements including a comfort station, individual wastewater system, cabin restoration/repair, and other facilities as needed for this park section, including composting toilets. CIP funding will be applied as follows:

- \$300,000 for the design of the proposed facilities and improvements and obtaining State and County permits and approvals including Chapter 343 compliance, SMA/SSD approvals, 6E SHPD approvals, building permits, and other permits as required.
- \$1,000,000 for construction of the proposed improvements. DSP will prioritize the projects to optimize available funding.
- DSP is planning to construct the comfort station and sewer improvements and improve one rental cabin during the RFQ/RFP process.

DISCUSSION:

DSP has made numerous attempts to reach an agreement as directed by the Board for the purpose of executing an RP with LCDC. Although substantial compliance has been achieved with respect to stopping the DOH and EPA violations, the continued, deliberate violation of DOH regulation with respect to the use of IWS#1 puts DLNR at risk of substantial fines and

enforcement action. DOH has clearly indicated a willingness to act upon violations in the past. It should be noted that even with DOH concurrence with the affirmative action plan schedule, DOH reserves the right to seek fines and penalties for the violations from the date the violation occurred and therefore, it is important the violations stop immediately. In addition, with respect to the requirement for fire and extended coverage insurance, DSP has no other mechanism in effect to protect against losses for these structures and therefore requires permittee's to cover these properties. Having a single exception for LCDC would set a precedent for which DSP does not have the funds to cover, especially in light of the fact that LCDC pays no rent for nearly 32 acres of prime, beach-front property and DSP has already suffered a substantial loss due to fire on the Property.

The inability to resolve these compliance issues prevents DSP from achieving agreement on the terms of the RP as directed by the Board. Therefore DSP requests the Board approve the issuance of an RP to LCDC if they correct the compliance measures within 10 days or in the alternative, if LCDC does not comply, DSP requests approval for the issuance of a RP to a different organization able and willing the follow long established Departmental policies, State and Federal regulations and standards.

The terms of the proposed RP would be similar to terms outlined with LCDC except that we ask that the Board delegate to the Chairperson the authorization to negotiate a percentage rent fee for the use of the Property at the discretion of the Chairperson for whomever the permittee may be.

RECOMMENDATION: That the Board:

1. Declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
2. Authorize the issuance of a revocable permit for a period of six (6) months to LCDC on the condition that within ten 10 days of the date of this submittal, all outstanding compliance issues are resolved regarding wastewater compliance and fire and extended coverage insurance, and if the compliance measures are not corrected, request for the issuance of a six (6) month revocable permit for a to be determined entity for the operation of public recreational facilities including cabin rental, campground rentals and a public, day use beach park under the conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. That the Permittee pay rent in an amount acceptable to the Chairperson;

- b. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time, which include requirements for fire and extended coverage insurance;
- c. Review and approval by the Department of the Attorney General; and
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



DANIEL S. QUINN
State Parks Administrator

Per

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson

Attachments

Exhibit A - Tax Map Key

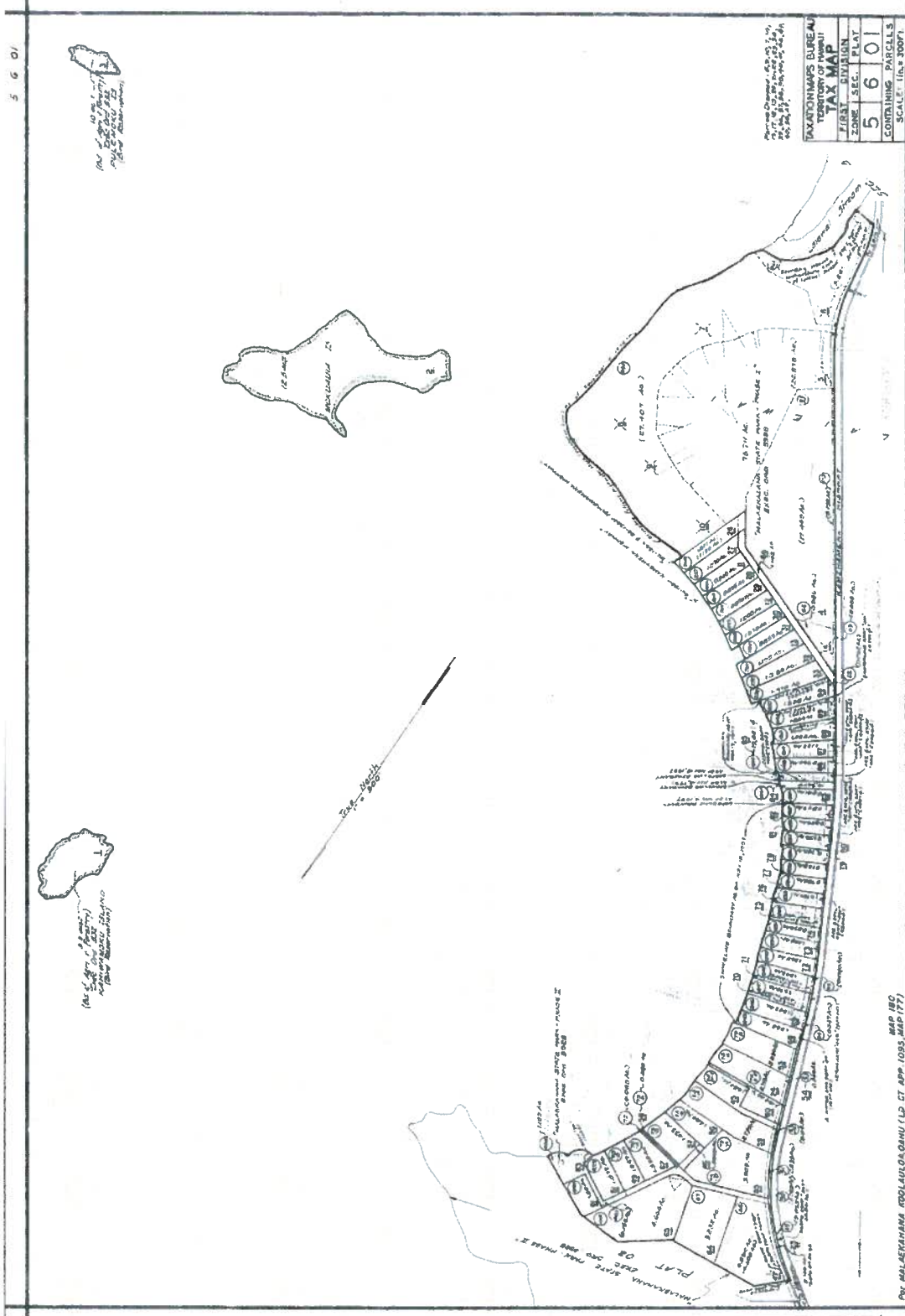


Exhibit B - Affirmative Timeline

Cesspool/IWS Compliance	Facility Served	Action	Timeframe
CP4 EPA - LCC DOH - IWS	Comfort Station 1	<ul style="list-style-type: none"> • Ceased discharge into cesspool. • Removal of CS 1. • Closure of LCC – in filled. • Closure documents to EPA and DOH. 	2/16/2012 - Confirmed 2/16/2012 - Confirmed 5/4/2012 – Confirmed 5/16/2012 – Report filed
CP7 EPA - LCC DOH - IWS	Stand-alone twin toilets and Cabin 5	<ul style="list-style-type: none"> • Disconnected twin-toilet structure. • Removal of twin toilet structure. • LCC closure addressed through the elimination of the multiple structure connection violation – only Cabin 5 being serviced. 	2/16/2012 - Confirmed 2/16/2012 - Confirmed 2/16/2012 – Confirmed
CP9 EPA - LCC DOH - IWS	Cabins 6 & 7	<ul style="list-style-type: none"> • Consolidate duplex back into a single dwelling unit. • LCC closure addressed through the elimination of the multiple structure connection violation – removal of second food preparation area. 	2/29/2012- Confirmed 2/29/2012 – Confirmed
CP10 EPA - LCC DOH - IWS	Comfort Station 4	<ul style="list-style-type: none"> • Ceased discharge into cesspool. • CS 4 removed from area. • Interim/alternative measures – portable toilets • Closure of LCC – in filled. • Closure documents to EPA and DOH. 	2/16/2012 - Confirmed 2/16/2012 - Confirmed 2/23/2012 - Confirmed 5/4/2012 – Confirmed 5/16/2012 – Report filed
CP14 EPA - LCC DOH - IWS	Employee residence compound	<ul style="list-style-type: none"> • Disconnected all sewer connections except for one dwelling unit. • LCC closure addressed through the elimination of the multiple structure connection violation – removal of second food preparation area. 	2/29/2012 – Confirmed 2/29/2012 – Confirmed
Seepage Pit 1 IWS 2 (unapproved) New LCC EPA - LCC DOH - IWS	Comfort Station 3	<ul style="list-style-type: none"> • Ceased discharge into cesspool, IWS facility is not a registered injection well/seepage pit. • Stop usage of all restroom and shower amenities. • Interim/alternative measures – portable toilets • Lanihuli proposal for conversion to 	2/29/2012 - Confirmed 2/29/2012 - Confirmed 2/29/2012 - Confirmed 5/22/2012-submitted to DOH

		<p>a seepage pit for proposed gray water system.</p> <ul style="list-style-type: none"> • SHPD approval of 6E application for excavation and trenching of gray water lines to seepage pit. • Construction of graywater system • Approval to operate gray water system 	<p>6/6/2012 - DOH approval Pending-7/11/12 submittal to SHPD Pending-not started to date Pending - no approval to operate to date</p>
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Cesspool/IWS Compliance	Facility Served	Action	Timeframe
<p>CP6 New LCC</p> <p>EPA - LCC DOH - IWS</p>	<p>Tutu's Hale (former Kawananakoa Cabin)</p>	<ul style="list-style-type: none"> • Ceased discharge into cesspool. • Stop usage of all restroom and shower amenities. • Interim/alternative measures - portable toilets • Conversion to a seepage pit for proposed gray water system by Lanihuli. • SHPD approval of 6E application for excavation and trenching of gray water lines to seepage pit • Construction of systems • Approval to operate gray water system 	<p>2/29/2012 - Confirmed 2/29/2012 - Confirmed 2/29/2012 - Confirmed 5/22/2012-submitted to DOH 6/6/2012 - DOH approval Pending-7/11/12 submittal to SHPD Pending-not started to date Pending- no approval to operate to date</p>
<p>IWS 1 DOH - IWS</p>	<p>Eco-cabin complex: 1 single unit and 1 duplex</p>	<ul style="list-style-type: none"> • Lanihuli proposal for composting toilets incorporated into the gray water system plans. • SHPD approval of 6E application for excavation and trenching of composter disposal beds and gray water leach fields. • Construction start. • Approval to operate gray water system • Closure of IWS #1 	<p>5/22/2012 - Submitted to DOH 6/6/2012-DOH approval Pending-7/11/12 submittal to SHPD Pending-not started to date Pending- no approval to operate to date nor closure of IWS # 1</p>
<p>IWS 3 DOH - IWS</p>	<p>Comfort Station 5</p>	<ul style="list-style-type: none"> • Closure of comfort station and no discharge into IWS 3 • Proposal for a gray water system for an outdoor sink serving this area. 	<p>5/22/2012 - Confirmed and submitted by Lanihuli in its letter to DOH Pending-7/11/12</p>

Cesspool/IWS Compliance	Facility Served	Action	Timeframe
<p>CP6 New LCC</p> <p>EPA - LCC DOH - IWS</p>	<p>Tutu's Hale (former Kawananakoa Cabin)</p>	<ul style="list-style-type: none"> • Ceased discharge into cesspool. • Stop usage of all restroom and shower amenities. • Interim/alternative measures – portable toilets • Conversion to a seepage pit for proposed gray water system by Lanihuli. • SHPD approval of 6E application for excavation and trenching of gray water lines to seepage pit • Construction of systems • Approval to operate gray water system 	<p>2/29/2012 – Confirmed 2/29/2012 – Confirmed 2/29/2012 – Confirmed 5/22/2012-submitted to DOH 6/6/2012 - DOH approval Pending-7/11/12 submittal to SHPD Pending-not started to date Pending– no approval to operate to date</p>
		<ul style="list-style-type: none"> • SHPD approval of 6E application for excavation and trenching of composter disposal beds and gray water leach fields • Construction start. • Approval to operate gray water system 	<p>submittal to SHPD Pending-not started to date Pending– no approval to operate to date</p>