FINAL

3/17/16

Wastewater Treatment System Program

West Hawaii Business Park

West Hawaii Business Park, LLC
P.O. Box 9032
Kailua-Kona, Hawaii 96745

March 2016

Exhibit 3

Wastewater Treatment System Program Manual
Table of Contents

A. Introduction

In 2002, Lanihau Properties, LLC (the "Petitioner") requested a change to the Land Use designation for West Hawaii Business Park ("Business Park") from the Conservation District to the Urban District. In approving the Petition in 2004, the Land Use Commission stipulated a number of conditions in the Decision and Order ("D&O") for Docket No. A00-730, including provisions relating to wastewater treatment and disposal. These conditions ("D&O Conditions") have been recorded and apply to the land comprising the Business Park.

Until a County wastewater transmission system is constructed in North Kona, the D&O Conditions provide for the limited use of Individual Wastewater Systems ("IWS Units") to service lots in the Business Park. These IWS Units are required to reduce the concentration of nutrients in the wastewater generated on the site. The D&O Conditions pertinent to the use of IWS Units for the treatment and disposal of wastewater are summarized below (and included in its entirety within Appendix 1):

1c. Until connection is available to the County's Kealakehe Wastewater Treatment Plant ("WWTP"), occupancy of the Business Park shall be limited to lots authorized to use an IWS Unit "designed to remove no less than 60% Total Nitrogen in the treatment system . . . and an absorption field of import material which is constructed in a manner to achieve no less than 80% reduction in nitrogen and 90% reduction in phosphorus."

1d. Use of IWS Units "….shall be limited to no more than 40 lots in the Business Park".

1e. Owners of IWS Units shall certify to the State Department of Health ("DOH") that the respective IWS Units will be operated and maintained in accordance with the provisions of an operation and maintenance manual developed pursuant to Hawaii Administrative Rules, Title 11, Chapter 62 (HAR 11-62), as may be amended (see Appendix 3).

1f. With the exception of the existing quarry operation, the Petitioner and lot owners authorized to use an IWS Unit shall develop and participate in a Wastewater Treatment System Maintenance Agreement ("Agreement") prior to construction upon or occupancy of any portion of the Business Park (see Appendix 2).

Amendment of Condition 1c

The findings of a study conducted for the Petitioner by Engineering Concepts, Inc. ("ECI") determined that attaining the required cumulative reduction in nitrogen concentration would be exceedingly difficult to achieve on a consistent basis. Based on this, the Petitioner filed a Motion to Amend with the LUC. The change to Condition 1c stipulated the removal of "no less than 80**%** Total Nitrogen in the treatment system." The LUC approved the Motion to Amend after a public hearing on September 7, 2007. The Motion to Amend, which deleted the cumulative 92% nitrogen removal, was formally adopted by Order approved by the LUC on January 31, 2008 and recorded on January 28, 2010 (attached in its entirety, within Appendix 1).

B. Overview of the Wastewater Treatment System Program

West Hawaii Business Park, LLC ("WHBP"), owns most of the land comprising the Business Park. WHBP has created the Wastewater Treatment System Program (the "Program") in order to:

1. Disclose the D&O Conditions pertaining to the interim use of IWS Units and leach fields for wastewater treatment and disposal;

2. Ensure uniform compliance by lot owners authorized to use IWS Units prior to completion and connection to the County wastewater system;

3. Provide pertinent information as to permit processing, installation alternatives, and the requirement for regular inspection and maintenance of IWS Units;

4. Establish special protocols for the collection, storage and transportation of samples of influent wastewater and treated effluent to qualified testing labs for analysis of nutrient concentrations; and

5. Disclose that when hook-up to the WWTP becomes available, the lot owners are required to connect to the County wastewater system irrespective of the prior installation of an IWS Unit.

C. Program Parameters

Participants:	WHBP and each owner of a lot in the Business Park authorized to use an IWS Unit shall participate in the Program. A copy of the Wastewater Treatment System Maintenance Agreement is provided for reference in Appendix 2.
Lot Limitation:	D&O Condition 1d limits the use of IWS Units to a maximum of 40 lots subdivided out of the bulk parcels that comprise the Business Park (TMK Nos.: (3) 7-4-8:13, 30, 74, 76, 77,

78, 79, 84 and 85). The parcels that have been granted the right (by West Hawaii Business Park) to construct an IWS unit include parcels 30, 74 and 84. The remaining available balance is 37 (40 less 3 = 37) IWS units.

Wastewater: IWS Units are wastewater systems designed to treat wastewater that is generated on site. For establishments within the Business Park, this is intended to treat and dispose of wastewater from business operations, restrooms, showers, lunchrooms and clothes washers located on the premises, including wastewater generated by janitorial activities.

Restricted Types of Wastewater:

Restaurants/Commercial Kitchens – Within the Business Park, restaurants and commercial kitchens shall be restricted until connected to the County wastewater system or unless approved by DOH. Wastewater treatment shall comply with existing DOH regulations relating to such facilities, including screening, grease removal and pre-treatment.

Commercial Laundries – Large laundry facilities shall be restricted from operating in the Business Park until such time as they are connected to the County wastewater system, or unless approved by DOH.

Industrial Effluent – Wastewater generated by industrial and manufacturing processes and water containing industrial pollutants are prohibited from being disposed of in IWS Units unless approved by DOH. Liquid industrial waste and wastewater contaminated with heavy metals, petroleum products, greases and lubricants, chemicals, solvents, cleaning fluids, hydraulic oil, herbicides, pesticides or fertilizer shall be captured within the facility and stored on an impermeable, bermed surface or in leak-proof (double-wall) containers for transport off-site for treatment and disposal.

Hazardous Material – Hazardous and toxic substances require special handling and shall not be deposited into IWS Units unless approved by DOH. Hazardous/toxic material shall be kept in leak-proof containers and removed from the premises and delivered to specialized facilities for disposal.

County System: The County of Hawaii is in the process of constructing off-site wastewater transmission facilities from the area of the

Business Park to the WWTP. The on-site wastewater collection system will be constructed incrementally by WHBP and dedicated to the County upon completion. The County may initiate an Improvement District, Community Facilities District, Impact Fees or other funding mechanism to accelerate construction of the off-site wastewater transmission system.

D. Wastewater Treatment

Nutrient Removal

Domestic quality wastewater generated by establishments in the Business Park must be treated to achieve a reduction in nutrient concentrations before being discharged into its leach field. Treatment for both nitrogen and phosphorus removal is required. The removal of nutrients involves a two stage process:

1) Treatment within the IWS Unit; and
2) Percolation through a leach field.

Both steps of the process must be employed to achieve the required reduction of nitrogen and phosphorus concentrations.

Nitrogen

Treatment System: Typical IWS Units remove nitrogen through biological uptake within the treatment system (i.e., the septic tank). The extent of removal achieved during this first stage of the treatment process is dependent upon the type of technology employed. The most common treatment employs aeration to enhance the biological conversion of organic nitrogen into inorganic nitrate and nitrite compounds ("aerobic treatment"). Most of the nitrogen removal takes place during this initial stage of treatment.

Leach Field: The second stage of treatment involves percolation of the treated effluent through a leach field. However, where organic nitrogen is removed through biological conversion in the tank, percolation provides minimal additional reduction in nitrogen, as inorganic nitrate and nitrite are relatively non-reactive in a leach field. Except for absorption into the root system of plants, nitrates and nitrites seep through the leach field into the underlying strata. Therefore, an additional process is required.

Phosphorus

Treatment System: IWS Units that rely on the aerobic treatment produce limited reductions in phosphorus concentrations during the first stage of treatment.

Leach Field: Unlike nitrogen, percolation of treated effluent through a properly constructed leach field achieves significant reductions in phosphorus concentrations due to the adhesion of phosphorus ions to the granules of the imported medium. The composition of the imported material (composition/size of granules) impact permeability, which is critical to effective phosphorus adhesion.

E. DOH Review and Approval

Title 11, Chapter 62, Hawaii Administrative Rules

The installation of IWS Units and leach fields is subject to review and approval by the DOH pursuant to Section 11-62-37, Hawaii Administrative Rules ("HAR"). A complete copy of Chapter 62 can be downloaded from the State of Hawaii website at:

www.hawaii.gov/DOH

DOH review of the proposed installation of an IWS Unit and leach field is normally conducted in conjunction with the processing of a Building Permit for construction of the structure to be serviced. Given the technical nature of the documentation required for the DOH review process, it is required that the services of a licensed professional engineer be utilized.

Application for installation of an IWS Unit and leach field requires the following documentation. Samples of Exhibits A to D referenced below are provided in Appendix 3.

DOH forms:

1. Application Form (Exhibit A)
2. Construction Plans (prepared by licensed engineer)
3. Site Plan (prepared by licensed engineer or architect)
4. Floor Plans for Structure (prepared by licensed architect)
5. Owner's Certification Form (Exhibit B)
6. Site Evaluation/Percolation Test Form (Exhibit C)
7. Operation & Maintenance Manual (manufacturer of IWS Unit)
8. Sludge Disposal Plan (prepared by Service Provider)
9. Service Contract (Appendix 4)

The Owner's Certification (Exhibit B) addresses the requirement of D&O Condition 1e. The lot owner is obligated to notify DOH as to the transfer of an IWS unit due to the conveyance of the lot.

The Site Evaluation/Percolation Test (Exhibit C) must be completed by a licensed engineer.

For installations on the Island of Hawaii, the Construction Inspection Report – Big Island (Exhibit D) is to be completed and submitted at the completion of construction.

Installation of IWS Units

Underground: IWS Units are typically installed below grade, which facilitates the gravity flow of untreated influent into the treatment system. Placement of the IWS Unit underground also protects the tank from accidental damage and removes it from sight. Inspection ports allow for viewing and servicing of the underground IWS Unit.

Above Grade: Installation of the IWS Unit above ground can minimize excavation. However, the above ground alternative may involve additional costs relating to:

- Installation of a pump to lift the influent wastewater into the tank.
- A covering to protect the fiberglass tank and PVC fittings from deterioration due to exposure to sunlight.
- Fencing to screen the IWS unit from view and to provide protection from damage.

Fencing for the above ground installations will be subject to the screening provisions of the Design Guidelines.

Multi-Tank Installations: As required, multiple IWS Units and leach fields can be installed on a large lot to service flows that exceed the capacity of a single treatment system, or are prudent to consider due to the size or topography of the lot.

Installation of Leach Fields

The Honokohau area of North Kona is a composed of a series of relatively recent a'a and pahoehoe lava flows. Due to the lack of soil cover, rain water readily passes through the fractured lava. Accordingly, the basaltic rock must be excavated and replaced with suitable granular material in order to achieve an acceptable percolation rate for phosphorus adhesion. DOH reviews the design

of the leach field as an integral part of the Chapter 62 approval process (see Section 11-62-34 on disposal Systems).

F. Authorized IWS Unit

Cyclic Biological Treatment

In 2006, the engineering consulting firm of Engineering Concepts, Inc. ("ECI") was retained to conduct a study of alternative wastewater treatment systems and assess the performance and cost of the alternative technologies. The findings of the ECI study indicated that the patented Cyclic Biological Treatment ("CBT") Unit produced superior results in terms of nutrient removal - 80% reduction in nitrogen and 60 % reduction in phosphorus concentrations - during the first stage of treatment in the tank. Based on the ECI study and a National Sanitary Foundation Standard 40 Performance Evaluation, the CBT Unit was selected for exclusive use in the Business Park. Alternate designs can be considered, with DOH approval.

Technical Data - Specifications on the CBT Unit, which are available in tank sizes ranging from 500 gallons to over 4,000 gallons, are available directly from the manufacturer, International Wastewater Technologies ("IWT"), at:

www.internationalwastewater.com

Documented Performance - A year long National Sanitation Foundation ("NSF") Standard 40 Performance Evaluation was conducted on the CBT Unit by the Water Resources Research Center of the University of Hawaii at Manoa in 2004-05. The performance of the CBT Unit under the stringent NSF protocols (one year duration) confirmed the ability to achieve the required nutrient reductions. Copies of the NSF Performance Evaluation and the ECI Alternative Wastewater Treatment study are available from the manufacturer upon request. Note: The ability of the CBT Unit to remove a majority of the phosphorus in the tank has the benefit of prolonging the useful life of the leach field.

Recommendations for Optimum Operation

Cyclic Biological Treatment utilizes aerobic and anoxic cycles of treatment to achieve the superior performance of the CBT Unit. The alternating cycles are dependent upon micro-organisms to biologically reduce nutrient concentrations in the CBT Unit. The introduction of large volumes of concentrated nutrients, suspended solids and toxic chemicals into the CBT Unit adversely impacts the reproductive capacity of the micro-organisms and should be minimized.

The following recommendations from IWT should be followed to ensure optimal operation:

- Only domestic quality wastewater should be disposed of in a CBT Unit.

- Food products represent a source of additional nutrient loading. The following items should be accumulated and disposed of in the trash:

    - Scraps from food preparation, leftovers and other garbage.
    - Citrus products (oranges/lemons/grapefruit) and melon rinds.
    - Coffee grounds, fruit pits and seeds.
    - Grease, fats and oils from cooking.

- Use drain screens to capture scraps of food for disposal in the trash to minimize use of garbage disposals.

- Toss solid material, particularly non-biodegradable items, into a trash receptacle:

    - Paper towels, cigarette/cigar butts, hair, nail clippings, etc.
    - Feminine hygiene products, baby wipes, disposable diapers, etc.

- Dispose of medicines and medical items in the trash:

    - Medications, antibiotics, ointments and gels.
    - Bandages, gauze, disinfectant swabs and wipes.

- Avoid the use of anti-bacterial soaps.

- Do not use strong disinfectants, cleaning products and soaps that could be deposited into the wastewater system:

    - Examples are Lysol, Pine-Sol, Tidy Bowl and Drano.
    - Recommended powdered cleaners are Comet and Biz.

- Laundry facilities (if any) should use only powdered, low-sudsing, low phosphate, bio-degradable detergents:

    - Recommended products are Gain, Arm & Hammer, Fresh Start and Dash Bright.
    - Do not use solid or liquid bleaches.
    - Avoid the use of liquid fabric softeners.
    - Run wash loads on multiple days rather than all on a single day.

- Do not use septic system additives, such as Ridix, which are intended for use in basic septic systems (settling tanks). In the case of an IWS, like the CBT Unit, these products do more harm than good.

Power Failures

The CBT Unit for a facility at the Business Park is to be sized to handle the anticipated activity on the site as part of the DOH application. The provision for peak loads provides sufficient capacity to accommodate short-term power failures. During a power outage, it is suggested that owners and tenants take steps to minimize the generation of wastewater, including deferring activities involving washing, cleaning and food preparation. To reduce the use of restroom facilities, consideration should be given to dismissing a portion of the work force and using only essential personnel until power is restored.

Once power is restored, the system reboots itself automatically. The National Sanitary Foundation Standard 40 Performance Evaluation on the CBT Unit includes a simulated power failure as one of the four stress tests required by the testing protocol. The results indicated that the system recovers quickly from a short-term power failure.

G. Inspection, Maintenance and Testing

Day-to-day operation, regular inspection and routine maintenance of the CBT Unit shall be performed in accordance with the provisions of HAR 11-62 and the International Wastewater Technologies Manual provided to owners at the time the CBT Unit is installed. Once installation has been completed, all work on the CBT Unit shall be performed by a wastewater professional ("Service Provider") approved by WHBP and IWT.

Participation in the Wastewater Treatment System Program requires that owners authorized to utilize a CBT Unit enter into a contract ("Service Contract") with a Service Provider to assure that regular inspection and maintenance service is performed and that the required reports and certifications are provided to the DOH. A sample of the Service Contract is attached for reference in Appendix 4. An executed Service Contract shall be included in the package submitted to DOH for review and approval under Chapter 62, HAR.

Standard Inspection and Maintenance

Frequency: To assure optimal performance of the CBT Unit, regular maintenance activities shall be performed as required by the International Wastewater Technologies Manual, or if more frequent, as stipulated by DOH.

Service logs shall be maintained by the Service Provider and made available to DOH upon request. All certifications regarding servicing and maintenance of the CBT Unit shall be filed by the Service Provider in accordance with the requirements of Chapter 62, HAR.

Performance Indicators: The Service Provider shall track the performance of the CBT Unit by monitoring the following indicators and recording the readings on the appropriate Service Logs:

- Dissolved Oxygen (DO)
- Acidity/Alkalinity (pH)
- Temperature
- Accumulation of Solids (Sludge)

As required by the DOH, the Service Provider shall collect samples to test for:

- Biological Oxygen Demand (BOD)
- Total Suspended Solids (TSS)

Testing for BOD and TSS shall be performed by an independent lab. The Service Provider shall properly store the collected samples and arrange transportation to an authorized testing facility. Appropriate chain-of-custody protocols shall be followed to insure the integrity of the collected samples.

Sludge Removal: The aerobic and anoxic conditions in the treatment cycles of the CBT Unit leads to an eventual build-up of sludge within the tank. The level of sludge build-up shall be monitored monthly, with the results of each settling test recorded on a cumulative basis on the settling chart.

In accordance with the Sludge Removal Plan included as part of the application package submitted to the DOH, the Service Provider shall periodically arrange for removal of the accumulated sludge from the tank to maintain optimal treatment system performance. The Service Provider shall use pumping and hauling operators (collectively “pumpers”) registered with the DOH. Records as to sludge removal and disposal required by the DOH shall be maintained by the pumpers contracted by the Service Provider.

Repairs: A record shall be kept of all repairs made to the CBT Unit, including replacement of components. Repair records shall be maintained by the Service Provider and made available to DOH upon request.

<u>Special Sampling for Nutrient Testing</u>

In order to assure that the required levels of nutrient reduction are achieved, special tests must be periodically conducted on samples of the untreated influent (raw sewage) entering the treatment system and the treated effluent pumped from the CBT Unit for disposal in the leach field. Pursuant to the D&O, tests to assure that an 80% reduction in Total Nitrogen and a 90% reduction in Total Phosphorus are attained in the treatment system, samples must be collected in accordance with the following protocols

Frequency: During the initial year after start-up of a newly installed CBT Unit, special sampling for nutrient testing shall be done every three months until the required reductions in Total Nitrogen and Total Phosphorus are attained. Thereafter, special sampling shall be performed on a semi-annual basis.

Sampling Boxes: In order to collect samples that are more representative of the composition of the untreated influent and the treated effluent, special sampling boxes shall be incorporated in to the design of all CBT Units installed at the Business Park. The sampling boxes are designed to permit representative samples to be accumulated for collection.

Test Kits: When sampling is scheduled to be conducted, the Service Provider shall order Test Kits from a lab qualified and equipped to test for concentrations of Total Nitrogen and Total Phosphorus, such as:

Hawaii Food and Water Testing
2688 Kilihau Street, #B
Honolulu, Hawaii 96819
Phone: (808) 836-5558

The Test Kit should include an ice pack, sample bottles and a Chain-of-Custody form packed in a cooler (to be used for shipment of the collected samples to the lab). The Test Kit(s) should be shipped by the Service Provider.

Sample Collection and Shipment:

The Service Provider shall comply with the following steps (as recommended by the testing lab):

1. Freeze the ice pack provided in the cooler upon receipt of the Test Kit.
2. When taking a sample, carefully fill the 1-Liter bottle with the fluid sample without splashing or overflowing. Note: There is a small amount of solution already in the sample

bottle that must not be touched or removed. This chemical stabilizes the sample that is taken.
3. Promptly seal the bottle and keep the sample chilled in the cooler.
4. Complete the Chain-of-Custody form and fill in the label for each of the sample bottles.
5. Transport the labeled sample bottles, frozen ice pack and Chain-of-Custody form to the testing lab.
6. The Service Provider shall arrange for shipment.
7. If the sample is shipped to an off island testing lab, the Service provider shall instruct air freight service that the cooler must be kept refrigerated – they will apply a "CHILL" sticker to the cooler. This will ensure that the cooler will be kept property refrigerated, particularly where it must be shipped overnight.
8. The Service Provider shall also call the lab to confirm that a cooler or coolers have been received. This provides a double check to ensure pick-up of the shipment by the lab.

Testing Fees

The Service Provider shall arrange for the special nutrient testing and pay the fees and charges from the lab to ensure timely testing of the samples. However, the ability of an owner to use the CBT Unit and occupy a lot in the Business Park in advance of a connection to the Kealakehe WWTP is predicated on the special nutrient testing. Accordingly, the fees and charges are ultimately the owner's obligation.

Test Results

The lab will only release test results to the party that pays the applicable fees and charges. Accordingly, the Service Provider shall provide copies of the test results to the owner, with additional copies to:

National Park Service
Kaloko-Honokohau National Historical Park
73-4786 Kanalani Street, Suite 14
Kailua-Kona, Hawaii 96740

West Hawaii Business Park, LLC
P.O. Box 9032
Kailua-Kona, Hawaii 96745

APPENDIX 1

R-721 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 17, 2004 08:02 AM
Doc No(s) 2004-032728

/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

24 1/1 Z3

LAND COURT | REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ( )

R. BEN TSUKAZAKI
TSUKAZAKI YEH & MOORE
85 WEST LANIKAULA STREET
HILO, HAWAII 96720

(Total Document Pages = 24)

Affects TMK: (3) 7-4-8:13 (portion) and 30

CERTIFICATE OF CONDITIONS

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, LANIHAU PROPERTIES, LLC (hereinafter "Petitioner"), a Hawaii limited liability company, fka LANIHAU PARTNERS, L.P., was the petitioner in State Land Use Commission (hereinafter "Commission") Docket No. A00-730, for the reclassification of approximately 336.984 acres of certain parcels of land situated at Honokohau, North Kona, Island of Hawaii, State of Hawaii, more particularly identified as Hawaii Tax Map Key No. (3) 7-4-8:13 (por.) and 30 (hereinafter "Petition Area"), and does hereby state and declare that the Commission, by its Findings of Fact, Conclusions of Law, and Decision and Order dated

September 26, 2003 (hereinafter "Decision and Order"), reclassified approximately 336.984 acres of the Petition Area under Docket No. A00-730, into the State Urban Land Use District, and more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, by its Decision and Order dated and entered on September 26, 2003, the Commission subjected its reclassification and redistricting of the Property to certain conditions (the "Conditions"), as more fully set forth on pages 80 through 96 of said Decision and Order; and

WHEREAS, pursuant to Section 205-4(g) of the Hawaii Revised Statutes, as amended, and §15-15-92 of the Rules and Regulations of the Land Use Commission, the Conditions are required to be recorded in the Bureau of Conveyances of the State of Hawaii as covenants running with the land; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, the reclassification and redistricting of the Property is made subject to the Conditions which are more fully set forth at pages 80 through 96 of said Decision and Order and which Conditions in their entirety are as shown on Exhibit "B" attached hereto and made a part hereof.

That the Conditions shall be binding upon Petitioner and each and every subsequent owner, lessee, sublessee, transferee, grantee, assignee or developer pursuant to §15-15-91, Hawaii Administrative Rules, and shall be covenants running with the Property as long as said reclassification and redistricting endures or until the Conditions have been fully satisfied and/or

terminated, modified or waived by the Commission as to all or any portion of the Property.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conditions this 26th day of January, 2004.

LANIHAU PROPERTIES, LLC,
a Hawaii Limited Liability Company

By _____
JAMES S. GREENWELL
Its President

"Petitioner"

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 26th day of January, 2004, before me personally appeared **JAMES S. GREENWELL**, to me known (or who has proven to me on the basis of satisfactory evidence) to be the person(s) described in and who executed the foregoing ***CERTIFICATE OF CONDITIONS***, who, being by me duly sworn, did say that he is the President of LANIHAU PROPERTIES, LLC, a Hawaii corporation, that the foregoing instrument was signed in the name of and on behalf of said LANIHAU PROPERTIES, LLC, and who acknowledged that he executed the same as his free act and as the free act and deed of said LANIHAU PROPERTIES, LLC.

L.S.

[Seal]

Shirley J. Miller
(Notary's signature)

Shirley J. Miller
(Type/Print clearly notary's name)
Notary Public, State of Hawaii

My commission expires: 4/21/2006

CONSERVATION

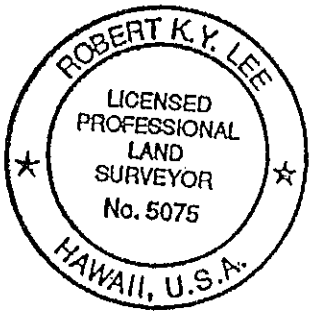
PORTION OF LOT A-1
BEING PORTION OF ROYAL PATENT 7587
LAND COMMISSION AWARD 11216, APANA 36 TO M. KEKAUONOHI

AND ALL OF PARCEL VIII
BEING PORTION OF ROYAL PATENT 6855
LAND COMMISSION AWARD 9971, APANA 9 TO W. P. LELEIOHOKU

At Honokohau 1st and 2nd, North Kona, Island of Hawaii, Hawaii

Beginning at the Northwest corner of this parcel of land, situated on the Easterly side of QUEEN KAAHUMANU HIGHWAY (Proj. No. BD-65-352), the coordinates of said point of beginning, referred to Hawaii State Plane Coordinate System, Zone 1, being 310,073.85 feet North and 320,034.85 feet East, and thence running by coordinates measured clockwise from True South:

1.	259°01'40"	2,683.91 feet along Kaloko Light Industrial Subdivision, Unit I (FILE PLAN 1806) and the Lands of Kaloko, being L.P. 8214, L.C. Aw. 7715, Ap. 11 to L. Kamehameha;
2.	260°55'30"	1,187.55 feet along the Lands of Kaloko, being L.P. 8214, L.C. Aw. 7715, Ap. 11 to L. Kamehameha;
3.	331°21'31.5"	3,433.20 feet along the remainder of Lot A-1, being portion of R.P. 7587, L.C. Aw. 11216, Ap. 36 to M. Kekauonohi;
4.	78°15'10"	3,429.84 feet along Lot 7A, being a remainder of R.P. 6855, L.C. Aw. 9971, Ap. 9 to W.P. Leleiohoku (Certificate of Boundaries No. 27);
5.	328°10'	459.24 feet along the same;
6.	78°15'30"	871.25 feet along Parcel IX, being a remainder of R.P. 6855, L.C. Aw. 9971, Ap. 9 to W.P. Leleiohoku (Certificate of Boundaries No. 27);
7.	148°10'	672.95 feet along the Easterly side of QUEEN KAAHUMANU HIGHWAY (Proj. No. BD-65-352);
8.		Thence along the same, on a curve to the right with a radius of 5,904.00 feet, the chord azimuth and distance being: 158°04'45" 2,32.68 feet;
9.	167°59'30"	1,175.19 feet along the same, to the point of being and containing an area of 336.984 Acres.



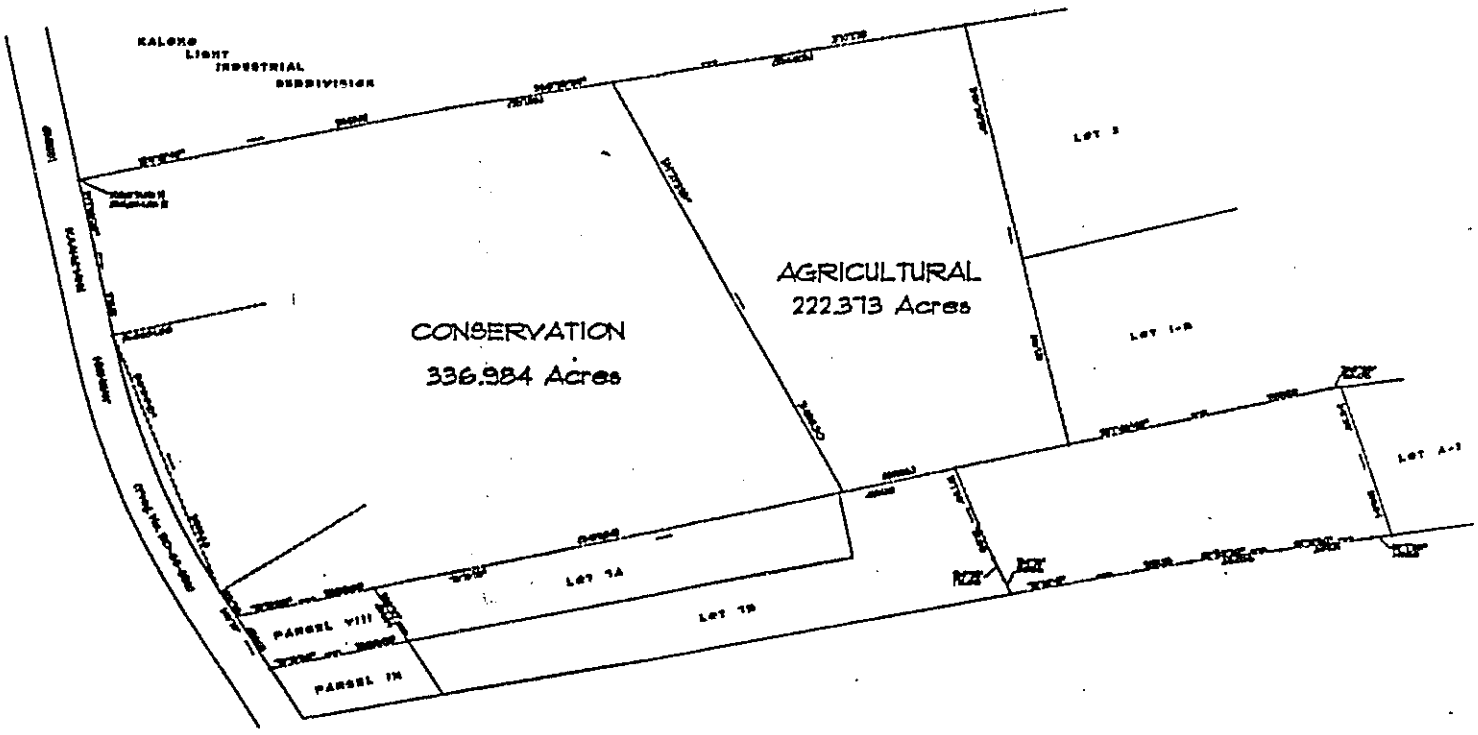
R.M. TOWILL CORPORATION

Description Prepared by:

Robert K.Y. Lee

Robert K.Y. Lee
Licensed Professional Surveyor
Certificate Number 5075

73-5574 Maiau Street, #11B
Kailua-Kona, Hawaii 96740
March 1, 2000



LAND USE DISTRICT
BOUNDARY INTERPRETATION OF
LOT A-1, BEING PORTION OF R.P. 7587,
L.C. Aw. 11216, Ap. 36 To M. KEKAUONOHI
AND PARCEL VIII, BEING PORTION OF R.P. 6855,
L.C. Aw. 9971, Ap. 9 To P. LELEIOHOKU

At Honokahau 1st and 2nd, North Kona, Island of Hawaii, Hawaii
Tax Map Key: (3) 7-4-08:13 and 30
Owners: Lanihau Partners L.P.
3465 Waialae Ave, Suite 260
Honolulu, Hawaii 96816

6. The endangered, endemic birds and the threatened and endangered sea turtles within the Park are valued and important natural resources.

7. The aforesaid native Hawaiian rights and natural and cultural resources would be damaged or destroyed by the pollution of groundwater that reaches the Park from surrounding areas, including Petitioner's Project on the Petition Area. Appropriate mitigation measures are, therefore, required under the Hawai`i Constitution and the Commission's decision-making criteria in order to approve reclassification of the Petition Area.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property being the subject of Docket No. A00-730, filed by Petitioner, Lanihau Properties, LLC, consisting of approximately 336.984 acres of land in the State Land Use Conservation District at Honokohau, North Kona, Island of Hawai'i, County of Hawai'i, State of Hawai'i, identified as Tax Map Key No. 7-4-8: 13 (por.) and 30, is hereby reclassified into the State Land Use Urban District, and the State land use district boundaries are amended accordingly, subject to the conditions of approval set forth herein.

This Commission is acutely aware that continuous development is planned for this coastline. Although each developer might claim that only a "small amount" of pollution will result from their development and that the area's ecosystem will show "little" effects, these developments and their impacts are cumulative and, absent strong mitigation measures, have the potential to devastate the fragile resources of the coastal and marine aquatic environments of the entire Kona coastal region.

Absent adequate, effective and enforceable conditions of approval, including removal of wastewater nutrients and surface runoff contaminants, Petitioner's Project has the

potential to cause unacceptable adverse impacts to coastal resources, particularly the natural and cultural resources of the adjacent Park and the traditional and customary native Hawaiian practices that depend on the sensitive nature of such resources.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the customary and traditional native Hawaiian practices, the cultural resources, and the important natural systems and habitats of the Park that have been identified herein shall be adequately protected by the conditions of this decision and order.

To protect the exercise of customary and traditional native practices; to protect the historical and cultural resources of the coastal area including KAHO; to ensure the health and preservation of the natural systems and habitats of KAHO, including the endangered, threatened, and endemic species and their habitat, the reclassification of the Property shall be subject to the following conditions:

Wastewater

1a. The Petition Area shall be developed with dry sewer lines for eventual connection to the Kealakehe WWTP.

1b. The Petition Area shall be required to connect to the WWTP, when such connection is available. The Petitioner, its successors, and assigns, shall collaborate with the County of Hawai'i to include the Petition Area within an improvement district, if one is developed, to fund the connection to the WWTP. The Petitioner or individual lot owners within the Petition Area shall pay for their fair share of the cost to fund such connection to the WWTP, whether or not an improvement district is established.

1c. Except for the existing quarry operations and the construction of the roads and utilities as provided for below, the Petitioner and/or any future owners(s) of the Petition Area

shall refrain from constructing upon or occupying any portion of the Petition Area until such time as the portion (e.g., lot) to be constructed upon or occupied is connected to the WWTP, unless in the interim, the portion to be constructed upon or occupied has installed a septic tank system or other Individual Wastewater System (IWS) designed to remove no less than 60% Total Nitrogen from the treatment system (e.g., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology) and an absorption field of import material which is constructed in a manner to achieve no less than 80% reduction of nitrogen and 90% reduction in phosphorous; featuring adequate percolation rate. The existing quarry operation shall have in place an IWS as described above within one year of the date of issuance of boundary reclassification. Installation is subject to conditions of approval imposed by the Director of the Hawai'i State Department of Health and Hawai'i Administrative Rules (HAR) Title 11 Chapter 62. When connection to the WWTP becomes available, all portions of the Petition Area, including all individual lots therein, shall connect to the WWTP, whether or not an interim wastewater treatment system has been installed.

1d. Utilization of the IWS described above in Condition lc shall be limited to no more than 40 lots to be developed in the Petition Area.

1e. The owner of the IWS shall certify with the Hawai'i State Department of Health that the IWS shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to HAR 11-62. The certification shall include that upon the sale or transfer of ownership of the IWS, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

1f. Petitioner and/or each individual lot owner(s) shall develop and participate in a Wastewater Treatment System Maintenance Agreement, before constructing upon or

occupying any portion of the Petition Area, that shall provide for safe and effective operation and maintenance of the treatment unit(s), whether shared or individual, and/or the temporary sewage line. The Maintenance Agreement shall require a contract with a wastewater professional to regularly inspect, maintain and certify that the IWS unit(s) installed in the Petition Area are operating correctly. Necessary repairs shall be performed promptly and record of repairs shall be kept. This requirement shall be included in the conditions of sale of any lot and/or parcel in the Petition Area.

1g. Should the NPS elect to pursue installation of a temporary sewage line to the WWTP for the KAHO Visitor Center construction project, the Petitioner may elect, subject to prior authorization by the NPS, to dispose of wastewater from not more than 20 lots in the Petition Area, via such temporary line to the WWTP. In no event shall the temporary sewage connection be in place and utilized for longer than five (5) years from the date of completion of construction of such temporary line except at the sole discretion of the NPS. The Petitioner shall pay its fair share cost to fund such temporary connection to the WWTP, as determined by the NPS, the Petitioner and the County of Hawai'i. When connection to the WWTP becomes available through permanent sewer lines, all portions of the Petition Area, including all individual lots that may have been connected to the above described temporary sewage line, shall connect to the WWTP through permanent lines, whether or not one or more lots were connected via the temporary sewage line. Connection of not more than twenty (20) lots to the WWTP via such temporary sewage line does not release any other individual lots within the Petition Area from compliance with any other condition(s) of this decision and order.

Storm water and Surface Water Run-off

2a. To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all runoff entering the ground shall be first treated to

remove all industrial waste so that no industrial pollutants will reach KAHO or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Petition Area and each lot into which the Petition Area may be subdivided, to contain spills and prevent materials associated with industrial uses attributable to the operations of the Property, including petroleum products, chemicals, or other pollutants from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants shall be subject to the approval of the DOH, upon consultation with the NPS, and the County of Hawai'i. The Petitioner and/or tenant shall obtain all required permits and construct required improvements for storm water discharge on and from the Property. These conditions shall include the following:

2b. Prior to the occupancy of any part of the Petition Area, the Petitioner shall engineer, construct (or require to be constructed) and maintain surface water/storm water containment systems that ensure no Federal, State, or County water quality standards will be violated. The foregoing is not applicable to uses permissible under the existing quarry permit.

2c. No injection well shall be constructed as an element of a surface water/storm water containment system in the Petition Area unless, prior to the start of any construction, appropriate requirements of HAR Chapter 11-23 are satisfied and the Hawai'i State Department of Health issues an UIC (Underground Injection Control) permit. Contaminants shall be monitored and removed with best efforts prior to entering injection wells. Monitoring protocols for injection wells shall be established in the Pollution Prevention Plan, pursuant to Condition 3b. All monitoring records shall be maintained and made available to the DOH, the County and the NPS, upon request.

2d. If a large void, such as a lava tube or solution cavity, is encountered during drilling, where the drill rod drops more than three feet, measures shall be taken to prevent migration of the injected fluids to KAHO to the satisfaction of the Hawai'i State Department of

Health as described in HAR §11-23-09(f).

2e. All injection wells established in the Petition Area shall be operated in such a manner that they do not violate any of the DOH's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and chapters 342-B, 342-D, 342-F, 342-H, 342-J, 342-L, and 342-N, HRS. Relevant HAR include but, are not limited to: i. Chapter 11-20, "Rules Relating to Potable Water Systems"; ii. Chapter 11-62, "Wastewater Systems"; and iii. Chapter 11-55, "Water Pollution Control".

2f. The operator of any injection well or wells in the Petition Area shall keep detailed records of the operation of the well or wells, including, but not limited to, the type and quantity of injected fluids, and the method and rate of injection for each well. Such records will be available for inspection or review by the Hawai'i State Department of Health as specified under appropriate sections of HAR Chapter 11-28.

2g. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of HRS and HAR as they relate to (but are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

2h. The Petitioner, successors and/or individual lot owners in the Petition Area shall ensure that all drainage injection wells or subsurface drainage structures are designed with an appropriate size debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin shall be periodically inspected and cleaned accordingly. Oil/water separators shall be utilized where petroleum products are used.

2i. The Petitioner shall establish an owners' association with the power to oversee and report violations as a second line of defense against pollution violations.

Pollution Prevention

3a. Petitioner currently operates a quarry in a portion of the Petition Area. Any further public or private industrial development within the Petition Area which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

3b. Except for the existing quarry operation and the construction of roads and utilities, before constructing upon or occupying any portion of the Petition Area, a Pollution Prevention Plan (PPP), after consultation with the NPS, shall be developed that addresses each of the types of uses permissible in the Petition Area, by specifically designating Best Management Practices (BMPs) tailored to each specific use. Emphasis shall be given to structural BMPs to prevent any and all pollutants that may be associated with such industries from being released into the environment, including reaching the groundwater. Structural BMPs shall include, but shall not be limited to, oil/water separators, detention ponds, lined containment pits, and storm water filtration units designed to contain and remove industrial contamination. The PPP shall include but not be limited to: i. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc. shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors if necessary, shall pass through a separator sump before being discharged. The PPP may identify exceptions to this rule under specific circumstances, provided that

adequate alternative BMPs (structural or otherwise) are identified and utilized for containment. ii. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed along with the local fire code.) iii. All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial spill onto the bare ground. In the event that the Petitioner and the NPS cannot agree upon a mutually acceptable final PPP within 12 months of the date of issuance of the boundary reclassification, the Commission shall review the draft PPP, along with written comments from Petitioner, the NPS and the other parties, and shall issue a final PPP. In no event shall the Petitioner and/or individual lot owner(s) construct upon or occupy any portion of the Petition Area until such time as the final PPP is complete. The final PPP shall be recorded and shall run with the land within the Petition Area in the same manner as all conditions of approval imposed by the Commission. In the event that a specific use is proposed for the Petition Area that is not specifically addressed in the final PPP, the Petitioner and/or the individual lot owner(s) proposing such use shall consult with the NPS to establish a set of BMPs appropriate for such proposed use and consistent with the goal of preventing any and all pollutants from being released into the environment.

3c. The Petitioner, its successors or individual lot owners shall provide signage for all drainage/injection wells in the Petition Area with warnings such as the following: DUMP NO WASTES. GOES TO GROUNDWATER AND OCEAN. HELP PROTECT

HAWAI'I'S ENVIRONMENT. Signage shall be either stand-up (legible from at least 30 feet, permanently posted at an effective and safe height) or painted on the ground next to the drainage well's inlet.

3d. For parking areas, BMPs will be established as covenants running with the land, which emphasize pollution prevention rather than treatment. All large vehicles such as buses, trucks or construction equipment shall utilize drip pans to avoid release of petroleum onto paved or graveled surfaces or, in the alternative, all parking areas for large vehicles shall include grassed or vegetative swales to capture drainage from such parking areas. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid build up of oil or other automotive fluids. Protocol for cleaning parking areas shall be established in the Pollution Prevention Plan, pursuant to Condition 3b. Maintenance work other than emergency work on vehicles will be banned in parking areas.

3e. Where site geometry permits, the Petitioner, its successors or individual lot owners shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales to capture storm water drainage from all perimeter lots, facilities, and parking areas of the Petition Area. For all vegetative swales, Petitioner and/or individual lot owners may apply only the minimum required nutrients (fertilizer) to maintain the vegetation without causing significant nutrient runoff, and the water used for irrigation purposes shall not exceed the amount necessary to maintain the vegetation.

3f. Owner or operator covenants developed for the Petition Area shall expressly disclose to all future individual lot owner(s) the existence of the National Park System Resource Protection Act, 16 U.S.C. Sections 19jj-19jj-4, and the consequences of violation of such act. In particular, future land owners shall be made aware that any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response

costs and damages resulting from such destruction, loss or injury.

3g. In performing the requirements of this Condition 3, the Petitioner shall consider and, to the extent practical, incorporate the information and ideas brought forth in the regional (Kaloko-Honokohau) pollution prevention forum convened by the Commission on November 4, 2002. The information and ideas at the forum included: pollution prevention planning; best available control technologies (BACT); structural and operation BMPs addressed to the type of uses permissible in an industrial park, and formulas for determining fair share and reasonable pro-rata share costs relating to any groundwater monitoring program.

Groundwater Quality Monitoring

4. The Petitioner shall contribute its fair and reasonable pro-rata share of costs relating to a groundwater monitoring program of USGS Wells 4161-01, 4161-02 and 4061-01, Aimakapa Pond, Kaloko Pond and two (2) other anchialine ponds of KAHO as identified by the NPS. Monitoring would continue once every six months for 10 years from initial occupancy, or until such time as sewer lines and hookup to the WWTP is implemented provided further that if conditions of approval in Docket Nos. A89-643 and A00-732 are amended to require a longer monitoring period or the Petitioners in those dockets otherwise agree to a longer monitoring period, the Petitioner shall be required to participate in the monitoring program for the extended period. Constituents to be monitored shall be of a full suite of nutrients (including nitrogen and phosphate), contaminants (including metals, phenolic compounds, pesticides and pesticide breakdown products, chlorinated solvents, BTEX compounds, selected pharmaceutical endocrine disruptive compounds, such as ethinyl estradiol, and nonylphenol), and standard water quality parameters (including pH, temperature, dissolved oxygenates, and salinity). The fair and reasonable pro-rata share of costs will be determined by the Commission and in conjunction with the findings generated at the regional pollution prevention forum discussed above.

Prohibited Uses

5. The Petitioner, its successors and assigns are prohibited from engaging in or allowing the following uses in the Petition Area: heliports, bulk storage of flammable and/or explosive materials (tank farms), landfills for dumping or disposal of refuse or waste matter (except for green waste/composting facilities), fertilizer manufacturing plants, junkyards, public dumps, saw mills, refining of petroleum products, slaughterhouses, commercial pesticide and/or extermination facilities, and power plants.

Transportation

6a. With respect to the Petition Area, the Petitioner shall contribute its fair share and reasonable pro-rata funding and construction of regional transportation improvements and programs to the satisfaction of the State Department of Transportation.

6b. The Petitioner shall participate and collaborate with the County of Hawai'i Department of Public Works and other affected agencies in the development of county feeder streets within the Petition Area.

6c. Petitioner shall participate in the fair and reasonable pro-rata funding and construction of any such roadways from its northern boundary to the southern boundary in accordance with the roadway requirements of the County of Hawai'i.

6d. The Petitioner shall participate and collaborate in a regional transportation planning committee to be established by the County of Hawai'i. Participants in this regional transportation planning committee shall include, but not be limited to, representatives from the State Department of Transportation, County of Hawai'i Planning Department and individuals or entities with a property or development interest within the region.

Financial Contribution Plan

7. The Petitioner shall coordinate with affected State or County agencies the development of a financial plan for satisfying any financial contributions or requirements associated with this Project. All such plans may provide for an annual fair share incremental payment to the affected agency by the Petitioner out of the development revenues or otherwise. The affected State or County agency may establish a dedicated escrow account for the deposit and utilization of the financial contribution from Petitioner to facilitate this plan.

Affordable Housing

8. The Petitioner shall submit a housing needs assessment and implementation plan to the Commission and appropriate County housing agency for their review and approval within six months of the issuance of this decision and order and comply with the County of Hawai'i affordable housing policy. The housing needs assessment shall be based on an analysis of the jobs generated by the Project, the projected number of qualified households which may be entitled to housing assistance as specified by the County of Hawai'i, the number and availability of affordable housing units and rentals in the West Hawai'i area (both planned and built), the projected number of employees from the development who might be expected to commute from East Hawai'i, the number of owner occupants (within the Petition Area) who reside in the West Hawai'i area and the number of employees who might already reside in the West Hawai'i area.

Archaeological/Historical Sites

9a. The Petitioner shall prepare a mitigation and preservation plan for review and approval by the Department of Land and Natural Resources State Historic Preservation Division, prior to any land alteration activity in the vicinity of the sites. The preservation plan

shall include the following eight (8) sites recommended for preservation in the Archaeological Inventory Survey: 02; 18081; 18088; 18099; 18116; 18117; 18134; and 18197.

9b. The Petitioner shall coordinate with the State Historic Preservation Division regarding burial treatment plans for all of the burial sites (5 identified within sites 18088, 18116, 18117, 18134, and 18197). Petitioner shall also comply with all applicable statutory provisions and administrative rules regarding inadvertent burial finds within the Property.

9c. The Petitioner shall incorporate, where possible, portions of one *mauka-makai ahupua'a* trail (site 18099) and portions of the Mamalahoa Trail (02) into the site/project plans for the Project. Additionally, the petroglyph concentrations (site 180181) located immediately east of the Mamalahoa Trail (site 02) will also be preserved.9d. Should any previously unidentified burial, archaeological or historical sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, the Petitioner, developer(s) and/or landowners of the affected properties shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to its satisfaction.

Landscaping

10a. In consultation with the NPS, Petitioner shall develop a landscaping plan for the Petition Area that must be followed by each subsequent lot owner/tenant. Fisherman knowledgeable of traditional reference points used in locating fishing grounds, and the NPS shall

be consulted on the development of building and landscape design guidelines prior to construction to maintain these reference points. In particular, landscaping and other visual design elements at the South Access Road intersection will be designed to render a harmonious connection between the Petition Area and the Park.

10b. Petitioner, where feasible, shall use indigenous and water conserving plants and incorporate the same into common area landscape planting.

10c. The Amy B.H. Greenwell Botanical Garden, KAHO and other interested parties and educational institutions shall be afforded the opportunity to gather seeds and cuttings of native plants on the Property that cannot be rescued or incorporated into the project's landscaping plan.

10d. The Petitioner shall provide buffer fences/buffer strips, with a minimum width of 30 feet, to protect the existing Bidens Micrantha population in or adjacent to the northeast corner of the Petition Area as identified in the Char & Associates survey dated April 2000.

10e. To reduce the potential for interactions between nocturnally flying Dark-rumped petrels with external lights and man-made structures, exterior lighting within the Petition Area will be shielded.

10f. Landscaping and architectural design criteria shall be developed and implemented to reduce visual impacts of the Project, preserve a feeling of open-space and avoid the look of an industrial corridor. Architectural design criteria shall include limitations and restrictions on building profiles, height and design, exterior color and surface treatment, and exterior lighting and sign standards.

10g. A minimum fifty (50) foot landscaping buffer shall be established along Queen Ka`ahumanu Highway.

10h. The Petitioner shall map the location of the existing Bidens Micrantha located near the northeast corner of the Petition Area when the Petition Area's boundaries are surveyed. A copy of the map shall be provided to DLNR prior to commencement of construction of the Project but, in any event, within one year after the effective date of the issuance of this order.

Soil Erosion and Dust Control

11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the Hawai'i State Department of Health.

Civil Defense

12. Petitioner, developers and/or landowners of the Property shall add a solar powered siren with 115 Dbc omni directional speaker array, and insure that the siren be installed in a central location funded and constructed according to adequate civil defense measures as determined by the County of Hawai'i and State Civil Defense agencies.

Solid Waste

13. The Petitioner shall produce a Solid Waste Management Plan, coordinated and approved by the County of Hawai'i, Department of Environmental Management Solid Waste Division, to divert construction waste and operational waste for alternative uses rather than sending all refuse products to the County's landfills. The plan shall address and encourage an awareness of the need to divert the maximum amount of waste material caused by developments away from the County's landfills.

Standard Conditions

14. Petitioner shall develop the Petition Area in full compliance with all material representations made by the Petitioner to the Commission. Failure to do so for any reason including but not limited to economic feasibility, may result in the imposition of fines as provided by law for each and every separate violation, reversion of the Petition Area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification or a change to a more appropriate classification and/or any legal remedies, including but not limited to suit for actual and punitive damages under Federal or State law or suit for injunctive relief that requires the Petitioner to restore the Petition Area to its former condition.

15. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to or during development of the Petition Area.

16. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawai'i Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

17. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

18. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a

statement that the Petition Area is subject to conditions imposed by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file such copy of such recorded statement with the Commission. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawai'i Administrative rules. All such conditions shall run with the land.

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE JAN 28, 2010 10:00 AM
DOCUMENT NO. Doc 2010-012585

LAND COURT SYSTEM | REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK UP (X)

BENJAMIN M. MATSUBARA, ESQ.
Matsubara - Kotake
888 Mililani Street, Eighth Floor
Honolulu, Hawai`i 96813
Telephone: (808) 526-9566

Affects TMK Nos.: (3) 7-4-8:13, 30, 74, and 76 to 79

TITLE OF DOCUMENT: AMENDED CERTIFICATE OF CONDITIONS

Total Pages: 7

AMENDED CERTIFICATE OF CONDITIONS

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, WEST HAWAII BUSINESS PARK, LLC, successor to LANIHAU PROPERTIES, LLC, a Hawai`i limited liability company, (hereinafter "Petitioner"), was the Petitioner in State Land Use Commission (hereinafter "Commission") Docket No. A00-730, for the reclassification of approximately 336.984 acres of land situated at Honokohau 1st, North Kona, Island and County of Hawai`i,

State Of Hawai`i, then identified by Tax Map Key Nos. (3) 7-4-8:13 (por.) and 30 (hereinafter "Petition Area")[1], and it does hereby state and declare that the Commission, by its Findings Of Fact, Conclusions Of Law, And Decision And Order dated September 26, 2003 (hereinafter "Decision And Order"), reclassified approximately 336.984 acres of the Petition Area under Docket No. A00-730, into the State Urban Land Use District, and more particularly described in Exhibit "A", a copy of which was recorded on February 17, 2004 in the Bureau of Conveyances of the State of Hawai`i as Document No. 2004-032728, and does hereby certify pursuant to Section 15-15-92 of the Hawai`i Administrative Rules, as follows:

THAT, pursuant to §205-4(g) of the Hawai`i Revised Statutes and §15-15-92 of the Hawai`i Administrative Rules, the Commission's Decision And Order dated and entered on September 26, 2003, the Commission conditioned its reclassification and redistricting of the property upon certain conditions (hereinafter the "Conditions"), a copy of which was recorded on February 17, 2004 in the Bureau of Conveyances of the State of Hawai`i as Document No. 2004-032728; and

THAT, in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, the reclassification and redistricting of the Property is made subject to the Conditions, and pursuant to the

[1] The Tax Map Nos. for the Petition Area have since been changed, and the current Tax Map Key Nos. for the Petition Area are (3) 7-4-8:13, 30, 74 and 76 to 79.

Order Granting Motion To Amend Conditions And Extend Time For Compliance

entered and effective as of January 31, 2008 shall be subject to the following:

"A motion having been made at a hearing on September 7, 2007, in Kailua-Kona, Hawaii, and the motion having received the affirmative votes required by section 15-15-13, HAR, this Commission hereby GRANTS Petitioner's Motion. The Decision and Order is amended as follows:

1. CONDITION 1c is amended to read as follows:

"1c. Except for the existing quarry operations and the construction of the roads and utilities as provided for below, the Petitioner and / or any future owner(s) of the Petition Area shall refrain from constructing upon or occupying any portion of the Petition Area until such time as the portion (e.g., lot) to be constructed upon or occupied is connected to the WTTP, unless in the interim, the portion to be constructed upon or occupied has installed a septic tank system or other Individual Wastewater System (IWS) designed to remove no less than 80% Total Nitrogen from the treatment system (e.g., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology) and an absorption field of import material which is constructed in a manner to achieve no less than 90% reduction in phosphorous, featuring adequate percolation rate. The existing quarry operation shall have in place an IWS as described above within one year of the date of issuance of boundary reclassification. Installation is subject to conditions of approval dictated by the Director of the Hawaii State Department of Health and Hawaii Administrative Rules (HAR) Title 11 Chapter 62. When connection to the WTTP becomes available, all portions of the Petition Area, including all individual lots therein, shall connect to the WTTP, whether or not an interim wastewater treatment system has been installed."

2. CONDITION 2 is amended by amending 2a to read as follows:

"2a. To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all

runoff entering the ground shall be first treated to remove all industrial waste so that no industrial pollutants will reach KAHO or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Petition Area to contain spills and prevent materials associated with industrial uses attributable to the operations of property, including petroleum products, chemicals, or other pollutants from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants shall be prepared by Petitioner upon consultation with the NPS and the County of Hawai`i. The Petitioner and/or tenant shall obtain all required permits and construct required improvements for storm water discharge on and from the property. These conditions shall include the following:"

3. CONDITION 7 is deleted.

4. The time of compliance with Conditions 1c and 2a, as amended, shall be extended to August 31, 2008.

All other findings of fact, conclusions of law, and condition in the Decision and Order are affirmed and continue in full force and effect."

That the Conditions shall be binding upon Petitioner and each and every subsequent owner, lessee, sublessee, transferee, grantee, assignee or developer pursuant to §15-15-91 of the Hawai`i Administrative Rules, and shall be covenants running with the Property as long as said reclassification and redistricting endures or until the Conditions have been fully satisfied and/or terminated, modified or waived by the Commission as to all or any portion of the Property.

IN WITNESS WHEREOF, the undersigned has executed this Certificate Of Conditions this _____ day of _____, 2009.

WEST HAWAII BUSINESS PARK, LLC
successor to LANIHAU PROPERTIES, LLC,
a Hawai`i limited liability company

By_____
JAMES S. GREENWELL
Its President

By_____
NORMAN S. HOM
Its Vice President

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 22 day of January, 2010, before me personally appeared JAMES S. GREENWELL, to me known, who, being by me duly sworn, did say that: he is the President of WEST HAWAII BUSINESS PARK, LCC, successor to LANIHAU PROPERTIES, LLC, a Hawai`i limited liability company and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

Frances Sakai
Name: Frances Sakai
Notary Public, State of Hawai`i
My Commission Expires: 11/8/2013

STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Amended Certificate Of Conditions
Date of Document: undated # Pages: 7
Date of Notarization: 1/22/2010

Frances Sakai
Notary Public Signature
Print Name: Frances Sakai
Notary Public, State of Hawaii, First Circuit
Notary Commission No. 09-470 (Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 22 day of January, 2010, before me personally appeared NORMAN S. HOM, to me known, who, being by me duly sworn, did say that: he is the Vice President of WEST HAWAII BUSINESS PARK, LCC, successor to LANIHAU PROPERTIES, LLC, a Hawai`i limited liability company and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

Frances Sakai
Name: Frances Sakai
Notary Public, State of Hawai`i
My Commission Expires: 11/8/2013

STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Amended Certificate Of Conditions
Date of Document: undated # Pages: 7
Date of Notarization: 1/22/2010

Frances Sakai
Notary Public Signature
Print Name: Frances Sakai
Notary Public, State of Hawaii, First Circuit
Notary Commission No. 09-470 (Stamp or Seal)

APPENDIX 2

WASTEWATER TREATMENT SYSTEM AGREEMENT

THIS AGREEMENT dated as of _____, 200_ (this "Agreement") is made by **WEST HAWAII BUSINESS PARK LLC,** a Hawaii limited liability company ("Seller"), and _____ ("Buyer").

Background:

Seller has agreed to sell, and Buyer has agreed to purchase, that certain real property identified as Lot _____ (the "Lot") in the "West Hawaii Business Park" Subdivision (the "Project").

The Project is a portion of the approximately 336.984 acres of land (the "Petition Area") that was reclassified by the State Land Use Commission from the Conservation District to the Urban District under Docket No. A00-730.

One of the requirements of the State Land Use Commission is that no improvements be constructed on the Lot until the Lot is connected to the Kealakehe Wastewater Treatment Plant unless an approved Individual Wastewater System is installed in the interim.

This Agreement pertains to the Buyer's responsibilities and obligations with respect to the installation and operation of an approved Individual Wastewater System on the Lot.

Agreement:

The parties mutually agree as follows:

1. **Acknowledgment of Receipt**. By executing this Agreement, Buyer acknowledges receipt of the **Wastewater Treatment System Program** manual (the **Manual")** which is attached hereto as Exhibit A.

2. **Buyer's Agreement**. Buyer hereby agrees for the benefit of Seller and its successors and assigns that Buyer will observe and perform the conditions and requirements set forth in the Manual for the installation, operation and maintenance of an approved Individual Wastewater System on the Lot before constructing any improvements on the Lot or occupying the Lot.

3. **Seller's Remedies**. If Buyer fails to comply with its agreement hereunder, Seller shall have the benefit of all remedies at law or in equity, including revocation of Buyer's authorization to utilize an approved Individual Wastewater System for wastewater treatment on the Lot prior to the completion of the permanent sewer connection of the Lot to the Kealakehe Wastewater Treatment Plant, and Buyer shall pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the enforcement of this Agreement.

4. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of Hawaii.

The parties have executed this Agreement as of the date written above.

WEST HAWAII BUSINESS PARK LLC

By_____
Name:
Title:

"Seller"

_____
_____
_____

"Buyer"

ImanageDB:752950.1
ImanageDB:753086.2

APPENDIX 3

DEPARTMENT OF HEALTH - WASTEWATER BRANCH
INDIVIDUAL WASTEWATER SYSTEM (IWS)
APPLICATION INFORMATION SHEET
Please Print or Type

Engineer: _____

Owner: _____

Owner's Mailing Address: _____

_____

Project Location: _____
(Street Address, Subdivision Name and General Area):

_____

Project Tax Map Key (TMK) Number: (____) ____-_____-_____: _____

Lot Size: _____

Projected Flow (gallons per day) or Number of Bedrooms: _____

Proposed Treatment Unit (Manufacturer, Model, Design Capacity):

_____

Proposed Disposal System: _____

Design Percolation Rate: _____ min/in

Existing IWS on lot: NO YES Type: _____

Existing potable drinking water well within 1,000 ft of the proposed disposal system? NO YES

Existing structure on lot: NO YES Type:_____

LCC upgrade? NO YES

FOR DEPARTMENT USE ONLY:

Date Received: _____ Project Engineer: _____ File No. _____

Filing Fee ($100_____ $25_____) Check Date: _____ Check No._____

Notes: _____

 EXHIBIT A

DEPARTMENT OF HEALTH - WASTEWATER BRANCH
INDIVIDUAL WASTEWATER SYSTEM (IWS)
OWNER'S CERTIFICATION FORM

Subject: Individual Wastewater System for _____

Tax Map Key (TMK) Number: (___) ____ - ____ - _____ : _____

Mailing Address: _____

_____

I, _____ , hereby certify that I am the owner (s) of the
(please print name)
subject property and that I have read the following and shall comply with all provisions. Failure to comply with any or all of the provisions can lead to imposition of the penalties and remedies as provided for in Administrative Rule, Title 11, Chapter 62, Section 11-62-42, Penalties and remedies.

1. I certify that as the owner of the Individual Wastewater System (IWS) serving the subject property, the IWS will be inspected, operated and maintained in accordance with the operation and maintenance manual developed by my IWS design engineer section (section 11-62-31.1(e)(2)).

   Furthermore, if an aerobic unit is utilized for wastewater treatment, an active service contract for the proper operation and maintenance shall be maintained at all times (section 11-62-33.1.(b)(3)).

2. I understand and shall comply with the provision of section 11-62-08 (g) which requires that the IWS be constructed by a licensed contractor.

   Furthermore, the licensed contractor information form shall be completed and submitted to the Department prior to final inspection.

3. I understand and shall comply with the provisions of section 11-62-31.(f) which states that the IWS must be inspected and approved of by the Department prior to use.

EXHIBIT B

Furthermore, I shall instruct and require my contractor to leave uncovered for inspection, various parts of the IWS system. These parts include manhole/access openings, distribution boxes, ends of trenches to visually see gravel, pipe and geotextile fabrics used and/or seepage pit openings. I understand that I will be required to re-expose these areas if at the time of inspection they are not visible.

4. I understand and shall comply with the provisions of section 11-62-31.1.(e)(2) which required me to certify upon sale or transfer of the subject property, that the appropriate transfer or sales documents and provisions shall bind the new owners to the operation and maintenance provisions referenced in item 1 above.

5. I understand and shall submit any and all changes made to my IWS plans to the Department (section 11-62-08(b)) for review and approval. Changes to the approved IWS plans that need to be submitted to the Department include but are not limited to the following - changes in location of any component of the wastewater system, changes in the type of products used, changes in the disposal system methods, changes in the dwellings/buildings location or size and changes in the design engineer for the IWS.

Signed: _____ Dated: _____

DEPARTMENT OF HEALTH - WASTEWATER BRANCH
INDIVIDUAL WASTEWATER SYSTEM (IWS) - SITE EVALUATION / PERCOLATION TEST

Date / Time: _____ Test Performed by: _____

Owner: _____ TMK: (____) ____ - ____ - ____ : _____

Elevation: _____ feet
Depth to Groundwater Table: _____ feet below grade
Depth to Bedrock (if observed): _____ feet below grade
Diameter of Hole: _____ inches
Depth to Hole Bottom: _____ feet below grade

Depth, inches below grade	Soil Profile (color, texture, other)
_____	_____
_____	_____
_____	_____

PERCOLATION READINGS:
Time 12 inches of water to seep away: _____ minutes
Time 12 inches of water to seep away: _____ minutes

Check one:

____ Percolation tests in sandy soils, recorded time intervals and water drops at least every 10 minutes for at least 1 hour.

____ Percolation tests in no-sandy soils, presoaked the test hole for at least 4 hours. Recorded time intervals and water drops at least every 10 minutes for 1 hour of time for the first 6 inches to seep away in greater than 30 minutes record time intervals and water drops at lest every 30 minutes for 4 hours or until 2 successive drops do not vary by more than 1/16 inch.

Time Interval	Drop in Inches	Time Interval	Drop in Inches
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Percolation Rate (time/final water level drop): _____ minutes/inches

As the engineer responsible for gathering and providing site information and percolation test results, I attest to the fact that above site information is accurate and that the site evaluation was conducted in accordance with the provisions of Chapter 11-62, "Wastewater Systems" and the results were acceptable. I also attest that three feet of suitable soil exist between the bottom of the soil absorption system and the groundwater table or any other limiting layer.

_____ _____
Engineer's Signature/Stamp Date

EXHIBIT C

DEPARTMENT OF HEALTH - WASTEWATER BRANCH
INDIVIDUAL WASTEWATER SYSTEM

FALLING HEAD TEST PROCEDURE

1. Preparing Percolation Test Hole(s)
   1. Dig or bore a hole, four to twelve inches in diameter with vertical walls to the approximate depth of the soil absorption system (bottom of trench or bed).
   2. Scratch the side wall and bottom to remove any smeared soil and remove loose material.
   3. Place one inch of coarse sand or gravel on bottom.

B. Determine Percolation Rate
   1. Place twelve inches of water in hole and determine time to seep away. Record this time on the site evaluation form.
   2. Repeat step B.1. above. Also record this time on the site evaluation form.
   3. If the time of the second test is less than 10 minutes go to Step C, if not skip to Step D.

C. Sandy (granular) Soils
   1. Establish a fixed reference point, add water to six inches above gravel and measure water level drops every ten minutes for 1 hour.
   2. Use a shorter time interval if first six inches seeps away in ten minutes or less.
   3. Refill when necessary, do not exceed six inches of water.
   4. Record time intervals and water drops on site evaluation form.
   5. Use final water level drop interval to calculate percolation rate. (Step E)

D. Other Soils (non-granular, e.g. silt, loams & clays)
   1. Maintain at least twelve inches of water in the hole for at least four hours to presoak soil.
   2. Do not remove water remaining after four hours.
   3. Permit soil to swell at least 12 hours. (Dry clayey soils should be soaked and permitted to swell for longer periods to obtain stabilized percolation rates).
   4. After swelling, remove loose material on top of gravel.
   5. Use fixed referenced point, adjust water level to six inches above gravel and measure water level drop.
   6. If the first six inches of water seeps away in less than 30 minutes, measure water level drops every ten-minutes and run for one hour.
   7. If the first six inches of water takes longer than 20 minutes to seep away, use 30 minute time intervals for four hours or until two successive drops do not vary by more than one-sixteenth inch (stabilized rate).
   8. Refill with water only when necessary, but no adjustment during last three readings except to the limit of the last drop. Do no exceed six inches of water.

E. Use final drop interval to calculate percolation rate and record on site evaluation form:

$$\frac{\text{Time Interval}}{\text{Water Level Drop}} = \text{Percolation Rate}$$

Department of Health - Wastewater Branch
Individual Wastewater System (IWS) - Construction Inspection Report
For Big Island, Hawaii Use Only

Please Print or Type

Inspector's Name: _____ Date of Inspection: ____/____/_____

TMK: (3) ____ - ____ - ____ : _____ IWS File #: _____

Project Name: _____ Address: _____

Subdivision: _____ Area: _____

IWS Contractor : _____ License #: _____

Telephone #: _____ Fax #: _____

Grease Interceptor (If applicable): Make / Model: _____ Size: _____

Septic Tank / Aerobic Unit (circle one): Make / Model: _____ Size: _____

Disposal System:

_____ Trenches / Bed (circle one):
# of Trenches / Bed: _____ Length: _____ Width: _____
Gravel & Lining verified: Yes / No (circle one)
Soil Replacement: Yes / No (circle one)

_____ Seepage Pit:
Diameter: _____ Depth: _____ Pit Lining Type: _____
If not lined, attach justification

House Construction: **Completed / Partial / Staked (circle one)**
Setback Distance between IWS and the Following (shortest distance) are measured and recorded on as-builts. At least three (3) distinct points referenced:

Buildings: _____ Property Line: _____ Stream: _____

Ocean at vegetation line: _____ Wells: _____

Item Verified: **Yes / No / NA**

Manhole / Inspection Ports to Grade . . . . . _____

Existing Cesspool:

Abandoning Large Capacity Cesspool Receiving
Less Than 1000 gallons per day . . . . . _____
(If you answer YES, please submit "LCC Backfilling Completion Report" Form)

Filled and Abandoned . . . . . _____

EXHIBIT Q

Pumped and Cleaned Before Reuse as Seepage Pit . . . . . _____

Three (3) Feet of Suitable Soil Below Trench / Bed . . . . . _____
(Masonary Sand or Equivalent)

Site Evaluation: (Note: *Soil percolation test is required during IWS plan submittal*)

Soil Percolation Tests Conducted at a Minimum Depth of
Three (3) Feet . . . . . _____

Soil Profile Observation at a Minimum Depth of Five (5) Feet
Submitted During Design . . . . . _____

If you answer **NO** to one of the questions above, please attach a site evaluation / percolation test form showing the three (3) feet percolation test and the soil profile observation at a minimum depth of five (5) feet.

List of Changes Made to Approved IWS Plans: _____

_____

_____

_____

---As the engineer performing the above final IWS inspection, see the following statement (check one):

_____ The IWS has been installed in strict accordance with the plans that were submitted and approved of by the Department of Health.

_____ The noted deficiencies and / or changes to the approved plans have been addressed by the homeowner, contractor, and myself and the final as built IWS is acceptable to me.

_____ The final construction of the IWS cannot be completed for the following reasons:

_____

_____ The construction of the IWS is not in accordance with the approved plans and I do not accept the changes made to the plans designed by me.

_____ _____
Signature, Stamp Date

Enclosures: As-Built Plans, Stamped and Signed by Engineer Photographs of Treatment Unit, Disposal System, Overview of IWS

APPENDIX 4

INSPECTION AND MAINTENANCE CONTRACT

THIS AGREEMENT made this _____ day of _____, 2010, by and between _____**, whose address is** _____ ("Owner"), and _____, whose mailing address is _____ ("Service Provider").

RECITALS:

1. Owner occupies a parcel of land ("Lot") situated at Honokohau, District of North Kona, Island and County of Hawaii that is part of the West Hawaii Business Park ("Business Park").

2. Wastewater for a limited number of parcels within the Business Park may be treated by an Individual Wastewater System ("IWS") on an interim basis until connection is available to the Kealakehe Wastewater Treatment Plant in North Kona.

3. The installation and operation of an IWS in the State of Hawaii falls under the jurisdiction of the State Department of Health ("DOH") and is governed by Chapter 62 of Title 11, Hawaii Administrative Rules ("Chapter 62").

4. Pursuant to Chapter 62 and the Wastewater Treatment System Program for the Business Park ("Program"), Owner must enter into an inspection and maintenance service contract ("Service Contract") with a wastewater professional ("Service Provider") to insure proper operation of an IWS installed on a Lot.

5. The Cyclic Biological Treatment System ("CBT Unit") has been designated as the exclusive IWS for the Business Park. The Service Provider shall be an authorized service representative for International Wastewater Technologies, Inc. ("IWT"), the manufacturer of the CBT Unit.

6. In consideration of the foregoing, the parties wish to enter into this Service Contract to assure compliance with Chapter 62, the Program and the IWT Operation and Maintenance Manual (provided to Owner by IWT).

NOW THEREFORE, the parties agree as follows:

1. Initiation of Service. Once the CBT Unit is installed on the Lot, the Service Provider shall initiate regular and continuous inspection and maintenance service. The foregoing shall include keeping monitoring records and the submittal of annual reports and certifications to DOH required by Chapter 62.

2. **Regular Inspection and Maintenance. D**uring the term of this Service Contract, the Service Provider shall conduct monthly inspections to monitor the performance of the CBT Unit and perform routine maintenance

.

(a) During regular inspection and maintenance of the CBT Unit, the Service Provider shall perform the following activities (as required):

- ❑ Check the decanter for proper operation
- ❑ Check the float tree and float switches
- ❑ Collect samples and perform on-site tests for DO, pH, solids settle-ability and chlorine residual in accordance with applicable requirements of Chapter 62
- ❑ Take temperature reading of the basin
- ❑ Record on-site test results on forms provided in the IWT Operation and Maintenance Manual (Appendix IV)
- ❑ Collect effluent samples for analysis for BOD and Suspended Solids (in accordance with Standard Methods procedures) after proper storage and transportation to off-site laboratory (if required by DOH)

- ❑ Check for abnormal odors
- ❑ Check for unusual noise
- ❑ Check sludge transfer pumps for proper operation; adjust flow rates (if necessary)
- ❑ Waste sludge to aerobic digester (if applicable)
- ❑ Check effluent chlorinating system for proper operation, adjust application rates (if chlorination is used for disinfection)
- ❑ Clean air filter and replace as required
- ❑ Check and clean diffuser to insure proper operation
- ❑ Perform routine servicing in accordance with the IWT Operation and Maintenance Manual (Standard Procedures - Pages 32-33)
- ❑ As necessary, wash and clean inside of risers, blower housing and chlorine boxes (if applicable)
- ❑ Maintain Service Record and Monthly Wastewater Treatment Plant Report on forms provided in the International Wastewater Technologies Operation and Maintenance Manual (Appendix IV or other IWT standard forms)

The scope of the foregoing items shall be supplemented by the provision of Exhibit A attached hereto and made part hereof.

(b) Items covered under the foregoing provisions for routine inspection and maintenance shall be performed by the Service Provider for the Standard Service Fees covered in Section 5(a) below.

(c) Other repair or the, replacement of parts not associated with routine maintenance or cover by the warranty will be performed by the Service Provider (or coordinated with IWT if required). Such extraordinary activities are not covered by the Service Contract and the cost and expense shall be additional charges that are the sole responsibility of the Owner.

3. <u>24-Hour Emergency Service</u>. Contractor shall maintain 24-hour on call service to respond to emergencies and after-hour trouble calls.

4. <u>Special Sampling and Testing for Nutrient Reduction</u>. The protocols to be followed by the Service Provider for sample collection, storage,

transportation to and arrangements for testing are detailed in Exhibit B. Fees and charges for special testing are covered in Section 5(c) below.

5. <u>Fees and Expenses</u>.

(a) Standard Service Fees: Service Provider shall be paid a fee for its services hereunder in the amount of $_____ per _____, plus general excise tax ("Standard Service Fee"). Payment for the Service Fee for work performed during the period shall be immediately due and payable upon receipt by the Owner. The Service Provider shall have the option to request an up-front deposit equal to the amount for a single service upon execution of the Service Contract.

(b) Other Fees and Charges: Costs associated with after hour emergency service calls, repairs to the CBT Unit not covered by the IWT warranty and extraordinary maintenance items (including costs for pumping sludge, damage resulting from the Owner's negligence, failure to adhere to the IWT Operation and Maintenance Manual and/or ignoring precautionary warnings from the Service Provider) shall be the sole responsibility of the Owner.

(c) Special Testing Fees: The Owner's ability to occupy a Lot in advance of a connection to the Kealakehe WWTP is predicated upon the implementation of the special sampling and testing covered in Exhibit B. Fees and charges incurred for sample collection by the Service Provider are not part of the Standard Service Fees. The costs and expenses relating to the nutrient testing ("Special Testing Fees") shall be the responsibility of the Owner. In addition to sample collection costs, the Special Testing Fees shall also include any advance payments made by the Service Provider for lab testing. The Service Provide shall provide the Owner with an up-front good faith estimate as to the Special Testing Fees when the Service Contract is executed.

6. <u>Term of Service Contract and Extension</u>.

(a) Initial Term. The initial term of this Service Contract shall commence upon the installation of the CBT Unit on the Lot and shall run continuous period of ___ years.

(b) Extension of Term. No later than three months prior to the expiration of the initial period, the Owner and Service Provider shall decide to terminate or to extend the Service Contract. The scope of work shall remain basically unaltered, but the Standard Service Fee may be renegotiated.

(c) No Extension. In the event Owner elects not to renew the Service Contract, Owner must enter into a similar form of agreement with another wastewater professional that is an authorized service representative for IWT. The form of new agreement shall cover the same items of inspection and maintenance as this Service Contract. The new Service Provider shall be subject to the prior approval of the DOH and WHBP.

7. <u>Amendment/Termination</u>. The parties agree that this Service Contract shall not be amended, terminated, extinguished or canceled without the written approval of DOH. DOH shall have the right to enforce this Service Contract and the conditions contained herein by appropriate action at law or suit in equity against the Owner and/or the Service Provider.

Executed on the day and date set forth above.

_____

_____

OWNER

_____

SERVICE PROVIDER

Exhibit A

Standard Inspection and Maintenance

Frequency: To assure optimal performance of the CBT Unit, regular maintenance activities shall be performed as required by the International Wastewater Technologies Manual, or if more frequent, as stipulated by DOH.

Service logs shall be maintained by the Service Provider and made available to DOH upon request. All certifications regarding servicing and maintenance of the CBT Unit shall be filed by the Service Provider in accordance with the requirements of Chapter 62, HAR.

Performance Indicators: The Service Provider shall track the performance of the CBT Unit by monitoring the following indicators and recording the readings on the appropriate Service Logs:

- Dissolved Oxygen (DO)
- Acidity/Alkalinity (pH)
- Temperature
- Accumulation of Solids (Sludge)

As required by the DOH, the Service Provider shall collect samples to test for:

- Biological Oxygen Demand (BOD)
- Total Suspended Solids (TSS)

Testing for BOD and TSS shall be performed by an independent lab. The Service Provider shall properly store the collected samples and arrange transportation to an authorized testing facility. Appropriate chain-of-custody protocols shall be followed to insure the integrity of the collected samples.

Sludge Removal: The aerobic and anoxic conditions in the treatment cycles of the CBT Unit leads to an eventual build-up of sludge within the tank. The level of sludge build-up shall be monitored monthly, with the results of each settling test recorded on a cumulative basis on the settling chart.

In accordance with the Sludge Removal Plan included as part of the application package submitted to the DOH, the Service

Provider shall periodically arrange for removal of the accumulated sludge from the tank to maintain optimal treatment system performance. The Service Provider shall use pumping and hauling operators (collectively "pumpers") registered with the DOH. Records as to sludge removal and disposal required by the DOH shall be maintained by the pumpers contracted by the Service Provider.

Repairs: A record shall be kept of all repairs made to the CBT Unit, including replacement of components. Repair records shall be maintained by the Service Provider and made available to DOH upon request.

Exhibit B

Special Sampling for Nutrient Testing

In order to assure that the required levels of nutrient reduction are achieved, special tests must be periodically conducted on samples of the untreated influent (raw sewage) entering the treatment system and the treated effluent pumped from the CBT Unit for disposal in the leach field. Pursuant to the D&O, tests to assure that an 80% reduction in Total Nitrogen and a 90% reduction in Total Phosphorus are attained in the treatment system, samples must be collected in accordance with the following protocols

Frequency: During the initial year after start-up of a newly installed CBT Unit, special sampling for nutrient testing shall be done every three months until the required reductions in Total Nitrogen and Total Phosphorus are attained. Thereafter, special sampling shall be performed on a semi-annual basis.

Sampling Boxes: In order to collect samples that are more representative of the composition of the untreated influent and the treated effluent, special sampling boxes shall be incorporated in to the design of all CBT Units installed at the Business Park. The sampling boxes are designed to permit representative samples to be accumulated for collection.

Test Kits: When sampling is scheduled to be conducted, the Service Provider shall order Test Kits from a lab qualified and equipped to test for concentrations of Total Nitrogen and Total Phosphorus, such as:

Hawaii Food and Water Testing
2688 Kilihau Street, #B
Honolulu, Hawaii 96819
Phone: (808) 836-5558

The Test Kit should include an ice pack, sample bottles and a Chain-of-Custody form packed in a cooler (to be used for shipment of the collected samples to the lab). The Test Kit(s) should be shipped by the Service Provider.

Sample Collection and Shipment:

The Service Provider shall comply with the following steps (as recommended by the testing lab):

1. Freeze the ice pack provided in the cooler upon receipt of the Test Kit.
2. When taking a sample, carefully fill the 1-Liter bottle with the fluid sample without splashing or overflowing. Note: There is a small amount of solution already in the sample bottle that must not be touched or removed. This chemical stabilizes the sample that is taken.
3. Promptly seal the bottle and keep the sample chilled in the cooler.
4. Complete the Chain-of-Custody form and fill in the label for each of the sample bottles.
5. Transport the labeled sample bottles, frozen ice pack and Chain-of-Custody form to the testing lab.
6. The Service Provider shall arrange for shipment.
7. If the sample is shipped to an off island testing lab, the Service provider shall instruct air freight service that the cooler must be kept refrigerated – they will apply a "CHILL" sticker to the cooler. This will ensure that the cooler will be kept property refrigerated, particularly where it must be shipped overnight.
8. The Service Provider shall also call the lab to confirm that a cooler or coolers have been received. This provides a double check to ensure pick-up of the shipment by the lab.

Testing Fees

The Service Provider shall arrange for the special nutrient testing and pay the fees and charges from the lab to ensure timely testing of the samples. However, the ability of an owner to use the CBT Unit and occupy a lot in the Business Park in advance of a connection to the Kealakehe WWTP is predicated on the special nutrient testing. Accordingly, the fees and charges are ultimately the owner's obligation.

Test Results

The lab will only release test results to the party that pays the applicable fees and charges. Accordingly, the Service Provider shall provide copies of the test results to the owner, with additional copies to:

National Park Service
Kaloko-Honokohau National Historical Park
73-4786 Kanalani Street, Suite 14
Kailua-Kona, Hawaii 96740

West Hawaii Business Park, LLC
P.O. Box 9032
Kailua-Kona, Hawaii 96745