

May 6, 2015

LAND USE COMMISSION
STATE OF HAWAII

2015 MAY 11 A 10:00

Delivery via U.S. Mail

Mr. Duane Kanuha
Director
County of Hawaii Planning Department
West Hawaii
74-5044 Ane Keohokalole Highway, Bldg E
Kailua-Kona, 96740

Mr. Daniel E. Orodener
Executive Officer
State of Hawaii Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Subject: Kaiser Foundation Health Plan, Inc.; TMK: 7-4-008:030, Honokohau, North Kona Hawaii; Annual Report for 2012/2013/2014 under Ordinance No. 04-110 (2004); Parcel 30

Dear Messrs. Kanuha and Orodener,

This letter is written by Kaiser Foundation Health Plan, Inc. ("KFHP"), the current landowner of the above-referenced parcel, and provides an update for 2013 and 2014. Our last annual update was for 2011, submitted in July 2012. For the purposes of this letter, references to the "Applicant" shall mean Lanihau Properties, LLC.

The following table shows the current status of conditions with respect to the above referenced parcel:

Condition	Description	Current Status for Parcel 30
	<u>Ordinance 04-110</u>	
A	The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.	This letter is an update on current status and compliance.
B	The applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A00-730) dated September 26, 2003 – attached here for reference.	KFHP has complied with such conditions.
C	Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage	KFHP has complied with this requirement.

	calculations, as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within ninety days from the effective date of this ordinance.	
D	The subject area shall be zoned in multiple increments.	KFHP acknowledges this.
D.1	The first increment shall consist of Parcel 2 (MG zoned area) and Parcel 3 (9.9 acre MCX zoned area) whose zoning shall be effective upon adoption of this ordinance.	KFHP acknowledges that the effective date of the zoning was October 12, 2004 for Parcel 3. KFHP defers to Applicant as to Parcel 2.
D.2	Zoning increments within Parcel 1 (186.7 acre MCX zoned area) shall be identified by applicant as part of future zoning increments shall be upon completion of construction or acceptance of financial assurance thereof, by bond or other means, meeting with the approval of the Planning Director, whichever occurs first, for the portion of road improvements as shown on the approved circulation plan within each increment. The incremental zoning boundaries shall be identified on the subdivision maps and shall be along the portions of the roads proposed to be improved and shall not include large lots, as described in Section 23-28, Chapter 23, Hawaii County Code, or any remainder lot that is designated by the applicant on its subdivision plans.	KFHP defers to Applicant for matters relating to Parcel 1. KFHP does not own Parcel 1.
E	Prior to the construction on the proposed lots, the applicant, successor or assigns shall secure Final Plan Approval for the proposed Development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impact to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).	KFHP received final plan approval.
F	An overall landscaping master plan, including a minimum 50-foot wide landscaping buffer along the property's frontage on Queen Kaahumanu Highway shall be submitted to and approved by the Planning Department prior to the issuance of Final Plan Approval for any development within Lots 1 and 3. The landscaping master Plan shall reflect the proposed landscaping concept depicted in Figure 4-4g of the petitioner's Final Environmental Impact Statement dated April 2003 and shall include, but not necessarily	KFHP defers to Applicant's report.

	limited to, plant species list, identification of view corridors from within and outside of the project area and maintenance program. The required landscaping improvements shall be installed in conjunction with the development of immediate surrounding areas.	
G	An updated Traffic Impact Assessment Report (TIAR) certified by a licensed engineer shall be submitted for review and approval to the Planning Director and Department of Public Works, prior to receipt of Final Subdivision Approval. The TIAR shall be updated to include the increase in the MCX-zoned area and the inclusion of interior intersections along the South Access Road and Honokahau Street. The revised TIAR shall also evaluate impacts to the Kamanu Street and Kealakehe Parkway intersection. The improvements identified in the updated TIAR shall be provided in an appropriate design year or phased with the needed right-of-way provided. Mitigation measures called for in the revised TIAR that are reasonably related to the project impacts shall be implemented meeting with the approval of the Planning Director in consultation with the Department of Public Works.	KFHP defers to Applicant's report.
H	All access and intersection improvements along Queen Kaahumanu Highway shall be constructed meeting with all the requirements and approval of the State Department of Transportation. Access to Parcel 1 from Queen Kaahumanu Highway shall be limited to the North Access Road and, after construction of the National Park Service/Lanihau (South Access Road) signalized intersection, to the National Park Service/Lanihau (South Access Road) intersection and to the North Access Road under such terms and conditions required by the Department of Transportation.	KFHP has complied with this requirement.
I	Prior to granting of Tentative Subdivision Approval for any lot within the subject area, the applicant shall prepare an overall Roadway Circulation Plan showing the major road corridors within the project area for review and approval by the Planning Department of Public Works and the State Department of Transportation.	KFHP has complied with this requirement.
J	Prior to the issuance of a Certificate of Occupancy of any structure within the project area, except as provided in Condition K, L and M below, Kamanu Street Extension shall be constructed and available for use across the entire project area. The applicant shall construct Kamanu Street extending from the north property boundary to the south property boundary meeting with the approval of the Department of Public	KFHP defers to Applicant as KFHP does not own Kamanu Street.

	<p>Works. At its sole discretion, the applicant may construct Kamanu Street Extension in stages, the first of which shall consist of preliminary vehicular access (hereinafter defined as road improvements constructed to non-dedicable standards) meeting with the safety and design requirements of the Department of Public Works suitable for through-vehicular travel. Construction of the first stage shall be completed prior to the issuance of the County's issuance of a Certificate of Occupancy for any portion of the subject property, except as provided herein. The second stage shall consist of upgrading the preliminary vehicular access to dedicable standards including curbs, gutters and sidewalks meeting with the approval of the Department of Public Works, which shall be constructed in conjunction with Final Subdivision Approval for any lands along the roadway improvements constructed in the first stage, excluding large lots or remainder lots. In the event that Kamanu Street is constructed with County or other government funding or financing, the applicant shall dedicate the Kamanu Street right-of-way to the County at no cost, and the Kamanu Street improvements shall be improved to County dedicable standards, including curb, gutter and sidewalks, prior to the issuance of a Certificate of Occupancy within the subject property, except as provided in Conditions K, L and M herein. In this event, prior to the granting of Final Subdivision approval for lots fronting Kamanu Street, other than bulk remainder lots, the applicant shall reimburse or otherwise contribute to the appropriate agency for the cost of construction. Provided that reimbursement shall occur within five years of completion of construction, or if reimbursement is by way of the applicant taking over bond payments, such repayment shall begin within four years of completion of construction. Reimbursement of the cost of construction of Kamanu Street shall not include any costs in excess of those necessary for a County-dedicable road serving the project area only.</p>	
K	<p>Prior to the issuance of a Certificate of Occupancy for improvements within an approximately 10-acre portion of Parcel 1 along Kanalani Street Extension between the north property boundary and the North Access Road, Kanalani Street Extension from the North Access Road and the construction of improvements within the North Access Road/Queen Kaahumanu Highway intersection and the North</p>	<p>KFHP defers to Applicant's report. KFHP has been issued a Certificate of Occupancy for the improvements it constructed on Parcel 3.</p>

	Access Road, as provided in the TIAR, shall be completed to the County dedicable standards.	
L	Prior to the issuance of a Certificate of Occupancy for improvement within Parcel 2, other than for uses or improvements permitted or allowed as part of the on-going quarry and related activities, Kamanu Street Extension shall be constructed and available for use across the entire project area as provided in Condition J above.	KFHP does not own Parcel 2. KFHP has complied with this requirement.
M	Prior to issuance of a Certificate of Occupancy within Parcel 3, the applicant shall improve the north side of Honokohau Street, meeting with the approval of the Dept. of Public Works.	KFHP has been issued a Certificate of Occupancy for the improvements it constructed on Parcel 3.
N	Street lights, traffic signals and applicable traffic control devices shall be installed as required by the Dept. of Public Works as warranted pursuant to the Manual on Uniform Traffic Control Devices.	KFHP has complied with this requirement.
O	In order to address and mitigate potential impacts from non-point source pollutants, the applicant shall participate with the County in a pilot storm drainage program for roadways within the Kaloko-Honokahau region. This pilot program may potentially include other developments within the County and apply to all other government and private developments. The applicant shall participate by constructing all roadways within the proposed industrial-commercial park to County dedicable standards with paved swales. The drainage system within the road rights-of-way shall, if required by the County of Hawaii, include storm drain filtration device which meet the approval of the Department of Public Works, in consultation with the National Park Service, and the applicable permitting requirements of the Underground Injection Control (UIC) of the Federal Safe Drinking Water Act and the National Pollutant Discharge Elimination System of the Federal Clean Water Act. The roadway and related improvements covered herein shall be considered eligible for dedication to the County of Hawaii.	KFHP defers to Applicant for a response. KFHP has complied with this requirement.
P	An Emergency Response Plan shall be submitted to the Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.	KFHP has complied with this requirement.
Q	An archaeological Preservation and Burial Treatment Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources – State Historic Preservation Division (DLNR – SHPD). Proposed mitigation treatment for the burial sites within the subject property shall be approved by	In our report for 2011, this requirement was stated by KFHP to have been met.

	SHPD's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Archaeological Preservation and Burial Treatment Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval, Final Subdivision review or prior to the issuance of any land alteration permit, whichever comes first.	
R	Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources – Historic Preservation Division (DLNR – HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR – HPD when it is found that the sufficient mitigation measures have been taken.	KFHP has complied with this requirement.
S	To ensure that the Goals and Policies of the Housing Elements of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy.	In our report for 2011, this requirement was stated by KFHP to have been met.
T	Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, condition included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.	Agree.
U	Comply with all other applicable laws, rules, regulations and requirements of other affected agencies.	Agree. KFHP has been issued a Certificate of Occupancy.
V	An Annual progress report shall be submitted to the Planning Director prior to the anniversary date of the enactment of the ordinance. The report shall include, but not be limited to, the status of the developmental and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Director acknowledges that further reports are not required.	Agree. However, unless instructed otherwise, this will be KFHP's last report.
W	An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.	KFHP defers to Applicant's 2009 report.

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	<p>Granting of the time extension would not be contrary to the General Plan or Zoning Code.</p> <p>Granting of the time extension would not be contrary to the original reasons for the granting of the change zone.</p> <p>The time extension shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).</p>	
X	<p>Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.</p>	<p>KFHP defers to Applicant's 2009 report.</p>

Should you have any questions about the foregoing, please call or email me at 432-5777 x 1434 or at Donald.R.Stevens@kp.org.

Yours very truly,

KAISER FOUNDATION HEALTH PLAN, INC.



Donald R. Stevens
Executive Director,
National Facilities Services

cc: Riley Smith, Lanihau Properties LLC

Enclosure: Certificate of Conditions
Doc. No.: 2004-032728



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 23

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.

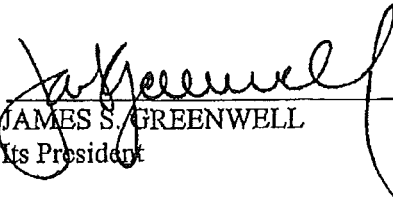
That the Conditions shall be binding upon Petitioner and each and every subsequent owner, lessee, sublessee, transferee, grantee, assignee or developer pursuant to §15-15-91, Hawaii Administrative Rules, and shall be covenants running with the Property as long as said reclassification and redistricting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

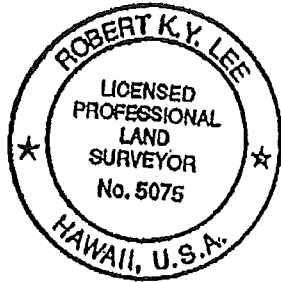
At Honokohau 1st and 2nd, North Kona, Island of Hawaii, Hawaii

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
CIVIL ENGINEERS • SURVEYORS
73-5574 HAIKU STREET, #118 • KAILUA-KONA, HAWAII 96740

EXHIBIT "A"



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

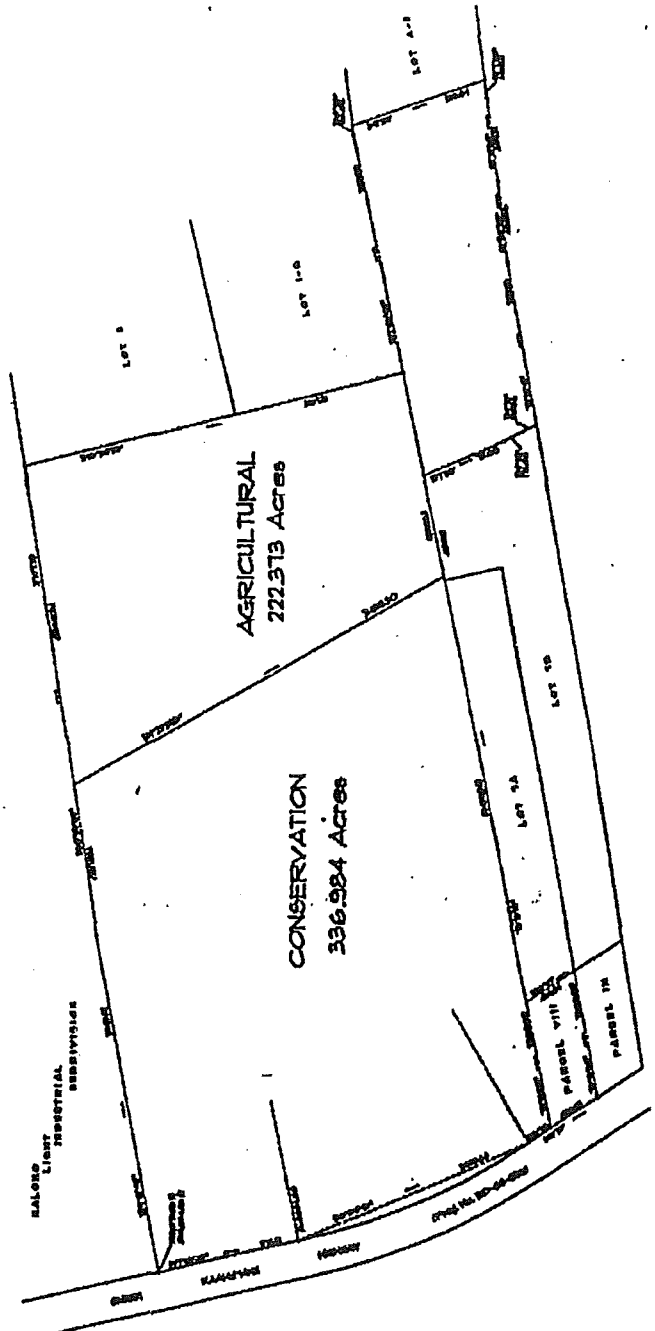
R.M. TOWILL CORPORATION

Description Prepared by:

A handwritten signature in cursive script that reads "Robert K.Y. Lee".

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

R.M. TOWILL CORPORATION
CIVIL ENGINEERS • SURVEYORS
73-5574 MAIAU STREET, #11B • KAILUA-KONA, HAWAII 96740



LAND USE DISTRICT
 BOUNDARY INTERPRETATION OF
 LOT A-1, BEING PORTION OF RP. 1867,
 L.C. No. 1216, AP. 34 TO H. KEKAUONOH
 AND PARCEL VIII, BEING PORTION OF RP. 6883,
 L.C. No. 9871, AP. 9 TO P. LELEIHOLO
 At Honolulu, HI, and 2nd, North Kona, Island of Hawaii, Hawaii
 Tax Map Key (3) 7-4-0613 and 30
 Owners: Limhau Partners LP
 5465 Waialae Ave, Suite 260
 Honolulu, Hawaii 96816



Scale: 1" = 100'

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 1c 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

HAWAII'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.