

# MATSUBARA, KOTAKE & TABATA

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February 8, 2023

## VIA EMAIL & U.S. MAIL

Mr. Daniel E. Orodenker, Executive Officer  
Land Use Commission, State of Hawai'i  
235 South Beretania Street  
Suite 406 Leiopapa A Kamehameha Bldg.  
Honolulu, Hawai'i 96813



Re: LUC Docket No. A00-730/Lanihau Properties, LLC  
TMK: (3) 7-4-008: 013 (por.) & 030  
Honokohau 1<sup>st</sup> & 2<sup>nd</sup>, North Kona, Hawai'i

Dear Mr. Orodenker:

Enclosed please find, the 2021-2022 Annual Report in regard to the above-referenced matter.

If you have any questions as to the enclosed, please contact me.

Very truly yours,

MATSUBARA, KOTAKE & TABATA

A handwritten signature in black ink, appearing to be "CT", enclosed in a light gray rectangular box.

Curtis T. Tabata

Enclosure

cc: West Hawaii Business Park, LLC  
Zendo Kern, Planning Director, Planning Department, County of Hawai'i  
Scott J. Glenn, Director, Office of Planning and Sustainable Development  
Alison Kato, Esq., Deputy Attorney General, State of Hawai'i Dept. of the  
Attorney General

Land Use Commission Docket No. A00-730  
Annual Report (2021-2022)



CONDITION 1a. The Petition Area shall be developed with dry sewer lines for eventual connection to the Kealakehe Wastewater Treatment Plant (WWTP).

**RESPONSE:** Petitioner, its successors and assigns will comply with this condition. This provision has been incorporated into the Declaration of Covenants, Conditions and Restrictions for the (“Association CCRs”) West Hawaii Business Park (“WHBP”). The Petitioner received Final Subdivision Approval No. 18-1890 for a portion of the WHBP. The improvements included the installation of dry sewer lines in accordance with this condition and the requirements of the County Department of Environmental Management.

CONDITION 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.

**RESPONSE:** Petitioner, its successors and assigns will comply with this provision. Petitioner has maintained contact with the Department of Environmental Management (“DEM”) in regard to the progress of funding, design and construction of the off-site wastewater transmission system.

Petitioner has been a participant in the North Kona Improvement District and is supportive of the efforts by the County of Hawaii (“County”) to establish an Improvement District or Community Facilities District to fund the required wastewater improvements. To date, the County has not implemented nor moved forward with either an Improvement District or Community Facilities District.

Petitioner, its successors or assigns will comply with a fair share condition, as required by the County. This provision as well as

**the requirement to connect to the WWTP when such connection is available, has been incorporated into the Association CCRs. In this regard, the Petitioner has agreed to dedicate a 2.596-acre area (TMK: 7-4-008: 090) at no cost to the County of Hawaii's Department of Environmental Management for the location of the regional pump station. The County is in the process of accepting the dedication of land.**

CONDITION 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 WWTP, unless in the interim, the portion 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 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 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.

**RESPONSE: Petitioner, its successors and assigns will comply with this restriction on construction.**

**The IWS requirements have been incorporated into Association CC&Rs as well as the Wastewater Treatment System Program Manual ("Program Manual").**

**Two enhanced treatment units were installed by West Hawaii Concrete (the present quarry operator) by the extended deadline. Use of their cesspool has been terminated pursuant to the provisions of Chapter 62, HAR. West Hawaii Concrete has subsequently converted one of the enhanced treatment units into a holding tank only. All of the waste from the holding tank is**

removed on a regular basis and disposed of at an approved wastewater treatment facility.

The Kaiser Permanente facility on TMK: (3) 7-4-008: 030 has been completed and is subject to the IWS requirements. No other construction or occupancy has occurred on the site to date (except for the existing quarry operation).

The installation of all future IWS units in the Petition Area shall comply with the provisions of Chapter 62, HAR.

Petitioner acknowledges the condition regarding hook-up to the WWTP and that all lot owners will be required to connect to the County wastewater system upon its completion. These provisions have been incorporated into the Association CCRs.

CONDITION 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.

**RESPONSE:** Petitioner its successors and assigns will comply with this condition. To date, two IWS's that are subject to the requirements of Condition 1c have been constructed on TMK 7-4-008: 074 (Blueroc) and TMK: 7-4-008: 030 (Kaiser Permanente). Two additional lots have permission to construct, but have not improved their parcels yet (Glover, TMK: 7-4-8: 84 and Amerco, TMK: 7-4-8: 98). Accordingly, 36 additional lots may be developed within the Petition Area pursuant to this condition.

CONDITION 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.

**RESPONSE:** Petitioner has produced a comprehensive Program Manual for those lots approved to use an IWS unit for the interim treatment of wastewater prior to connection to the WWTP. The Program Manual incorporates the DOH Owner's Certification Form, which

**will be used to ensure compliance with this condition. This requirement has been incorporated into the Association CCRs.**

CONDITION 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. This 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.

**RESPONSE: The Program Manual incorporates a master Wastewater Treatment System Agreement to be executed between the Petitioner and each lot owner utilizing an IWS to ensure that regular and consistent maintenance is performed.**

**The Wastewater Treatment System Agreement provides that each IWS unit is to be inspected and maintained on a regular basis by a single service contractor (i.e., the wastewater professional designated by the Petitioner). A separate Maintenance Contract shall be executed between the service contractor and each lot owner. A sample of the Maintenance Contract is incorporated into the Program Manual.**

**This requirement has been incorporated into the Association CCRs.**

CONDITION 1g: Should the National Park Service 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 National Park Service, 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.

**RESPONSE:**           **Petitioner and NPS were unable to reach an agreement for inter-connection with NPS, since the temporary sewage line had to be under construction prior to approval of Petitioner’s change of zone application.**

**Given the foregoing, the condition with respect to conversion of the individual lots to the permanent wastewater collection system and abandonment of the temporary NPS sewage line is not applicable.**

CONDITION 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 and/or tenant 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:

**RESPONSE:**           **Petitioner, its successors and assigns will comply with this condition.**

**The provisions of Section 2 of the D&O have been incorporated into the Declaration of Covenants, Conditions and Restrictions for Storm Water and Surface Water Runoff (“Storm Water CCRs”), which were recorded on August 27, 2008 to comply with the extended deadline granted by the Commission pursuant to its**

**Order filed on January 31, 2008. The Storm Water CCRs for TMK: 7-4-08: 030 were recorded on January 17, 2007.**

CONDITION 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 permitted under the existing quarry permit.

**RESPONSE: Petitioner, its successors and assigns will comply with this restriction on occupancy of the Petition Area. This requirement has been incorporated into the Storm Water CCRs.**

CONDITION 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.

**RESPONSE: Petitioner, its successors and assigns will comply with this condition pursuant to the provisions of UIC operating permits.**

**UIC operating permits, which specify monitoring requirements for injection wells, are not usually issued by DOH for Class V, Subclass C drywells used for storm water disposal. Monitoring protocols for storm water runoff remain an open item between the Petitioner and NPS. This requirement has been incorporated into the Storm Water CCRs.**

CONDITION 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).

**RESPONSE: Petitioner, its successors and assigns will comply with this condition.**

**Specific language highlighting the provisions of Condition 2d will be included on grading plans for all construction activities within the Petition Area. This requirement has been incorporated into the Storm Water CCRs.**

CONDITION 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, Hawai`i Revised Statutes (HRS). Relevant HAR include but, are not limited to: i. Chapter 11-20, “Rules Relating to Potable Water Systems”; ii. Chapter 1162, “Wastewater Systems”; and iii. Chapter 11-55, “Water Pollution Control”.

**RESPONSE: Petitioner, its successors and assigns will comply with this condition. This requirement has been incorporated into the Storm Water CCRs.**

CONDITION 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.

**RESPONSE: Petitioner, its successors and assigns will comply with this condition pursuant to the provisions of UIC operating permits. This requirement has been incorporated into the Storm Water CCRs.**

CONDITION 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.

**RESPONSE: Petitioner, its successors and assigns will comply with this condition.**

CONDITION 2h: The Petitioner, successors and/or individual lot owners in the Petition Area shall ensure that all drainage injection wells or subsurface drainage



structures be 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.

**RESPONSE:**        **Petitioner, its successors and assigns will comply with this condition. This requirement has been incorporated into the Storm Water CCRs.**

CONDITION 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.

**RESPONSE:**        **Petitioner, its successors and assigns has complied with this condition. The Declaration of Covenants, Conditions and Restrictions for WHBP, including the establishment of an owner's association with the power to oversee and report violations, was recorded in the Bureau of Conveyances, State of Hawaii, as Doc 2008-191978 on December 23, 2008 ("Association CCRs").**

CONDITION 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.

**RESPONSE:**        **Petitioner, its successors and assigns, acknowledges these requirements. The recordation of the Association CCRs, the Storm Water CCRs and the PPP will assure that these requirements are complied with.**

CONDITION 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 National Park Service 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.

**RESPONSE:**           **The PPP for IMK: (3) 7-4-008: 030 ("Parcel 30") was recorded on December 1, 2006. The PPP for Parcel 30 was subsequently refined to address requests from NPS and the Commission. The amendments were recorded on October 4, 2007.**

**The PPP for the WHBP has undergone extensive consultation with NPS. The PPP for the WHBP was recorded on June 25, 2008. The Petitioner has indicated a willingness to incorporate monitoring protocols for storm water runoff entering drywells in the event the County adopts such a requirement for all developments within the North Kona District.**

CONDITION 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.

**RESPONSE: Petitioner, its successors and assigns, including the owners of individual lots subdivided within the Petition Area, will comply with the signage requirement. This provision has been incorporated into the Association CCRs. The required stencils were installed for the portions of the WHBP improvements that were completed pursuant to Subdivision No. 18-1890 and subsequently dedicated to the County.** CONDITION 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.

**RESPONSE: Petitioner has incorporated the provisions of this condition into the PPP for Parcel 30 and the PPP for the WHBP. The provisions in regard to parking and parking areas have also been incorporated into the Association CCRs. Each of the foregoing documents have been recorded and run with the land.**

CONDITION 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.

**RESPONSE:**        **Petitioner, its successors and assigns will comply with this condition. These provisions have been incorporated into the Association CCRs.**

CONDITION 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.

**RESPONSE:**        **Petitioner has incorporated this disclosure requirement into the PPP for Parcel 30 and the PPP for the WHBP. The disclosure has also been incorporated into the Association CCRs.**

CONDITION 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 the industrial park, and formulas for determining fair share and reasonable pro-rata share costs relating to any groundwater monitoring program.

**RESPONSE:**        **Petitioner has incorporated the appropriate information into the PPP for Parcel 30 and the PPP for the WHBP.**

CONDITION 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 406101, 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.

**RESPONSE:**           **Petitioner, its successors and assigns will comply with this condition as required. Provisions have been incorporated into the Association CCRs for the costs associated with the portion of the groundwater monitoring program allocable to the Petition Area to be assessed to the individual lot owners.**

CONDITION 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.

**RESPONSE:**           **Petitioner, its successors or assigns will comply with this restriction on prohibited uses. Notice as to these prohibited uses has been incorporated as a specific provision of the Association CCRs.**

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

**RESPONSE:**           **Petitioner, its successors or assigns will comply with this condition as required.**

CONDITION 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.

**RESPONSE:** **Petitioner, its successors or assigns will comply with this condition as required. Requirements for the development of feeder streets are incorporated in the conditions of approval of Change of Zone Ordinance No. 04-110, as amended by Ordinance Nos. 18-115 and 22-34.**

CONDITION 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.

**RESPONSE:** **Petitioner, its successors or assigns will comply with this condition. The requirement for the development of the Kamanu Street Extension from the north boundary to the south boundary of the petition area is incorporated in the conditions of approval of Change of Zone Ordinance 04-110, as amended by Ordinance Nos. 18-115 22-34. The Petitioner has obtained approval of the construction plans for Kamanu Street extension through the Petition area. The road improvements will be constructed as part of the development of the surrounding industrial zoned lands.**

CONDITION 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.

**RESPONSE:** **Petitioner, its successors or assigns will comply with this condition as required.**

CONDITION 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.]~~

**RESPONSE:           Approval of the Petitioner’s Motion by the Commission’s Order dated January 31, 2008, amended the original D&O to delete this condition.**

CONDITION 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.

**RESPONSE:           The Petitioner has complied with this condition.**

**At their meeting of October 30, 2006, the Hawaii County Housing Agency adopted Resolution No. 143 approving the Housing Needs Assessment and the proposal by the Petitioner to use previously earned Affordable Housing Credits to fulfill any affordable housing requirement for the WHBP. A formal Agreement between the Petitioner and the County’s Office of Housing & Community Development was executed on September 16, 2008 confirming that the County’s affordable housing requirements have been satisfied. Copies of the Housing Needs Assessment for the WHBP, Resolution No. 143 and the Agreement dated September 16, 2008 were transmitted with the 2009 Annual Report.**

CONDITION 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.

**RESPONSE:**           **The Petitioner has complied with this condition.**

**Data recovery activities have been completed and the Final Data Recovery Plan was accepted by the State Historic Preservation Division (SHPD) by letter dated July 19, 2006.**

**The Archaeological Preservation Plan (Non-Burial Sites) was accepted as an interim report by SHPD by letter dated August 21, 2003. The final version of the Archaeological Preservation Plan was accepted by SHPD on September 23, 2008.**

CONDITION 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.

**RESPONSE:**           **The Burial Treatment Plan (BTP) was accepted by the Hawaii Island Burial Council on October 20, 2005 and subsequently approved by SHPD by letter dated January 20, 2006.**

**The Petitioner will comply with applicable requirements related to inadvertent burials should any be found within the property.**

CONDITION 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 Business Park. Additionally, the petroglyph concentrations (site 180181) located immediately east of the Mamalahoa Trail (site 02) will also be preserved.

**RESPONSE:**           **Petitioner has complied with this condition.**

**Pursuant to the provisions of the Archaeological Preservation Plan, Petitioner has incorporated the referenced archaeological features into a subdivided Trail Preservation Area and Interpretative Complex. The trail and related preservation areas**



**are situated within TMK: (3) 7-4-008: 078 which has been set aside for preservation purposes.**

CONDITION 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 their satisfaction.

**RESPONSE: Petitioner, its successors or assigns will comply with this condition. These requirements have been incorporated into the Association CCRs.**

CONDITION 10a: In consultation with the National Park Service, 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 National Park service 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.

**RESPONSE: The Petitioner has complied with this condition.**

**Research with respect to navigation points in the North Kona area conducted with lineal/cultural descendants and NPS indicated that no relevant features are located within the Petition Area.**

**On December 1, 2009, the Planning Department approved the WHBP Design Guidelines which included a landscape master plan for the interior of the WHBP. These Design Guideline were prepared in consultation of NPS and have been incorporated as part of the WHBP CC&Rs which required compliance by subsequent lot owner/tenant.**

On January 9, 2023, the Planning Department approved an amendment of the Landscaping Master Plan related to improvements along the Queen Kaahumanu Highway frontage and included assignment of specific responsibilities for the installation and maintenance of the landscaping by the owners/tenants of TMK: 7-4-008: 077, 078 and 090. These amendments were prepared in consultation with NPS. WHBP, LLC is in the process of amending the WHBP Design Guidelines to formally incorporated these changes. No other changes to the Design Guidelines are proposed.

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

**RESPONSE:** In consultation with NPS, Petitioner revised the Design Guidelines to incorporate indigenous plant material into the Plant List (Appendix G) for the Design Guidelines.

CONDITION 10c: The Amy B. H. Greenwell Botanical Garden, Kaloko-Honokohau National Historical Park 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.

**RESPONSE:** The Petitioner has complied with this requirement.

In the 4<sup>th</sup> Quarter of 2006, invitations were sent to Amy B.H. Botanical Garden (“GBG”), NPS, Office of Hawaiian Affairs, University of Hawai`i at Hilo and other educational institutions offering an opportunity to gather seeds and cuttings from within Petition Area through the end of 2006. Except for the GBG, there was no response to the invitations. Representatives of the GBG hiked the site and determined that the limited native plant material in the Petition Area also exist elsewhere in the Kona area.

CONDITION 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.

**RESPONSE:** Survey of the northeast corner of the WHBP revealed that the Bidens Micranthia population is actually located outside of the Petition Area on lands owned by TSA. Information and maps were transmitted to DLNR in 2004.

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

**RESPONSE:** The requirement for the shielding of external light sources has been incorporated into Chapter 7 of the Design Guidelines.

CONDITION 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.

**RESPONSE:** Special emphasis has been made in developing the Design Guidelines to the highly visible frontage along the Queen Kaahumanu Highway in terms of landscape treatment, additional building setbacks, reduction of the building envelope, architecture and colors to mitigate the visual impact of the WHBP.

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

**RESPONSE:** The fifty-foot landscape buffer has been established as part of SUB No. 19-1980. The landscaping concept plan for the Buffer Area along the frontage of the Queen Kaahumanu Highway has been incorporated into the Design Guidelines to insure its implementation. On January 9, 2023, the Planning Department approved an amendment of the Landscaping Master Plan related to improvements along the Queen Kaahumanu Highway frontage which were prepared in consultation with NPS. WHBP, LLC is in the process of amending the WHBP Design Guidelines to formally incorporated these changes.

CONDITION 10h: The Petitioner shall map the location of the 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.

**RESPONSE:** As noted in Condition 10d, the Bidens Micranthia population has been mapped and is located outside of the Petition Area. The survey map was submitted to DLNR by letter dated September 13, 2004.

CONDITION 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.

**RESPONSE:** Petitioner, its successors and assigns will comply with this requirement. These requirements have been incorporated into the Association CCRs.

CONDITION 12: Petitioner, developers and/or landowners of the affected properties shall add a solar powered siren with 115 Dbc omni directional speaker array, and ensure 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.

**RESPONSE:** Petitioner, its successors or assigns will comply with this condition as required.

CONDITION 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.

**RESPONSE:** The Petitioner has complied with this requirement.

**Petitioner has prepared a Solid Waste Management Plan for the**

**WHBP. The Plan was accepted by the Solid Waste Division of DEM on August 21, 2006.**

CONDITION 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 developer to restore the project area to its former condition.

**RESPONSE: Petitioner acknowledges and agrees to this condition. With the recordation of the D&O conditions as the Certificate of Conditions (as amended), this requirement shall also be binding on Petitioner's successors and assigns.**

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 development of the Petition Area.

**RESPONSE: Petitioner, its successors and assigns has complied with this condition with the completion of the initial development area with the issuance of Final Subdivision Approval on August 7, 2020 for Subdivision No. 19-001890.**

**Prior to this development, the Petitioner provided notice to the LUC of sales within the Petition Area, including the following:**

- **On December 28, 2008, Petitioner conveyed TMK: (3)7-4-08:74 to Blueroc Properties, LLC. An additional .606 acres was conveyed to Blueroc Properties, LLC on February 19, 2010.**
- **On January 31, 2007, Petitioner conveyed TMK: (3) 7-4-08: 30 to PS Investments, LLC. On or about December 5, 2008, PS Investments, LLC conveyed TMK: (3) 7-4-08: 30 to Kaiser Permanente.**
- **On March 29, 2016, the Petitioner sold 14.127 acres to Jas. W. Glover Holding Company, Ltd. and 2.635 acres to Blueroc Properties, LLC.**

CONDITION 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.

**RESPONSE: Petitioner, its successors or assigns will comply with this condition.**

CONDITION 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.

**RESPONSE: Petitioner acknowledges and agrees with this condition.**

CONDITION 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.

**RESPONSE: This condition was satisfied with the recordation of the Certificate of Conditions recorded as of February 17, 2004.**