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October 9, 2009

Mr. Orlando "Dan" Davidson, Executive  
Officer  
Land Use Commission, State of Hawai`i  
P.O. Box 2350  
Honolulu, Hawai`i 96804-2359

COPY

Re: LUC Docket No. A00-730/Lanikai 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. Davidson:

Enclosed please find, a current 2008-2009 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



Wyeth M. Matsubara

Enclosure

cc: West Hawaii Business Park, LLC  
Ms. Bobby Jean Leithead-Todd, Director  
Planning Department, County of Hawai`i  
Mr. Abbey Seth Mayer, Office of Planning  
Bryan C. Yee, Esq.

2009 OCT -9 P 2:11  
LAND USE COMMISSION  
STATE OF HAWAII

**Land Use Commission Docket No. A00-730**

**Annual Report**

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 West Hawaii Business Park ("Association CCRs").**

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 is 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.**

**Petitioner, its successors or assigns will comply with a fair share condition, as established by the County. This provision has been incorporated into the Association CCRs.**

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 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 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 the restriction on construction. No construction or occupancy has occurred on the site to date (except for the existing quarry operation). The requirement of the Decision & Order ("D&O") in regard to a 60% nitrogen reduction within the IWS unit plus an additional 80% reduction in the leach field (combined 92%) was amended by the State Land Use Commission ("Commission") at its meeting on September 7, 2007 and adopted in the Commission's Order Granting Motion to Amend Conditions and Extend Time For Compliance dated January 31, 2008.**

**The Motion approved by the Commission provides for an 80% nitrogen reduction in the treatment unit and deletes the cumulative requirement. Approval of Petitioner's Motion by the Commission also provided an extension until August 31, 2008 for the installation of the IWS for the existing quarry operation. Two enhanced treatment units were installed by West Hawaii Concrete (the present quarry operator) by the extended deadline and are presently in operation. Use of the cesspool has been terminated pursuant to the provisions of Chapter 62, HAR.**

**The installation of all IWS units in the Petition Area, including the two enhanced treatment units at West Hawaii Concrete, 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. This provision has 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.**

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 Wastewater Treatment System Program Manual ("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.**

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 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.**

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 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:

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

**By letter dated January 18, 2007 DOH advised the Petitioner that a determination had been reached that it was not authorized to approve or disapprove private covenants. The Petitioner's Motion approved by the Commission on September 7, 2007 and confirmed by Order dated January 31, 2008 amended this condition by deleting the reference to DOH approval of the Storm Water CCRs.**

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.

Discussions between Petitioner and NPS on a Memorandum of Agreement ("MOA") that addresses the rights and obligations of the respective parties, including the future Association, culminated in a request on February 19, 2009 for the Petitioner to sign the MOA and forward the document to NPS for execution. The executed MOA was transmitted to NPS on February 24, 2009.

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.

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.**

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.**

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 11-62, "Wastewater Systems"; and iii. Chapter 11-55, "Water Pollution Control".

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

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.**



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.**

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 will comply with this condition. The Declaration of Covenants, Conditions and Restrictions for West Hawaii Business Park 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 will comply with this condition. With the exception of the existing quarry operation,**

**there has been no development activity or new construction within the Petition Area.**

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 Petitioner, its successors and assigns will comply with the restriction on construction or occupancy the Petition Area prior to recordation of the PPP.**

**The PPP for IMK: (3) 7-4-8:30 ("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 Business Park on the original TMK: (3) 7-4-8:13 (327.083 acres) has undergone extensive consultation with NPS. The PPP for the Business Park 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.**



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 Business Park. 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 Business Park. 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 Business Park.

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. 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.**

**Sampling protocols for the monitoring of groundwater within KAHO are pending submission to NPS to implement a monitoring program in conjunction with TSA Corporation.**

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.**



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.**

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. In 2007-08, the Petitioner worked closely with the County on the formation of a Community Facilities District to fund the construction of the Kamanu Street Extension. Further activity is presently on hold due to soft economic conditions.**

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.**

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: 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. Copies of the Housing Needs Assessment for the West Hawaii Business Park, Resolution No. 143 and the Agreement dated September 16, 2008 are submitted herewith. (Copies of which are attached hereto as Exhibits "1", "2" and "3", respectively).**

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:** 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.

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:** 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 located within the Petition Area identified as TMK: (3) 7-4-8:78.

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.**

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:           A landscape master plan for the interior of the Business Park, including the major internal roadways and the front yard area of each lot, has been incorporated into the Design Guidelines for the West Hawaii Business Park. The Design Guidelines have been through multiple reviews with NPS and the Planning Department, County of Hawaii. The pre-final version of the Design Guidelines was transmitted to NPS and the Planning Department in May 2009 to complete the consultation process. The Planning Department responded with a request for minor technical revisions to comply with the requirements of Rule 17 (Landscaping Standards).**

**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.**

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:** In the 4<sup>th</sup> Quarter of 2006, invitations were sent to GBG, NPS, OHA, UHH 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 GBF hiked the site and determined that the limited native plant material in the Petition Area also exists 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 Business Park 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 Business Park.

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

**RESPONSE:** The landscape 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.

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 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.

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 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.

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

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: Petitioner has prepared a Solid Waste Management Plan for the Business Park. 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 will comply with this condition. On December 28, 2008, Petitioner conveyed TMK: (3)7-4-08:74 (Lot A-2 - 12.706 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.**





# **Housing Needs Assessment and Implementation Plan**

**West Hawaii Business Park  
Honokohau, North Kona, Hawaii**

**Prepared for:**

**West Hawaii Business Park, LLC**

**Prepared by:**

**Brian T. Nishimura,  
Planning Consultant**

**October 2006**

**EXHIBIT "1"**

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## A. Introduction

This Housing Needs Assessment report has been prepared in compliance with a condition of approval by the State Land Use Commission (LUC) incorporated as part of its Decision and Order of September 26, 2003, reclassifying approximately 336.984 acres of land from the Conservation District to the Urban District at Honokohau, North Kona, Island of Hawaii, identified as Tax Map Key No. (3) 7-4-8; portion of 13 and 30. (See Exhibit A – Location Map)

Condition No. 8 of the Findings of Fact, Conclusion of Law, and Decision and Order for Docket No. A00-730 entitled Affordable Housing provides that:

*"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."*

Subsequently, Change of Zone Ordinance No. 04 110, effective on October 12, 2004, amended the zoning district classification for 196.631 acres of the subject property from Open (O) to Industrial-Commercial Mixed (MCX-20) and an additional 85.733 acres to General Industrial (MG-1a). The rezoned area encompasses a total of 282.354 acres, with 54.62 acres subject to a future rezoning action (See Exhibit B – Zoning Amendments)

Ordinance No. 04-110 included condition S which stipulates that:

*"To ensure that the Goals and Policies of the Housing Element 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."*

The foregoing conditions establish two requirements relating to affordable housing:

- 1) The preparation of a housing needs assessment and implementation plan; and,
- 2) Compliance with the County of Hawaii Affordable Housing Policy.

The housing needs assessment has been prepared to address the factors specifically listed in the LUC condition and an implementation plan has been prepared in response to the requirements of Chapter 11, Article 1, Hawaii County Code, relating to Affordable Housing Policy.

## **B. County of Hawaii Affordable Housing Policy**

The County of Hawaii's Affordable Housing Policy was amended in 2005 by Ordinance No. 05 23 which became effective on February 9, 2005, and Ordinance No. 05 111, effective as of July 13, 2005. Neither of these amendments to the Affordable Housing Policy materially affected the parameters for this housing needs assessment.

Two objectives of the Affordable Housing Policy relevant to the subject project are:

- *"Implement the goals and policies of the General Plan;"*
- *"Require large resort and industrial enterprises to address related affordable housing needs as a condition of rezoning approvals, based upon current economic and housing conditions."*

Section 11-4(d) of the County's Affordable Housing Policy specifies the affordable housing requirements for industrial uses as follows:

*"Requirements for Industrial Uses. The industrial uses that must fulfill the affordable housing requirements are any uses allowed as of right in an ML or MG district, except for home improvement centers, and any uses that are also allowed as of right in a CG district. Individual industrial enterprises generating more than 100 employees on a full-time equivalent basis must earn one affordable housing credit for every four full-time equivalent jobs created."*

The basis for the County's Affordable Housing Policy as it pertains to industrial projects is the Hawaii County General Plan. A specific policy of the General Plan relative to affordable housing states, "Large industries which create a demand for housing shall provide employee housing based upon a ratio to be determined by an analysis of the locality's needs." The key phrase in this policy is "large industries which create a demand for housing". This policy is intended to address the needs generated by primary industries, those that generate income by producing goods and services that are purchased mainly by nonresident individuals and businesses. Essentially, primary industries import capital to the County by selling goods and services to external parties. Examples of primary economic sector industries include agricultural products produced for export, technology industries, travel (tourist) industry, federal government (military and civilian expenditures) and scientific research.

Secondary industries which produce goods and services that are purchased for consumption predominantly by the primary industries and resident individuals.

Secondary industries are induced by economic growth and the requirements of primary income generators and are merely responding to the needs generated by growth already occurring in the region. Secondary economic industries include the following sectors: retail, wholesale, finance, insurance, real estate, utilities, communication, transportations, manufacturing (nonexport), construction, service industries, state and local government.

The County's Affordable Housing Policy makes a clear distinction between primary and secondary industries by exempting any uses allowed as of right in the General Commercial (CG) District from a requirement for affordable housing. In this regard, note that thirty-six (36) of the forty-eight (48) permitted uses listed for the Industrial-Commercial Mixed Use (MCX) District (the zoning designation that comprises 69.5% of the subject project) are allowed as of right in the CG district. In addition, the intent of the General Plan is to only impose an affordable housing requirement on large industries is maintained by the County's Affordable Housing Policy which limits application to individual industrial enterprises having more than 100 employees.

As a point of reference, the attached Phasing Plan for the project illustrates the intent to develop the highly desirable retail commercial areas along Honokohau Street (Phase 1a), Kamanu Street (Phase 2) and Kanalani Street adjacent to the Queen Kaahumanu Highway (Phase 3 and a portion of Phase 4) as a priority. (See Exhibit C – Phasing Plan) The existing quarry operation located within the MG zoned area is anticipated to continue for another 4 to 5 years. The MG zoned area and other interior portions on the Business Park will be developed as market conditions for light and heavy industrial space warrant.

### **C. Housing Needs Assessment**

#### **1. Jobs generated by the development**

The development of the West Hawaii Business Park will occur incrementally over an approximate period of 15 to 20-years as the industrial-commercial and industrial lots are sold and built-out. The initial phase of the West Hawaii Business Park is expected to commence in 2007 and will consist of lots ranging in size from ½ to 3+ acres within Phase 1a. Phase 1a (TMK: 7-4-8: 30) is a subdivided lot with access and utilities available directly from Honokohau Street.

*A Market Study and Economic Impact Analysis* was prepared by the Hallstrom Group in May 2000 for the subject project. The study projected that upon completion of the project there could be up to 3,895 permanent on- and off-site jobs related to the businesses situated in the Business Park (adjusted for current layout). This projection is based on 1 worker per 350 square feet of finished floor area in the MCX zoned area and 5 workers per acre in the MG zoned area. On average employment opportunities could increase by approximately 200 jobs/year.

Ongoing quarry operations and related uses have existed on the site since 1967 and were previously approved by Conservation District Use Permit HA-66/6/12-35. The quarry operations and related uses such as concrete pre-casting and concrete batching operations will continue to be accommodated within the MG zoned area, but the quarrying of rock is projected to be completed by mid-2010. Existing and anticipated uses in the MG zoned area are secondary industries responding to the growing needs of the region stretching from North Kohala to South Kona.

The bulk of the West Hawaii Business Park zoned Industrial-Commercial Mixed District (MCX-20) is anticipated to be utilized by retail commercial and/or service related enterprises similar to those existing within the present industrial-commercial mixed projects serving the North Kona region. No primary industries having more than 100 employees are anticipated within the West Hawaii Business Park. The project, in and of itself, is not anticipated to be a generator of growth, but will respond to the needs of the growth that is already occurring in the region. Therefore, the number of jobs generated by primary industries in the proposed project is anticipated to be zero.

**2. Projected number of qualified households which may be entitled to housing assistance as specified by the County of Hawaii**

Information on affordable housing needs in West Hawaii was obtained primarily from two sources: the *Hawaii Housing Policy Study, 2003* prepared for the County of Hawaii by SMS Research and Marketing Services, Inc., August 28, 2003, and the *Market Assessment for the Proposed Waikoloa Employee Housing Project* prepared for the County of Hawaii Office of Housing and Community Development by Mikiko Corporation, April 30, 2004. Additional information was also obtained from the Waikoloa Workforce Housing Survey Report prepared by SMS for the County of Hawaii in August, 2006.

In 2004, Mikiko Corporation prepared a 15-year projection of households for the County of Hawaii as part of its Waikoloa study, incorporating projections by Claritas, Inc. and SMS. Growth rates in households of between 2.0% to 2.5% per year are projected. The study notes that West Hawaii generally and Waikoloa in particular are poised to host much of this growth from an economic standpoint and in terms of major planned developments.

The target group for affordable housing is the range from 50% to 140% of median family income. The U.S. Housing and Urban Development guidelines specify a 2004 median income of \$51,000 for a family of four in the County of Hawaii. For the housing target groups of 50% to 140% of the median family income, 28,500 households (50% of all households) fall in this range. By 2017, this number of target households is projected to increase to 38,900 households, an increase of 10,400 from 2003. (See attached Exhibit 6-1 from the study by Mikiko Corporation.)

For those households in the targeted 50% to 140% for affordable housing, it is estimated that there is an existing pent-up demand for some 1,020 housing units County-wide. The SMS Housing Policy Study estimated a pent-up demand for 2,333 housing units in 2003, with all income ranges included. (See attached Exhibit D - Affordable Guidelines for the County of Hawaii)

The Waikoloa Workforce Housing Survey estimated that 28% of all Hawaii Island Households or 15,800 households, are expecting to move in the future. Approximately 39% or 6,132 of those households expecting to move had incomes within the affordable housing target group (50% to 140% of the median income). Assuming a proportionate share of 35% of the total, based upon current population distribution in Hawaii County, the West Hawaii households within the affordable housing target group expecting to move in the future is approximately 2,146 families.

**3. Number and availability of affordable housing units and rentals in the West Hawaii area (both planned and built)**

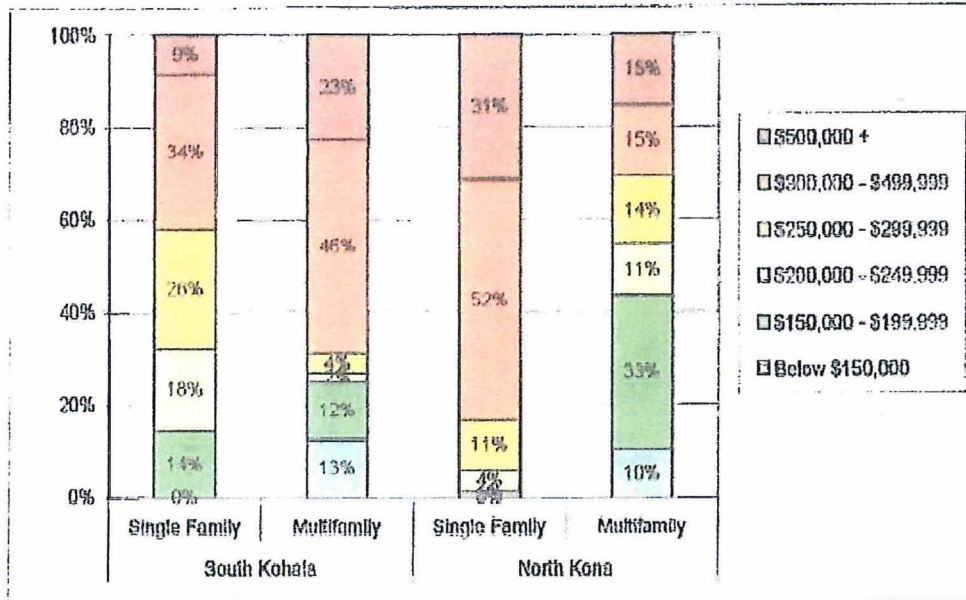
SMS provided estimates of housing supply in the North Kona area as part of their 2003 Housing Policy Study, as shown in the table below. Of 12,073 housing units in North Kona, there were 5,626 units, or 47%, in the 50% to 140% target income group. It should be noted that these figures represent the income characteristics of the families occupying the existing inventory of units and do not reflect the price of these units in relation to their ability to pay.

<b>2003 Housing Characteristics: North Kona</b>		
	<b>Count</b>	<b>Percent</b>
Total Housing Units	12,073	100%
<b>Household Income as % of HUD Median</b>		
30% or less	97	0.8%
Over 30% to 50%	801	6.6%
Over 50% to 80%	1,122	9.3%
Over 80% to 100%	1,944	16.1%
Over 100% to 120%	1,406	11.6%
Over 120% to 140%	1,154	9.6%
Over to 140% to 180%	2,151	17.8%
Over 180%	3,398	28.1%
<b>2003 Household Characteristics: North Kona</b>		
Rented, or no cash	3,277	27.1%
Owner Occupied	8,795	72.9%
<i>Source: SMS Research, "Hawaii County Policy Study, 2003", August 28, 2003.</i>		

The availability of housing units in the North Kona area for the affordable housing income range can be illustrated by reviewing recent sales data. The chart below shows a tabulation of residential sales data from July 2003 to February 2004



from the Mikiko Corporation study which provides some indication of the relative affordability of available units. For those earning up to 140% of the median income, housing prices of up to \$250,000 would be affordable. (Also see attached Exhibit 4-3 from the Mikiko Corporation)



The median sold multi-family unit in North Kona was \$228,250; this price level would be affordable to households earning 120% to 140% of the median income. There were 117 multi-family homes sold for less than \$250,000, which is 55% of the total number of multi-family units sold. There were 13 single-family homes sold for less than \$250,000, or 6% of the total number of single-family units sold.

Regarding the rental market, SMS surveyed advertised rentals on the Island of Hawaii for the period from 1995 to 2002. It was found that West Hawaii listings have declined significantly, and fell again at the end of 2002. West Hawaii rents were up significantly in 2002, rising dramatically since 1994. A typical West Hawaii one-bedroom apartment was renting for about \$800 to \$899 in 2002, while a two-bedroom apartment was asking \$1,100 to \$1,199. Anecdotal information regarding the rental market situation in West Hawaii indicates that the trend of rising rental rates has continued since 2002 and shows no sign of leveling off.

The 2006 Waikoloa Workforce Housing Survey found housing characteristics consistent with both the U.S. Census data and County of Hawaii research conducted previously. The report noted that, "Overall, shelter payments were very close to the distribution measured in the Housing Policy Study Update, 2003." The report further stated that, "The shelter-to-income ratio (percentage of household income paid as rent or mortgage payments) reflects the impact of

Hawaii's high housing costs on residents. The ratio also suggests something about how well prospective homeowners may be prepared for new units. Many owners (56%) have low ratios. They are realizing the American Dream, buying in at a low price, paying off smaller mortgages and accumulating appreciation while achieving higher family incomes. Still, 12 percent of the owners have shelter-to-income ratios above .33. Renters have much higher shelter-to-income ratios. Over 35 percent of them are paying more than a third of their incomes for shelter, and 28 percent pay more than 40 percent."

The SMS Survey Report also provided information on other affordable housing projects scheduled for completion within the next five years. The report states that "Over the next five years at least 638 for-sale units may be available from competing developments for less than \$380,000. This total includes 108 units from Sea Scape Condos, 300 units from Kaloko Heights and 177 units from Wehilani at Waikoloa, along with other smaller housing developments. The report further notes that the Department of Hawaiian Home Lands (DHHL) plans to develop more than 600 affordable units from 2009 to 2011 in their Villages of La'opua project.

Finally, the County of Hawaii's Waikoloa Workforce Housing project will produce approximately 1,000 affordable units over the next eight years. Phase I is scheduled for completion in 2008 with 200 units. Approximately half of the units will be developed as affordable rentals, with the balance as affordable for sale units.

#### **4. Projected number of employees from the development who might be expected to commute from East Hawaii**

In 2001, a survey was conducted by Peter Young, former County Managing Director, of North Kona and South Kohala resort workers to determine their area of residence and hence commuting distances. The survey revealed that approximately 60% of resort workers lived in the North Kona-South Kohala area, while the balance commuted from areas beyond this region. Approximately 20% commuted from East Hawaii areas, including 13% from Hamakua, 2% from North Hilo, and 5% from South Hilo. We believe that the commercial and service industry related jobs generated by the West Hawaii Business Park will result in a similar percentage of workers commuting from East Hawaii.

The 2006 Waikoloa Workforce Housing Survey included data on employee characteristics and found that, "Among all the workers, more than 88 percent are employed on the same side of the island on which they live. That means that 12 percent of all employed persons are commuting from one side of the island to the other. The number of those who travel to and from East Hawaii and West Hawaii is nearly the same."

## **5. Number of owner occupants who reside in the West Hawaii area**

The SMS Housing Policy Study provided occupancy data for single-family and condominium housing units. Statewide, 64% of single-family units and 30% of condominium units are owner occupied. For the Island of Hawaii, 56% of single-family and 15% of condominium units are owner-occupied.

For all housing units in North Kona, 37% were owner-occupied (4,842 units of 13,132 units total). For single-family units, 52% were owner-occupied (4,157 of 8,049 units). For condominiums, 15% were owner-occupied (685 of 4,515 units).

## **6. Conclusions from the Housing Needs Assessment**

There is a near-term need for approximately 2,000 affordable housing units in the County of Hawaii. Of this total, there is an estimated need for approximately 800 affordable housing units in the West Hawaii regions of North and South Kona and South Kohala. Several projects that are currently under construction or scheduled to break ground shortly will address the need for affordable housing units in North Kona and South Kohala over the next several years. These projects include the Sea Scape Condos (108 units), Kaloko Heights (300 units) and the Wehilani at Waikoloa Project (177 units) along with a number of other smaller housing developments. The inventory of affordable housing units in West Hawaii will also increase significantly over the next eight years with the County's Waikoloa Workforce Housing Project, which will produce approximately 1,000 affordable units as well as the DHHL's Villages of Laiopua Project which will produce approximately 600 units.

The population growth and household formation rates projected in the Market Assessment Report prepared earlier for the County's Affordable Housing Project at Waikoloa reflects a demand for additional housing units regardless of whether the West Hawaii Business Park is built or not. No primary industries having more than 100 employees are anticipated within the West Hawaii Business Park. As such, the proposed project will not serve as a generator of growth, but is meeting the commercial and service needs of the growth that is already occurring in the region. The secondary industries will not constitute "large industries which create a demand for housing" as described in the General Plan policy relative to affordable housing. Based on the foregoing, the West Hawaii Business Park is not anticipated to generate the type of industrial activity that would trigger the requirements of the County's Affordable Housing Policy.

Nevertheless, as a long-standing member of the Kona Community, West Hawaii Business Park and its affiliate, Lanihau Properties, LLC, understands the impacts generated by the growth occurring within the North Kona District. Over the years, the Greenwell family, the landowner of the property, has cooperated with the County of Hawaii in providing land for essential public improvements benefiting the North Kona community. The landowner recognizes that the

County Housing Agency is concerned about benefits to the community based upon the rezoning of the West Hawaii Business Park property (like the adjacent Kaloko Industrial Park). In this regard, however, it is important to recognize that the community has in fact benefited from the landowner's participation in the development of the Hualalai Elderly Housing Projects (Phases I, II and III) which is providing 96 very low income elderly rental units at a time when there was no requirement to produce affordable housing. Phase I of the Hualalai Elderly Housing Project was completed in 1999, Phase II in 2003 and Phase III will be completed shortly.

#### **D. Implementation Plan**

The development of the West Hawaii Business Park will occur incrementally over approximately a 20-year period as the commercial and industrial lots are sold and built-out. The initial phase of the West Hawaii Business Park is expected to commence in late 2007 and will consist of lots ranging in size from ½ to 3+ acres within a 9.9 acre parcel zoned MCX. The second phase of development will follow the construction of the Kamanu Street Extension, projected for late 2007 with completion in 2008. Development of future phases will be undertaken as market conditions warrant. The specific businesses to be pursued on the lots will be left up to the purchasers, and are limited only by the allowable zoning and the additional restrictions imposed by the LUC.

Although the West Hawaii Business Park is not anticipated to generate the type of industrial activity that would trigger the requirements of the County's Affordable Housing Policy, the landowner will voluntarily enter into an agreement with the Office of Housing and Community Development to apply 32 affordable housing credits, earned through its participation in the development of Phases I & II of the Hualalai Elderly Housing Project, in satisfaction of any affordable housing requirement imposed under Chapter 11, Hawaii County Code, as amended, as it relates to (i) the landowner/developer of the West Hawaii Business Park and (ii) the subsequent purchasers of the individual lots within the project.

## EXHIBITS

Exhibit A – Location Map

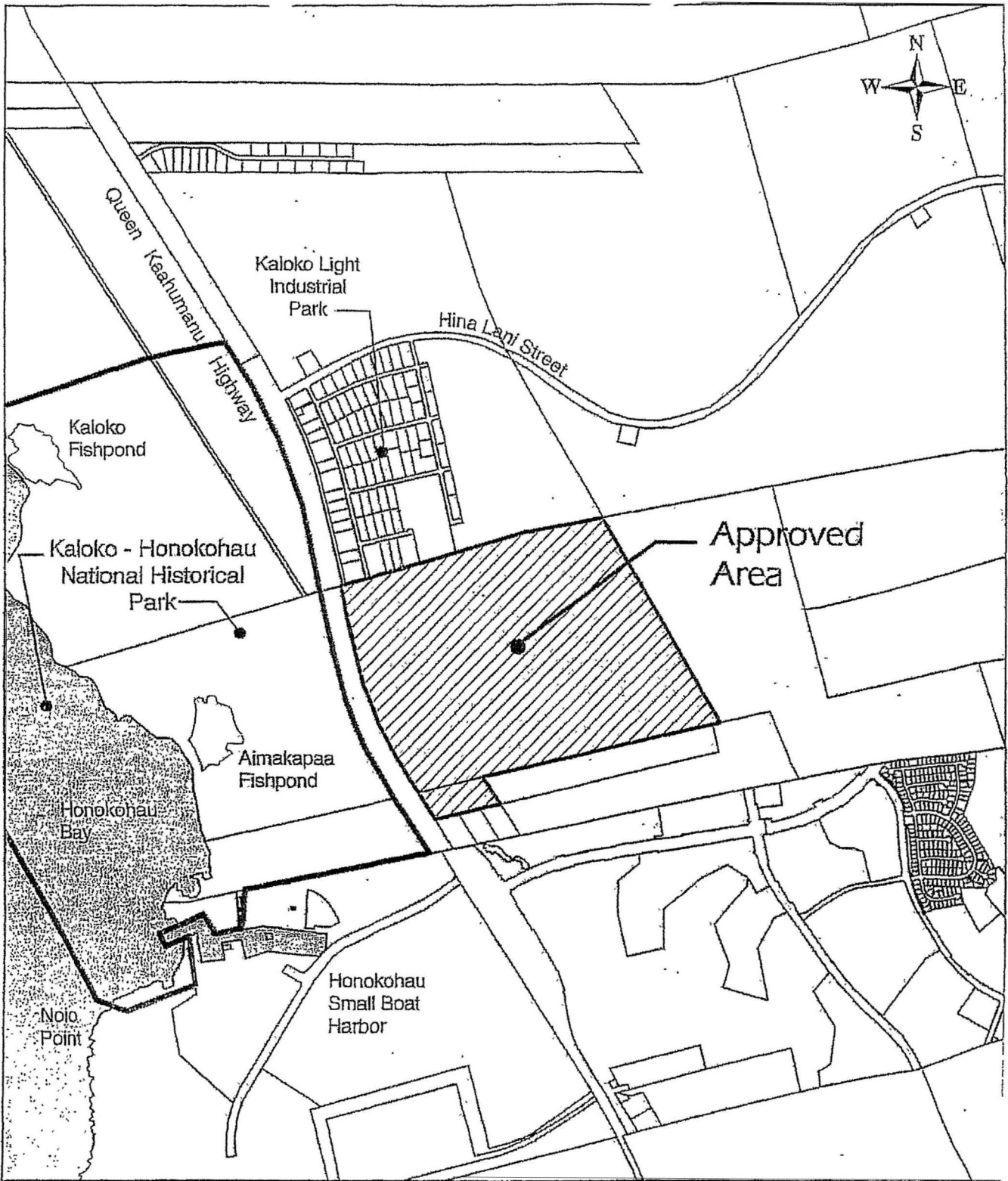
Exhibit B – Zoning Amendments

Exhibit C – Phasing Plan

Exhibit 6-1 Projected Households by Income in County, 2003 to 2017

Exhibit D – Affordable Guidelines for the County of Hawaii

Exhibit 4-3 Home Sales by Price in the South Kohala and North Kona Districts,  
July 1, 2003 to February 4, 2004

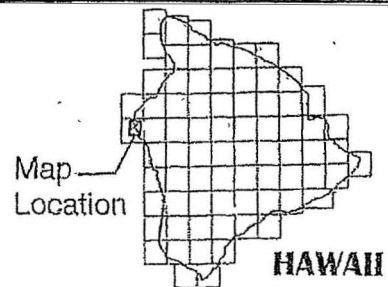


**A00-730 LANIHAU PROPERTIES, LLC**

**LOCATION MAP**

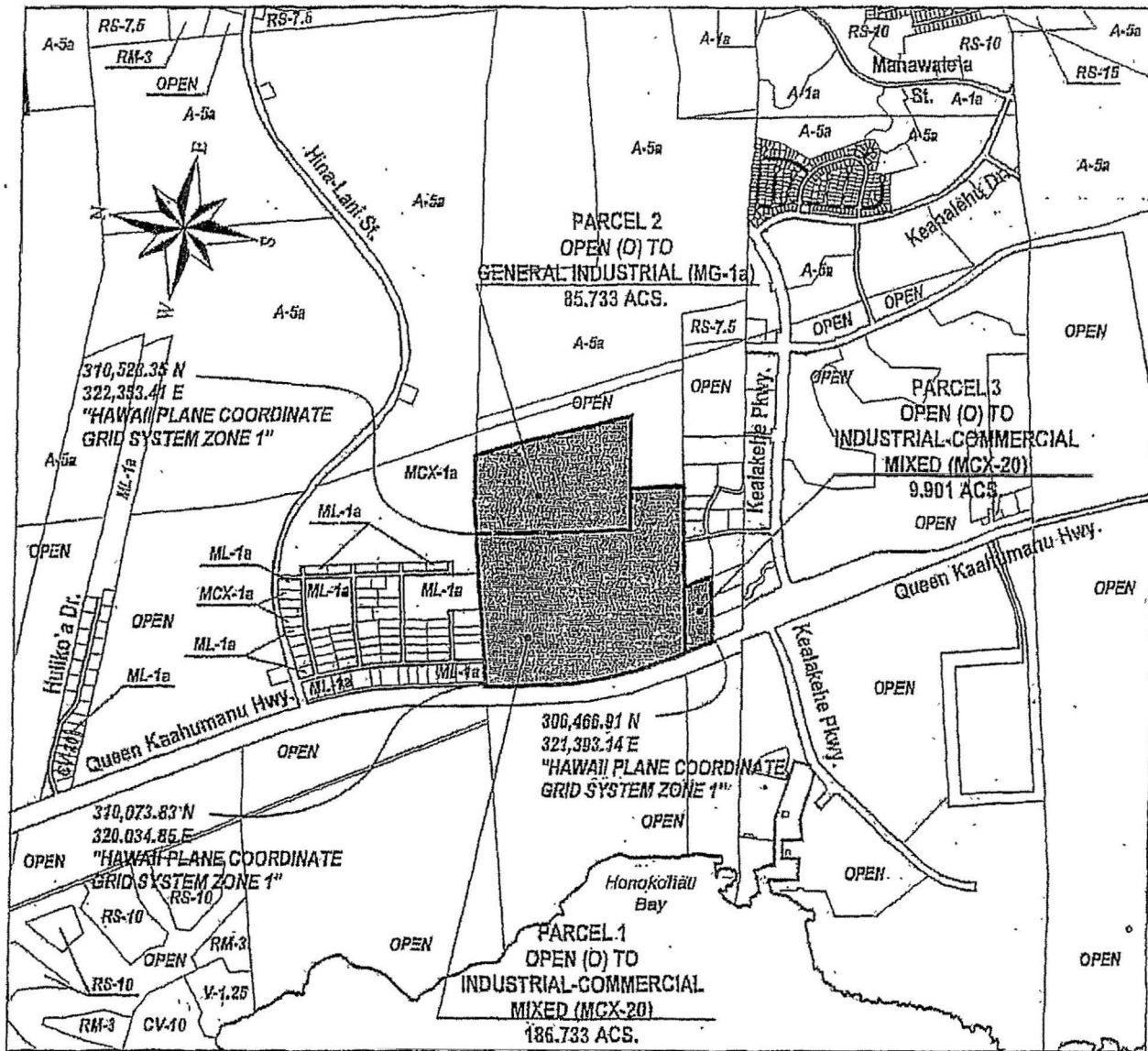
Tax Map Key: 7-4-08: por. 13 & 30  
 Honokohau 1st & 2nd, North Kona, Hawaii  
 Scale: 1" = 2,000 ft.

**EXHIBIT "A"**



**HAWAII**





# AMENDMENT TO THE ZONING CODE

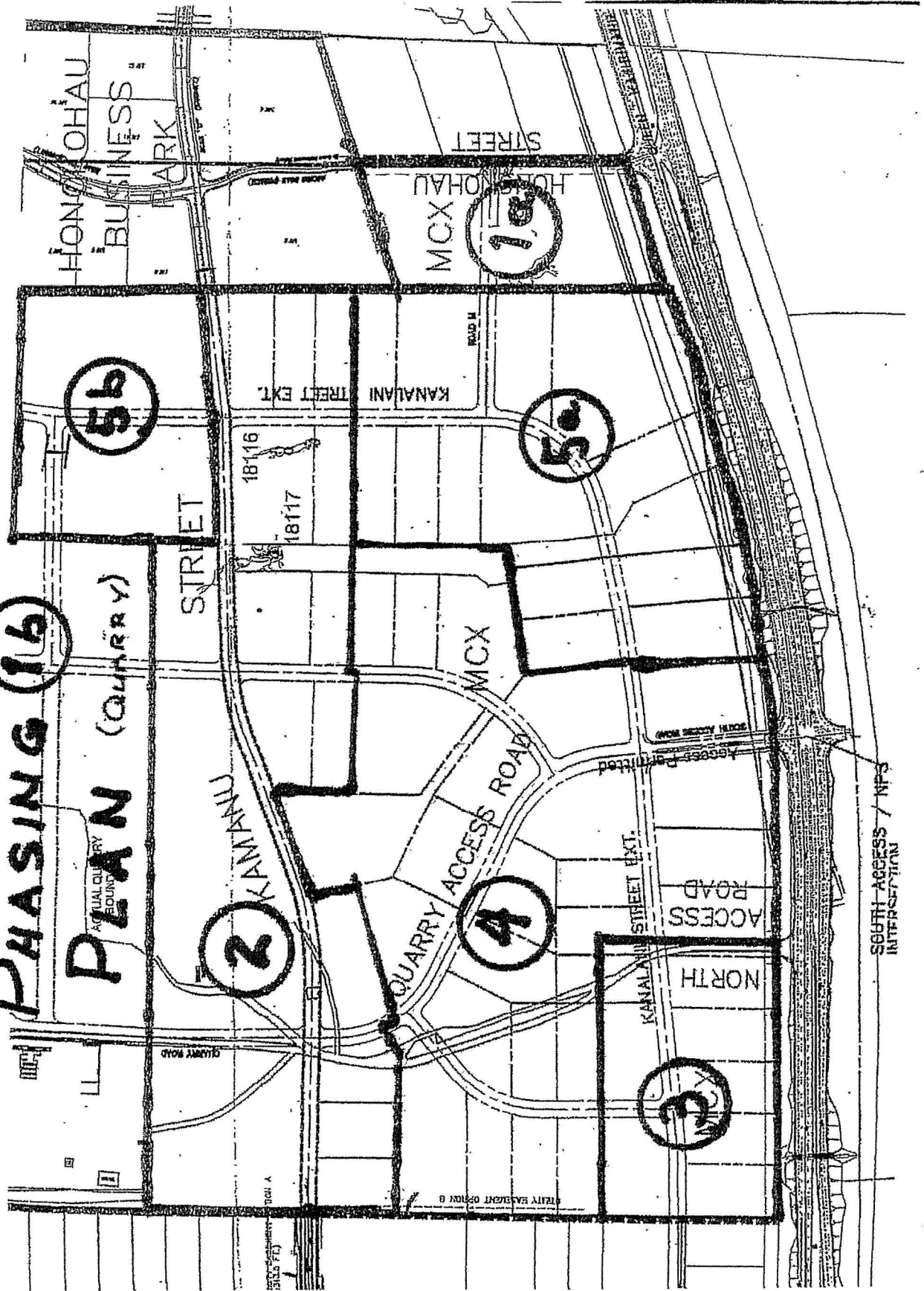
AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP)  
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE,  
 BY CHANGING THE DISTRICT CLASSIFICATION  
 FROM OPEN (O)  
 TO INDUSTRIAL-COMMERCIAL MIXED (MCX-20)  
 AND GENERAL INDUSTRIAL (MG-1a)  
 AT HONOKOHAU 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

Exhibit C

# PHASING 1b

## PLAN (QUARRY)





**Exhibit 6-1: Projected Households by Income in County  
2003 to 2017**

Projected households <sup>1</sup> :	Projected annual growth			Estimated														
	2003-08	2008-13	2013-17	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Hawaii County	2.5%	2.2%	2.0%	57,076	58,491	59,940	61,424	62,945	64,504	65,923	67,373	68,855	70,370	71,918	73,357	74,824	76,320	77,847

30-mile households by % of County median income:	Distribution <sup>3</sup>																	
	Max income, 2004 <sup>2</sup>	Incr- ment	Cumul- ative	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
30% or less	\$15,300	14%	14%	7,991	8,189	8,392	8,599	8,812	9,031	9,229	9,432	9,640	9,852	10,069	10,270	10,475	10,685	10,899
Between 30% and 50%	\$25,500	12%	26%	6,849	7,019	7,193	7,371	7,553	7,740	7,911	8,085	8,263	8,444	8,630	8,803	8,979	9,158	9,342
Between 50% and 80%	\$30,800	15%	41%	8,552	8,774	8,991	9,214	9,442	9,676	9,888	10,105	10,326	10,556	10,786	11,004	11,224	11,446	11,677
Between 80% and 100%	\$51,000	9%	50%	5,137	5,284	5,395	5,520	5,665	5,805	5,939	6,064	6,197	6,333	6,473	6,602	6,734	6,869	7,005
Between 100% and 120%	\$61,200	14%	64%	7,991	8,160	8,332	8,509	8,692	8,881	9,031	9,229	9,432	9,640	9,852	10,069	10,270	10,475	10,685
Between 120% and 140%	\$71,400	12%	76%	6,849	7,019	7,193	7,371	7,553	7,740	7,911	8,085	8,263	8,444	8,630	8,803	8,979	9,158	9,342
Between 140% and 180%	\$91,800	10%	86%	5,708	5,849	5,994	6,142	6,295	6,450	6,592	6,737	6,886	7,037	7,192	7,336	7,482	7,632	7,785
180% or more	\$91,800	14%	100%	7,991	8,189	8,392	8,599	8,812	9,031	9,229	9,432	9,640	9,852	10,069	10,270	10,475	10,685	10,899
Total		100%		57,076	58,491	59,940	61,424	62,945	64,504	65,923	67,373	68,855	70,370	71,918	73,357	74,824	76,320	77,847

Households in targeted groups (50% to 140% of median, rounded):

See shaded areas above

Total number	28,500	29,200	30,000	30,700	31,500	32,300	33,000	33,700	34,400	35,200	36,000	36,700	37,400	38,200	38,900	39,600
Percent of County	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%

Increase since 2003, households in targeted income groups:

Annual	700	800	700	800	800	700	700	700	700	800	800	700	700	800	700	700
Cumulative	700	1,500	2,200	3,000	3,800	4,500	5,200	5,900	6,700	7,500	8,200	8,900	9,700	10,400		

Note: Totals and cumulatives may not add due to rounding.

<sup>1</sup> Household estimates or projections to 2008 provided by Claritas, Inc., March 29, 2004. See Exhibit 2-2.

<sup>2</sup> Based on 2004 HUD median income of \$51,000 for a family of four, as shown on [www.huduser.org/Datasets/IL/LLO4/hud04hl.pdf](http://www.huduser.org/Datasets/IL/LLO4/hud04hl.pdf)

<sup>3</sup> Considers distribution of County household incomes by dollar amount, as estimated for 2003 estimates by Claritas, Inc., 2004 and SMS Inc., "Hawaii Housing Policy Study 2003," with reallocation to correspond to assumed median of \$51,000. See Exhibits 2-5, 2-8, 3-4 and 3-9.

**Exhibit D**

**AFFORDABLE GUIDELINES FOR THE COUNTY OF HAWAII**

**SALES GUIDELINES**

This information is based on 2006 median income established by the U.S. Department of Housing and Urban Development (HUD) for various family sizes. Adjustments to the very low- (50%) and low-income (80%) limits are made by HUD for areas with unusually high or low family income or housing costs. Most income limits are proportionately based on very low-income limits. Thus, the four-person (60%) income limit is 120% (60/50ths) of the four-person very low-income limit.

The figures considers (1) a 30-year conventional fixed mortgage; (2) a fixed interest rate of 6%\*; (3) housing expenses equal to 28% of gross annual income; and (4) a down payment equal to 5% of the sales price.

\* The interest rate used is the annual average interest rate for a 30-year conventional fixed mortgage, for the twelve months ending in the previous year, as published by the Federal Home Loan Mortgage Corp ([www.freddiemac.com/news/factbook](http://www.freddiemac.com/news/factbook)). The rate is rounded up to the nearest whole percent.

% of Median	50%	60%	70%	80%	90%	100%	110%	120%	130%	140%
<b>FAMILY SIZE: 1</b>										
Income	\$ 20,950	\$ 25,140	\$ 29,330	\$ 33,550	\$ 37,710	\$ 38,710	\$ 42,580	\$ 46,450	\$ 50,320	\$ 54,190
Sales price	\$ 85,800	\$ 103,000	\$ 120,200	\$ 137,400	\$ 154,500	\$ 158,600	\$ 174,400	\$ 190,300	\$ 206,100	\$ 222,000
<b>FAMILY SIZE: 2</b>										
Income	\$ 23,950	\$ 28,740	\$ 33,530	\$ 38,300	\$ 43,110	\$ 44,240	\$ 48,660	\$ 53,090	\$ 57,510	\$ 61,940
Sales price	\$ 98,100	\$ 117,700	\$ 137,400	\$ 156,900	\$ 176,600	\$ 181,200	\$ 199,900	\$ 217,500	\$ 235,600	\$ 253,700
<b>FAMILY SIZE: 3</b>										
Income	\$ 26,950	\$ 32,340	\$ 37,730	\$ 43,100	\$ 48,510	\$ 49,770	\$ 54,750	\$ 59,720	\$ 64,700	\$ 69,680
Sales price	\$ 110,400	\$ 132,500	\$ 154,600	\$ 176,600	\$ 198,700	\$ 203,900	\$ 224,300	\$ 244,700	\$ 265,100	\$ 285,500
<b>FAMILY SIZE: 4</b>										
Income	\$ 29,950	\$ 35,940	\$ 41,930	\$ 47,900	\$ 53,910	\$ 55,300	\$ 60,830	\$ 66,360	\$ 71,890	\$ 77,420
Sales price	\$ 122,700	\$ 147,200	\$ 171,800	\$ 196,200	\$ 220,800	\$ 226,500	\$ 249,200	\$ 271,900	\$ 294,500	\$ 317,200
<b>FAMILY SIZE: 5</b>										
Income	\$ 32,350	\$ 38,820	\$ 45,290	\$ 51,750	\$ 58,230	\$ 59,720	\$ 65,700	\$ 71,670	\$ 77,640	\$ 83,610
Sales price	\$ 132,500	\$ 159,000	\$ 185,500	\$ 212,000	\$ 238,500	\$ 244,700	\$ 269,100	\$ 293,600	\$ 318,100	\$ 342,500
<b>FAMILY SIZE: 6</b>										
Income	\$ 34,750	\$ 41,700	\$ 48,650	\$ 55,550	\$ 62,550	\$ 64,150	\$ 70,560	\$ 76,980	\$ 83,390	\$ 89,810
Sales price	\$ 142,400	\$ 170,800	\$ 199,300	\$ 227,600	\$ 256,200	\$ 262,800	\$ 289,100	\$ 315,400	\$ 341,600	\$ 367,900

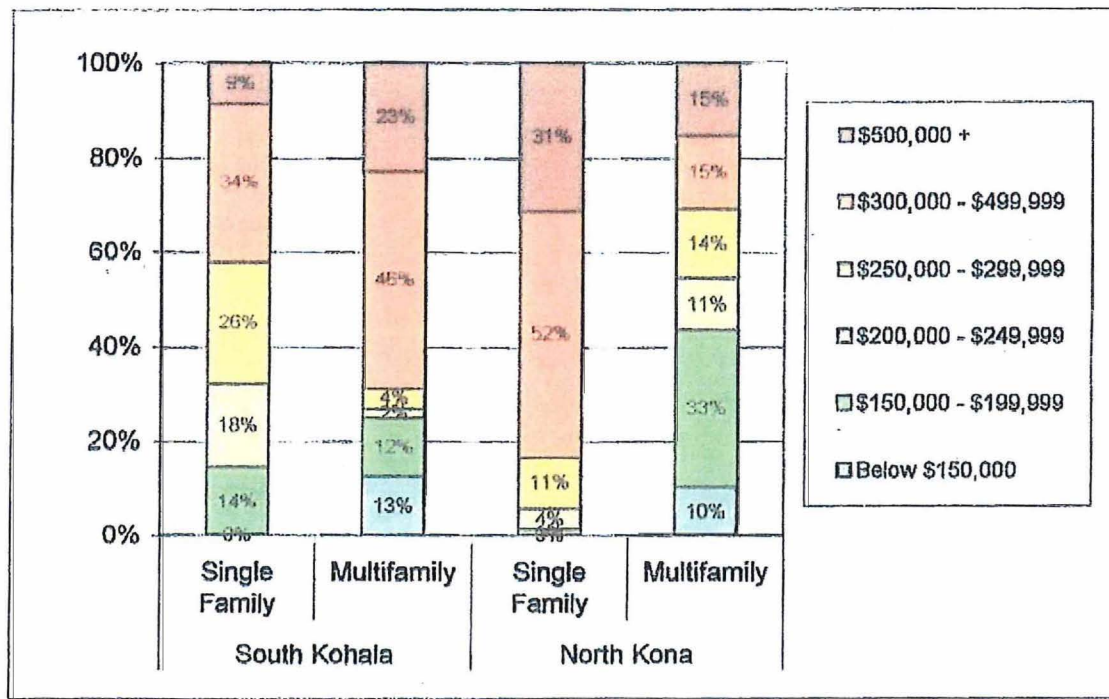
**RENT GUIDELINES**

Affordable rents are based on 30% of gross monthly income, including utilities (water, sanitary sewage service, electricity and/or gas). Please refer to form HUD-52667 (*Allowances for Tenant-Furnished Utilities and Other Services*) for utilities for either single- and/or multi-family units.

Bedroom Size	% of Median Income					
	Studio	One	Two	Three	Four	Five
30%	\$ 313	\$ 336	\$ 403	\$ 466	\$ 520	\$ 583
50%	\$ 523	\$ 561	\$ 673	\$ 778	\$ 868	\$ 958
60%	\$ 628	\$ 673	\$ 808	\$ 935	\$ 1,042	\$ 1,149
80%	\$ 838	\$ 898	\$ 1,077	\$ 1,245	\$ 1,388	\$ 1,531
100%	\$ 967	\$ 1,036	\$ 1,244	\$ 1,437	\$ 1,603	\$ 1,769
120%	\$ 1,161	\$ 1,244	\$ 1,493	\$ 1,725	\$ 1,924	\$ 2,123
140%	\$ 1,354	\$ 1,451	\$ 1,742	\$ 2,012	\$ 2,245	\$ 2,478

**Exhibit 4-3: Home Sales by Price in the South Kohala and North Kona Districts**  
 July 1, 2003 to February 4, 2004

	South Kohala (Zone 6)		North Kona (Zone 7)	
	Single Family	Multifamily	Single Family	Multifamily
Average sales price	\$403,066	\$410,851	\$514,699	\$541,294
Median sales price	\$285,000	\$390,500	\$405,000	\$228,250
<b>Number of sales:</b>				
Below \$125,000	0	17	0	6
\$125,000 - \$149,999	0	15	0	16
\$150,000 - \$174,999	6	16	2	46
\$175,000 - \$199,999	14	15	1	25
\$200,000 - \$224,999	15	0	1	11
\$225,000 - \$249,999	10	5	9	13
\$250,000 - \$274,999	19	7	9	17
\$275,000 - \$299,999	17	4	15	14
\$300,000 - \$349,999	19	21	30	16
\$350,000 - \$499,000	28	96	86	17
\$500,000 +	12	58	70	33
<b>Total</b>	<b>140</b>	<b>254</b>	<b>223</b>	<b>214</b>



Note: Sample excludes units reported to be less than 500 square feet net interior; also excludes waterfront properties in Kailua-Kona, defend as Alii Drive, Kahakai Road, Kaiolu Road and Ke'alahi Kai Place.

Source: Hawaii Informaton Service.



HAWAII COUNTY HOUSING AGENCY  
Resolution No. 143

RESOLUTION APPROVING THE HOUSING NEEDS ASSESSMENT AND IMPLEMENTATION  
PLAN FOR THE WEST HAWAII BUSINESS PARK AT HONOKOHAU, NORTH KONA,  
ISLAND OF HAWAII

WHEREAS, on September 26, 2003, the State Land Use Commission (SLUC) issued Findings of Fact, Conclusions of Law and Decision and Order relating to Docket No. A00-730, approving the reclassification of approximately 336.984 acres of land from the Conservation District to the Urban District for property situated at Honokōhau, District of North Kona, Hawaii; and

WHEREAS, the SLUC reclassification included Condition No. 8 entitled Affordable Housing which requires the petitioner to submit a housing needs assessment and implementation plan to the Commission and appropriate Hawaii County Housing Agency (HCHA) for their review and approval and comply with the County of Hawaii affordable housing policy; and

WHEREAS, Change of Zone Ordinance No. 04-110, effective on October 12, 2004, rezoned 196.631 acres of the subject property from Open (O) to Industrial-Commercial Mixed District (MCX-20) and an additional 85.733 acres to General Industrial (MG-1a); and

WHEREAS, Change of Zone Ordinance No. 04-110 included Condition 8 which stipulates that the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code, relating to Affordable Housing Policy; and

WHEREAS, Section 11-4(d) of the County's affordable housing policy provides the affordable housing requirements for industrial uses and stipulates that industrial uses that must fulfill the affordable housing requirements are any uses allowed as of right in a ML or MG district, except for home improvement centers, and any uses that are also allowed as of right in a CG district; and

WHEREAS, Section 11-4(d) of the County's affordable housing policy further states that individual industrial enterprises generating more than 100 employees on a full-time equivalent basis must earn one affordable housing credit for every four full-time equivalent jobs created; and

WHEREAS, a Housing Needs Assessment and Implementation Plan was submitted to the Office of Housing and Community Development (OHCD) on October 11, 2006, to address the requirements of Condition No. 8 of the State Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order issued on September 26, 2003, relating to Land Use Commission Docket No. A00-730; and

WHEREAS, the West Hawai'i Business Park will be developed incrementally over approximately a 20-year period with industrial and commercial uses and is unlikely to include individual industrial enterprises having more than 100 employees; and

WHEREAS, the OHCD has reviewed the Housing Needs Assessment and Implementation Plan submitted for the West Hawai'i Business Park and is recommending its approval; and

WHEREAS, the HCHA and the landowner/developer of the West Hawai'i Business Park, acknowledge the existing and projected future pent up demand for affordable housing units in the North Kona district, with or without this project; and

WHEREAS, as a long-standing and responsible member of the Kona Community, West Hawai'i Business Park and its affiliate, Lanihau Properties, LLC, understands the impacts generated by the growth occurring within the North Kona District. Over the years, the Greenwell family, the landowner of the property, has cooperated with the County of Hawai'i in providing land for essential public improvements benefiting the North Kona community; and

WHEREAS, the HCHA is concerned about benefits to the community based upon the rezoning of the West Hawai'i Business Park Property; and

WHEREAS, Lanihau Properties, LLC, has provided community benefits well in advance of any requirements by participating in the development of the Hualālai Elderly Housing Projects (Phases I, II and III) which is providing 96 very low income elderly rental units in the North Kona community; and

WHEREAS, the HCHA adopted Resolution No. 134, Draft 2 on December 2, 2003, which acknowledged the interest and goodwill of Lanihau Properties, LLC, toward the development of the Hualālai Elderly Rental Housing Project Phases I and II and awarded 132 affordable housing credits to Lanihau Properties, LLC; and

WHEREAS, HCHA Resolution No. 134, Draft 2, further stated that these affordable housing credits be transferable within properties owned by Lanihau and/or its affiliated entities to satisfy future affordable housing conditions pursuant to Chapter 11, Article 1 Sections 11-4 and 11-5 of the Hawai'i County Code; and

WHEREAS, the landowner/developer of the West Hawai'i Business Park will voluntarily enter into an agreement with the OHCD to apply 32 affordable housing credits, earned through its participation in the development of Phases I and II of the Hualālai Elderly Housing Project, in satisfaction of any affordable housing requirement imposed under Chapter 11, Hawai'i County Code, as amended, as it relates to

(i) the landowner/developer of the West Hawai'i Business Park and (ii) the subsequent purchasers of the individual lots within the project.

NOW, THEREFORE AND WITH THE ABOVE UNDERSTANDING, BE IT RESOVED BY THE HAWAI'I COUNTY HOUSING AGENCY that the Housing Needs Assessment and Implementation Plan for the West Hawai'i Business Park is hereby approved.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

Dated at Hilo, Hawai'i, this 30th day of October, 2006.

HAWAI'I COUNTY HOUSING AGENCY

ABSENT AND EXCUSED

PETE HOFFMANN, Chairperson

DONALD IKEDA, Vice Chairperson

JAMES ARAKAKI, Member

STACY HIGA, Member

DR. FRED HOLSCHUH, Member

VIRGINIA ISBELL, Member

ABSENT AND EXCUSED

BOB JACOBSON, Member

K. ANGEL PILAGO, Member

ABSENT AND EXCUSED

GARY SAFARIK, Member







AGREEMENT

THIS AGREEMENT, effective this 16<sup>TH</sup> day of September 2008, by and between LANIHAU PROPERTIES, LLC, a Hawai'i limited liability company, whose mailing address is 3465 Waialae Avenue, Suite 260, Honolulu, Hawai'i 96816, and WEST HAWAII BUSINESS PARK, LLC, whose mailing address is 3465 Waialae Avenue, Suite 260, Honolulu, Hawai'i 96816 (hereinafter together referred to as "LANIHAU"), and the COUNTY OF HAWAII, whose mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720 (hereinafter referred to as the "County"), by and through its Mayor.

WITNESSETH

WHEREAS, LANIHAU is comprised of entities, consisting of persons who are the descendants of Francis R. Greenwell or who represent the Greenwell family interests within Honokohau, District of North Kona, County and State of Hawai'i; and

WHEREAS, on September 26, 2003, the State Land Use Commission ("LUC") issued Findings of Fact, Conclusions of Law and Decision and Order relating to Docket No, A00-730, approving the reclassification of approximately 336.984 acres of land ("subject property") from the Conservation District to the Urban District for the subject property situate at Honokohau, District of North Kona, Hawai'i, which was further identified at that time as Tax May Key: (3) 7-4-008: 013 and 030; and

WHEREAS, the LUC reclassification included Condition No. 8 entitled Affordable Housing, which required the Petitioner to submit a housing needs assessment and

Implementation plan to the LUC and the Hawai'i County Housing Agency ("HCHA") for review and approval and compliance with the County of Hawai'i affordable housing policy; and

WHEREAS, Change of Zone Ordinance No. 04-110, effective on October 12, 2004, rezoned a total of 282.367 acres of the 336.984 acres in the Urban District, which included 196.634 acres of the subject property from the Open District ("O") to the Industrial-Commercial Mixed District ("MCX-20") and an additional 85.733 acres to the General Industrial District ("MG-1a") designated as TMK: (3) 7-4-8: por. 13 and 30, all of which rezoned areas are hereinafter referred to as the "West Hawai'i Business Park"; and

WHEREAS, Change of Zone Ordinance No. 04-110 included Condition S, which stipulates that the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code, relating to the County of Hawai'i affordable housing policy; and

WHEREAS, Section 11-4(d) of the County's affordable housing policy provides the affordable housing requirements for industrial uses and stipulates the affordable housing requirements for industrial uses that must fulfill the affordable housing requirements are any uses allowed as of right in an ML or MG district, except for home improvement centers, and any uses that are also allowed as of right in a CG district; and

WHEREAS, a "Housing Needs Assessment and Implementation Plan" was submitted on behalf of LANIHAU to the HCHA through the Office of Housing and Community Development ("OHCD") on October 11, 2006, to address the requirements of Condition No. 8 of the LUC's Findings of Fact, Conclusions of Law and Decision and Order issued on September 26, 2003, relating to LUC Docket No. A00-730 and the provisions of Condition S of Ordinance 04-110 effective as of September 12, 2004; and

WHEREAS, LANIHAU and the Greenwell family have cooperated with the County of Hawai'i in providing land for essential public improvements benefiting the North Kona community; and

WHEREAS, LANIHAU has provided community benefits by participating in the development of the Hualalai Elderly Housing Projects (Phases I, II and III), which are providing a total of 96 very low income elderly rental units in the North Kona community; and

WHEREAS, HCHA adopted Resolution No. 134, Draft 2, on December 2, 2003, which acknowledged the interest and goodwill of LANIHAU toward the initial development of the Hualalai Elderly Rental Housing Project, Phases I and II comprising a total of 66 very low income rental units, and awarded 132 affordable housing credits to LANIHAU; and

WHEREAS, HCHA Resolution No. 134, Draft 2, further stated that these affordable housing credits are transferable within properties owned by LANIHAU and/or its affiliated entities to satisfy future affordable housing condition pursuant to Chapter 11, Article 1, sections 11-4 and 11-5 of the Hawai'i County Code; and

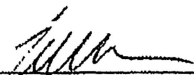
WHEREAS, OHCD recommended approval of the Housing Needs Assessment and Implementation Plan submitted for the West Hawai'i Business Park on October 11, 2006 and HCHA granted such approval on October 30, 2006, by adopting Resolution No. 143; which Resolution anticipated that LANIHAU would enter into this agreement with the COUNTY (through OHCD) to apply 32 affordable housing credits earned through LANIHAU'S participation in the development of phases I and II of the Hualalai Elderly Housing Project as it relates to West Hawai'i Business Park.

NOW THEREFORE, the parties hereby agree as follows:

1. Pursuant to the Housing Needs Assessment and Implementation Plan, and in satisfaction of Condition S of Change of Zone Ordinance No. 04-110, LANIHAU may proceed with the implementation provisions that are contained within such Housing Needs Assessment and Implementation Plan, as attached hereto as Exhibit "A"; and
2. Pursuant to such implementation provisions, Resolution No. 143 and with OHCD's concurrence, LANIHAU hereby applies 32 affordable housing credits, previously earned through its participation in the in the development of Phases I and II of the Hualalai Elderly Housing Project, in full satisfaction of the affordable housing requirement imposed under Chapter 11, Hawai'i County Code, as amended, as it may be related to (i) LANIHAU or its successors or assigns, as the landowner/developer of the West Hawai'i Business Park (the description of which is contained in Ordinance No. 04-110 and the location which is depicted on Exhibit "A" to said Ordinance) and (ii) the subsequent purchasers of the individual lots within the project.


IN WITNESS THEREOF, the parties hereto have caused these present to be executed the day and year first above written.

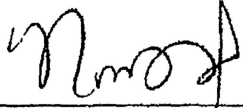
RECOMMEND APPROVAL:

  
\_\_\_\_\_  
Housing Administrator  
Office of Housing and  
Community Development

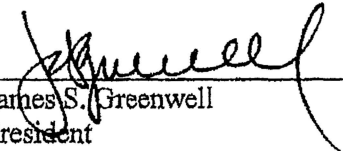
Date: 09/10/08

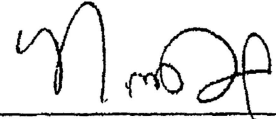
LANIHAU PROPERTIES, LLC,  
a Hawai'i limited liability company.

By:   
\_\_\_\_\_  
James S. Greenwell  
President


By:   
\_\_\_\_\_  
Norman S. Hom  
Vice President

WEST HAWAII BUSINESS PARK LLC,  
a Hawai'i limited liability company.

By:   
\_\_\_\_\_  
James S. Greenwell  
President

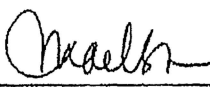
By:   
\_\_\_\_\_  
Norman S. Hom  
Vice President

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel  
County of Hawai'i

Date: 9/12/08

COUNTY OF HAWAII

By:   
\_\_\_\_\_  
Harry Kim  
Its Mayor

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On September 16, 2008, before me personally appeared DIXIE KAETSU, to me personally known, who, being by me duly sworn, did say that DIXIE KAETSU is the Acting Mayor of the County of Hawai'i, a municipal corporation of the State of Hawai'i; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i; that the foregoing instrument was signed and sealed in behalf of the County of Hawai'i by authority given to said Acting Mayor of the County of Hawai'i by Section 5-1.5 of the County Charter, County of Hawai'i (2000), as amended, and said DIXIE KAETSU acknowledged said instrument to be the free act and deed of said County of Hawai'i.



*Virginia M. Tolentino*

VIRGINIA M. TOLENTINO  
Notary Public, State of Hawai'i

My Commission Expires: 4/22/09

Doc. Date: <u>SEP 16 2008</u>	# Pages: <u>5</u>
Notary Name: Virginia M. Tolentino	Third Circuit
Doc. Description: <u>Agreement for Application - Affordable Housing Credits. West Hawaii Business Park.</u>	
<u><i>Virginia M. Tolentino</i></u>	<u>SEP 16 2008</u>
Notary Signature	Date