Harry Kim Mayor

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William A. Kucharski
Director

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# County of Hawai'i

#### DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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June 14, 2018

### Via Email and U.S. Mail

Ms. Kathleen H. Johnson, Director Enforcement Division U.S. Environmental Protection Agency, Region 9 75 Hawthorne Street San Francisco, California 94105

Subject:

**Federal Administrative Order of Consent** 

EPA Docket No. SDWA-UIC-AOC-2017-0002 Nā'ālehu and Pāhala Large Capacity Cesspools Requests for Extension of Compliance Dates

Dear Ms. Johnson:

The County of Hawai'i Department of Environmental Management (County) requests extensions of the following compliance deadlines, in accordance with Paragraph 52 of the Administrative Order of Consent (Consent Order).

- 1. Compliance Provision V.A.29.c: Acquire land for Pāhala Wastewater Treatment Facility (Pāhala WWTP).
  - A. Request: The County requests that the Compliance Date be extended from July 5, 2018 to September 10, 2019. [See Exhibit 1, Pāhala Project Schedule, Revision 10, dated June 4, 2018.]

### B. <u>Justification</u>:

- (1) The extension is needed to complete Environmental Assessments (EA) and/or Environmental Impact Statements (EIS) <u>prior</u> to the acquisition of land for the Pāhala WWTP.
  - a. The original Compliance Date for acquiring land did not include the time needed to complete the EAs and/or EISs, as required by Hawai'i Revised Statutes §343, Environmental Impact Statements, prior to the acquisition of land.

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- b. If the extension is granted, all other Compliance Dates can be met, including closure dates for the existing Large Capacity Cesspools (LCCs).
- (2) Nine (9) sites in Pāhala were investigated for suitability of the proposed Pāhala WWTP. [See Exhibit 2, Map depicting Pāhala WWTP Sites Considered, dated December 13, 2017.]
  - a. The final proposed site is on a portion of land owned by the Bernice Pauahi Bishop Estate Trust (Kamehameha Schools), Tax Map Key (TMK) (3) 9-6-002:018, and must be acquired via eminent domain, which, even if a "friendly condemnation," will be a lengthy process.
    - (i) On May 28, 2018, Kamehameha Schools confirmed its support of the County acquiring a portion of this property for a wastewater treatment plant to serve the community.
  - b. One of the previously considered sites was a 0.41 acre site conveyed to the County by C. Brewer & Co., Ltd. (C. Brewer), for installation of a Large Capacity Septic System (LCSS). However, this site was determined to be unsuitable because the property is within 1,000 feet of an existing industrial water well which the owner intends to convert to a potable water well.
    - (i) Additionally, installation of a LCSS to serve the community would require a variance from requirements regarding Individual Wastewater Systems (IWS) under Hawai'i Administrative Rules (HAR) §11-62, Wastewater Systems; which would be required to be renewed at five (5) year intervals and expansion of the LCSS to service the greater community in the future would not be possible.
  - c. In December 2017, two additional properties owned by Kamehameha Schools were investigated based on public input. However, based on the topography, distance from Pāhala town, and crossing of the state highway, the current selected site was determined to be more desirable.
- 2. Compliance Provision V.B.31.c: Acquire land for Nā'ālehu Wastewater Treatment Facility (Nā'ālehu WWTP).
  - A. Request: The County requests that the Compliance Date be extended from June 27, 2018 to June 1, 2020. [See Exhibit 3, Nā'ālehu Project Schedule, Revision 17, dated June 6, 2018.]

#### B. Justification:

- (1) The extension is needed to complete the EAs and/or EISs <u>prior</u> to the acquisition of land for the Nā'ālehu WWTP.
  - a. The original Compliance Date for acquiring land did not include the time needed to complete the EAs and/or EISs prior to acquisition of land.
  - b. If the extension is granted, all other Compliance Dates can be met, including closure dates for the existing Large Capacity Cesspools (LCCs).
- (2) Thirty-two (32) sites were investigated in Nā'ālehu for suitability of the proposed Na'alehu WWTP. [See Exhibit 4, Map depicting Nā'ālehu WWTP Sites Considered, dated June 4, 2018.]
  - a. The initial site was a 0.237 acre site. The property had been conveyed by C. Brewer to the County for installation of a Large Capacity Septic System (LCSS), but the LCSS was determined, after more detailed technical evaluations, to be unsuitable for the intended purpose. The existing Large Capacity Cesspool (LCC) served only a small portion of the C. Brewer community and a LCSS would not be able to accommodate all of the wastewater flows from the entire community.
  - b. As such, the County investigated the possibility of acquiring additional property in the area for a LCSS but it was later determined that odor issues were a likely concern because the LCSS would be located in the middle of the community and only preliminary treatment would be provided.
  - c. LCSS effluent disposal was also an issue due to unfavorable percolation test results.
  - d. Another proposed site evaluated for the new Wastewater Treatment Plant (WWTP) was located approximately ½ mile east of the town, on a relatively flat section of land which was reportedly utilized as a sweet potato farm in past years, and was up for sale by the owner.
    - (i) The Archaeological Inventory Survey (AIS) for the property determined that the site had been previously used as a Hawaiian Makahiki (festival) site during the precontact period, making this site unacceptable for the WWTP.

- e. The County proposed relocating the WWTP west of the Makahiki area, however, there was opposition from the community due to the proximity to the Makahiki site. The County continued to investigate additional sites in the area.
- (3) The next proposed site for the WWTP is located on a portion of TMK (3) 9-5-012:002 (east of the town) which is owned by the State of Hawai'i. Disposal of the treated and disinfected effluent was to occur on a private parcel (TMK (3) 9-5-011:003) which was to have been acquired by the County as it was up for sale at the time.
  - a. As a part of the Land Acquisition Process the County conducted a Preliminary Archaeological Field Study of the area which was completed on March 20, 2017. No major archaeological features were identified.
  - b. Additionally, on August 25, 2017, a Phase 1 Environmental Assessment of the area intended to be utilized for the treatment and disposal system was performed and transmitted to the EPA, along with the Preliminary Engineering Report in accordance with Section V.B.31.a and V.B.31.d of the Administrative Order of Consent (AOC).
  - c. An appraisal of TMK 9-5-011:003 was completed on June 28, 2017 and an Offer Letter was provided to the owners on August 31, 2017.
    - (i) While two (2) of the four (4) property owners accepted the offer, two (2) other property owners did not accept the offer. However, no purchase of a property designated for a WWTF is allowed under County rules before an EA/EIS in compliance with HAR 343 has been completed.
  - d. During the period of April 9, 2018, through April 12, 2018, the County's Design Consultant and its Public Outreach subconsultant, held initial public meetings with the community, in accordance with Section V.B.31.b of the AOC. Nineteen (19) individuals with various interests were independently interviewed, and three (3) "Talk Story" meetings open to the general public were held on three separate evenings.
    - (i) While it was reported that there was general agreement with the treatment technology, there was also community opposition to the proposed site for the WWTP.
  - e. The County is currently in the process of evaluating the use of a portion of another property located west of Nā'ālehu town. Two

- (2) previously unavailable properties, have since been visited by the Wastewater Division and the Design Consultant. The County is currently in discussions with one of the property managers about obtaining a portion of the property for a Wastewater Treatment and Disposal Site (WWTP).
- (4) On May 25, 2018, the local land manager informed the County that the owner would like to help the County as well as the community with finding a solution for wastewater treatment and disposal for the community.
  - a. Based on the above, the County will be proceeding with preliminary work to determine feasibility of utilizing a portion of the property for the Nāʿālehu WWTP.
  - b. Preliminary work would include exploratory geotechnical borings, a drainage study of a portion of the property, and a Phase 1 Environmental Site Assessment (Phase 1 ESA) of the proposed site.
    - (i) To confirm suitability of this new potential site and to minimize project delays, the Design Consultant is in the process of obtaining a geotechnical engineer to perform borings within the property (the property manager has indicated that they would be amenable to allowing access in the interim) to confirm that permeability is acceptable for disposal of the treated effluent. The Design Consultant expects that the work can be performed by the end of June 2018.
  - c. While the current owner is in the process of conducting an Archaeological Inventory Survey (AIS) of the property, the County will conduct an AIS of the portion of the property determined to be the final selected site, if required. This work would be done as part of an Environmental Assessment (EA) for the project.
- 3. Compliance Provision V.B.31.a: Complete Phase 1 ESA for Nā'ālehu no later than January 4, 2018.
  - A. Request: The County requests that the Compliance Date be extended from January 4, 2018, to November 27, 2018.

## B. <u>Justification</u>:

(1) The County completed a Phase 1 ESA for the proposed treatment facility to be located on a portion of TMK (3) 9-5-012:002 and TMK (3) 9-5-011:003 on October 20, 2017 and subsequently transmitted to the EPA in

- accordance with Section V.B.31.a of the Administrative Order of Consent (AOC).
- (2) As indicated under Section 2.B.(5) above, the County is investigating the feasibility of relocating the Nā'ālehu WWTP to another property based on community opposition to the current proposed site. As the new site has only recently become available, additional time is required to perform the Phase 1 ESA.
  - a. The Phase 1 ESA is currently scheduled to occur after initial feasibility studies of the proposed new site (geotechnical and drainage feasibility studies) have been completed.

Finally, as requested, a description of the sequenced steps required for acquisition of property is provided below.

- 1. Determination of the public need for the site and appropriation of funds.
- 2. Initial contact with the property owner to discuss possible acquisition of the property and to obtain a Right of Entry in order to determine feasibility of the property for its intended use.
- 3. Confirm feasibility of the property for its intended use (technical as well as public acceptability).
- 4. Perform a survey of the property to include a survey map as well as metes and bounds providing a description of the property. If only a portion of the property is to be utilized provide Subdivision Maps and Descriptions.
- 5. Perform a Title Search and have an appraisal done of the property.
- 6. Perform a survey (boundary and topographical) of the property, including a survey map as well as metes and bounds providing a description of the property.
- 7. Perform an Environmental Site Assessment (ESA) of the property.
- 8. Perform an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for the project.
- 9. For projects funded by the Clean Water State Revolving Fund (CWSRF); the State of Hawai'i Department of Health (DOH) is required to consult with the State Historic Preservation Division (SHPD), Native Hawaiian Organizations (NHO's) and other applicable agencies in accordance with Section 106 of the National Historic Preservation Act.
- 10. Obtain an Order of Possession in the event that condemnation of the property via eminent domain is required.

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- 11. Obtain a Special Permit in accordance with HAR §15-15 and HRS §205 for use of Agricultural Lands for a Wastewater Treatment Facility after completion of the EA/EIS.
- 12. Negotiate purchase of the property based on the appraisal and after completion of the EA/EIS.
- 13. Subdivide the property if only a portion of the property is to be obtained.
- 14. Draft an agreement of sale (or obtain via condemnation).

If there are any comments or questions regarding this report, please contact Dora Beck, P.E., Wastewater Division Chief, at 808-961-8513 (dora.beck@hawaiicounty.gov), Curtis Bailey, P.E., Acting Wastewater Division Deputy Chief, at 808-961-8279 (curtis.bailey@hawaiicounty.gov), or William Kucharski, Director, at 808-961-8083 (william.kucharski@hawaiicounty.gov).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely.

William A. Kucharski

Director

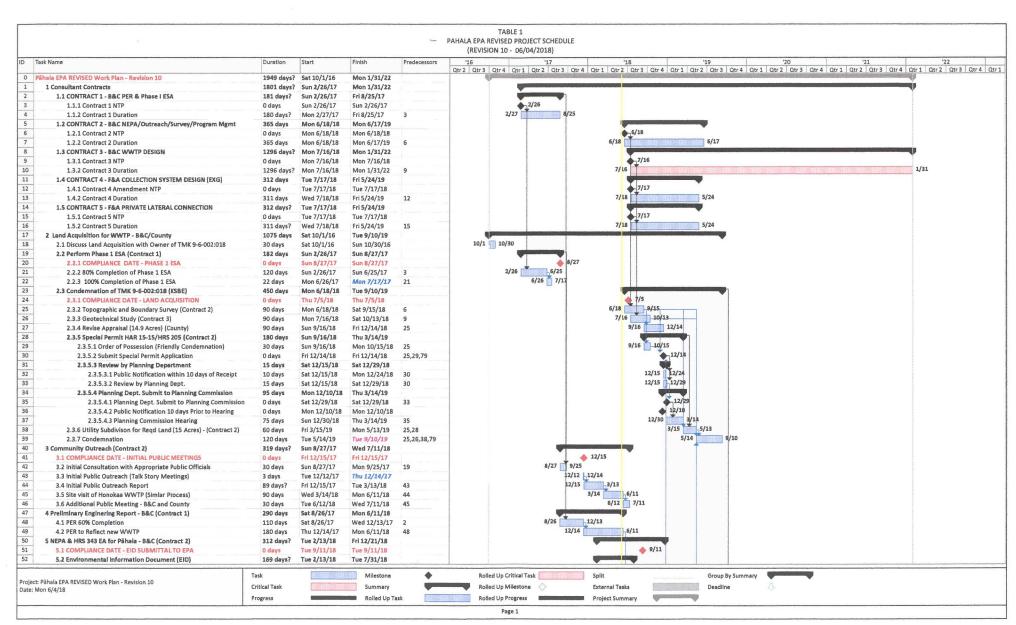
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Attachments: Exhibits 1 - 4

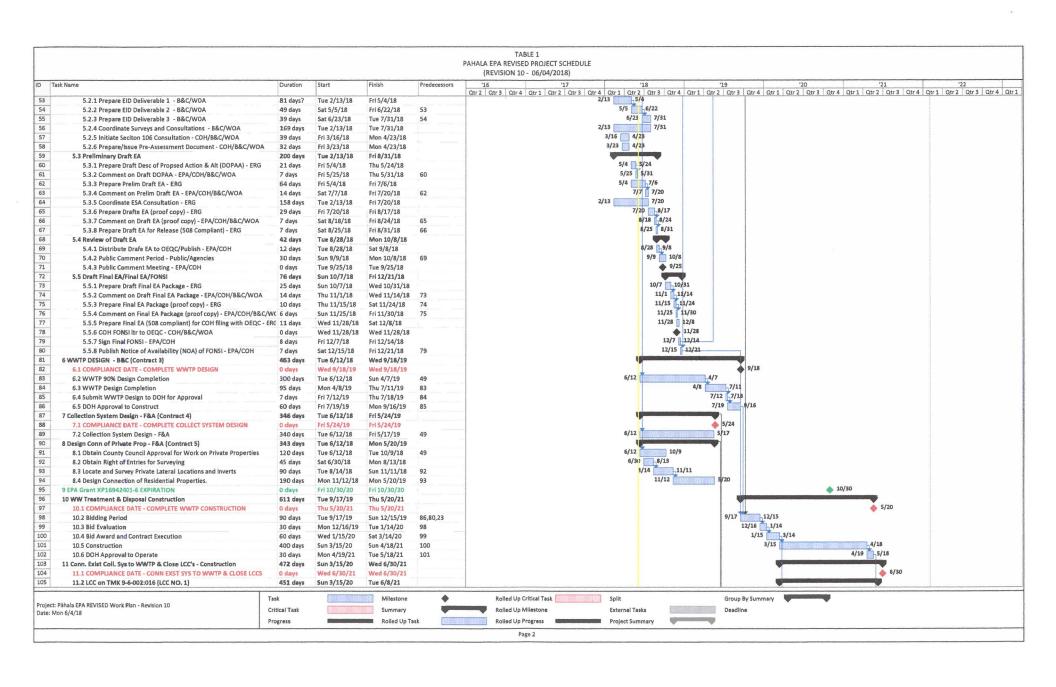
cc: Mayor Harry Kim

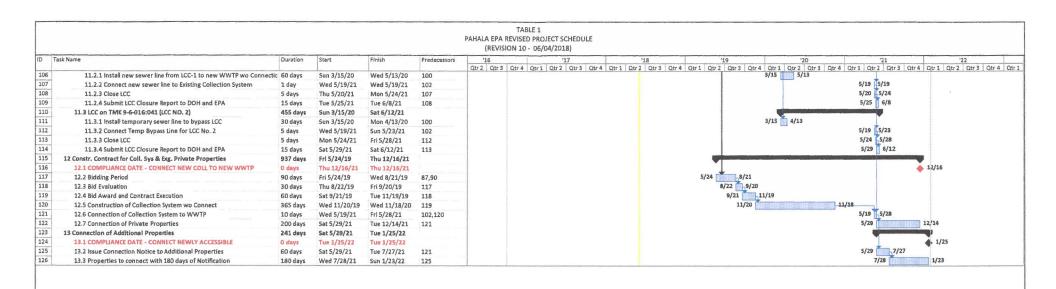
Wilfred M. Okabe, Managing Director
Diane Noda, DEM Deputy Director
Joseph Kamelamela Corporation Counsel
Keyra Wong, Deputy Corporation Counsel
Dora Beck, P.E., Wastewater Division Chief
Tessa Berman, EPA Region 9 Counsel
Craig Lelwer, P.E., Managing Engineer, Proving Street

Craig Lekven, P.E., Managing Engineer, Brown & Caldwell



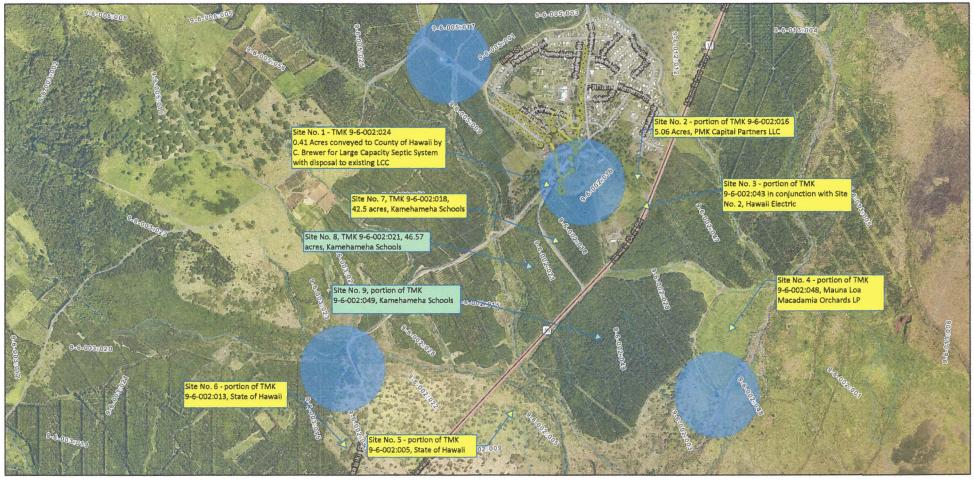
**EXHIBIT 1** 





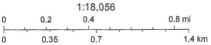
Task Milestone Rolled Up Critical Task Split Group By Summary Project: Pāhala EPA REVISED Work Plan - Revision 10 Critical Task Rolled Up Milestone Deadline Summary External Tasks Date: Mon 6/4/18 Progress Rolled Up Task Rolled Up Progress Project Summary Page 3

# Pahala WWTP Sites Considered

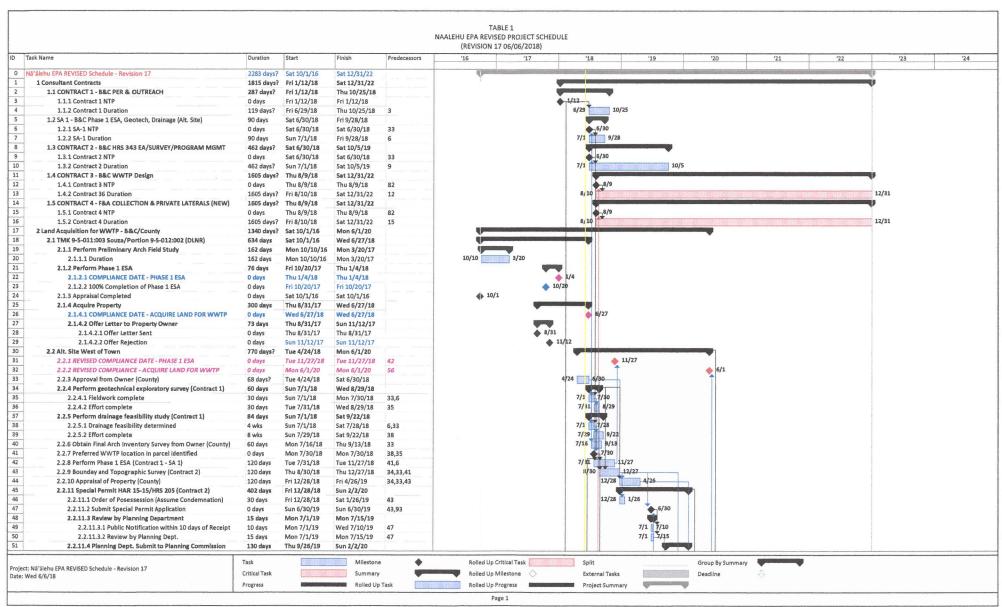


December 13, 2017

**EXHIBIT 2** 



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**EXHIBIT 3** 

