

**NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY**

**FACILITIES USE MANUAL**

**NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY  
Keahole Point, Kailua-Kona, Hawaii**

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## **SECTION I: Intent and Purpose**

### **A. Mission**

The Natural Energy Laboratory of Hawaii Authority (NELHA) was created to promote and provide for the research, development, demonstration and commercial application of activities that utilize the natural resources of two distant sites on the island of Hawaii: ocean water and solar resources at the Keahole Site in Kona and geothermal resources at the Pohoiki site in Puna.

### **B. Purpose of Manual**

The purpose of this manual is to establish for the Authority's Keahole site, standards, restrictions and guidelines that will ensure a high quality of coordinated development and a minimum of adverse environmental impacts, while providing sufficient design and operating flexibility to encourage sound economic development.

## **SECTION II: Definitions**

As used in this manual, unless the context otherwise specifies or indicated a different meaning:

“Accessory building” means a permanent building detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the main building such as storage of equipment, research, processing, product development and testing.

“Approval” means written approval prior to implementation of the proposed action.

“Authority” means the Natural Energy Laboratory of Hawaii Authority (NELHA).

“Average lot width” means the total lot area divided by the maximum depth of the lot. In the case of a flag lot, the maximum depth of the lot excludes the length of the driveway portion of the lot.

“Board of Directors” means the appointed Board of the Authority.

“Capital Investment” means any permanent improvement to the leased land.

“County” means County of Hawaii, Island of Hawaii.

“Commercial” means occupied with or engaged in commerce or work intended for commerce.

“Development” means activity engaged in determining the commercial possibilities of a particular project.

“Director” means the executive director of the Authority.

“FRA” means Facilities Rental Agreement, an agreement between NELHA and a small scale (less than one acre) commercial tenant located with the NELH area for the use of land, lab and/or office space.

“FUA” means Facilities Use Agreement, an agreement between NELHA and a tenant for the use of land, lab or office space during the research and development stages of a project.

“Gross floor area” means the total area of all floors of a building including the basement measured along the exterior walls of such building.

“GSA” means general services agreement, an agreement between NELHA and a commercial tenant to cover the use of services such as equipment, facsimile, telephones, seawater, etc.

“Hazardous material” means material defined as hazardous waste by the State of Hawaii, Department of Health and the U.S. Environmental Protection Agency, and material classified by the National Fire Protection Association (NFPA) as either a flammable liquid, a Class II combustible liquid, or Class IIIA combustible liquid.

“HOST Park” is synonymous with the term “Hawaii Ocean Science and Technology Park” and means the site and facilities associated with commercial projects located at Keahole, North Kona, Island of Hawaii.

“Improvement” means any building, road, driveway, parking area, loading area, pond, raceway, tank, water containment structure, ocean water line, potable water line, sewer, electrical and gas distribution facilities, telephone line, retaining wall, fence, screen, berm, pond cover or screen, greenhouse, stairway, deck, pole, hedge, planting, sign, exterior illumination, and all other structures, installation and landscaping of every type and kind, whether above or below the land surface.

“Industrial/Support Area” means the real property so designated in the Master Plan.

“Lot” means a parcel identified by a lot number shown in the Master Plan, NELHA subdivision map, or rented space as designated by the Authority.

“Lot area” means the total area of a lot, including any area to be used for a driveway.

“Master Plan” means the 1989 HOST Park Master Plan.

“NELH” is synonymous with the term “Natural Energy Laboratory of Hawaii” and means the site and facilities associated with research and development projects located at the Natural Energy Laboratory of Hawaii Authority, Keahole Point, North Kona, Island of Hawaii.

“NELHA” means the Natural Energy Laboratory of Hawaii Authority which collectively manages the NELH and HOST Park facilities.

“Ocean water area” means the real property so designated in the 1989 HOST Park Master Plan, and/or designated as an ocean water use area.

“Principal building” means a permanent building which provides facilities for the main use of a lot.

“Research” means the experimentation and/or collecting of information about a particular subject.

“Sign” means any structure, device or contrivance, electric or non-electric, temporary or permanently affixed, upon which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever, is used, fastened or affixed.

“Street” means any street, road, or thoroughfare within NELHA and shown on any recorded subdivision or parcel map, or record of survey, whether designated as a street, boulevard, place, drive, road, court, terrace, way, land, circle or otherwise.

“Tenant” means a lessee, project or licensee who is lawfully occupying a lot with the authorization of the Board of Directors.

“Utilities” means potable water, ocean water, electricity, and telephone systems as supplied by the Authority, private utility, or by the County.

“Visible from adjacent lots” means, with respect to any given object on a lot, that such object is or would be visible to a person six feet tall, standing on any part of an adjacent lot, street or other part of an adjacent lot, street or other property at an elevation no greater than the ground elevation at the location of the object or activity being viewed.

### **SECTION III: Administration**

The Authority, or its designated representative, shall administer the provisions of these policies and procedures, except where indicated.

### **SECTION IV: Rules for Construction of Language**

The following rules of construction apply to these rules:

- (1) The particular shall control the general;
- (2) In case of any difference of meaning or implication between the text of these rules and any caption, illustration, map, summary table or illustrative table, the text shall control;
- (3) The word “shall” is always mandatory and not discretionary. The word “may” is permissive;
- (4) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicated the contrary;
- (5) A “building” or “structure” includes any part thereof;
- (6) The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity;
- (7) Unless the contract clearly indicates the contrary, where a provision involves two or more items, conditions, provisions, or events connected by the conjunction “and” or “or”, the conjunction shall be interpreted as follows:
  - (a) “And” indicates that all the connected items, conditions, provisions, or events shall apply;
  - (b) “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- (8) The word “includes” shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of similar kind or character.

## **SECTION V: Compliance with General Leases**

- A. A portion of Keahole Point is leased to the Authority by the Department of Land and Natural Resources. Tenants that occupy this portion of Keahole Point shall also be responsible for complying with the provisions of the appropriate general lease.
- B. In the event of a conflict between these policies and procedures and general lease, the provisions of the latter shall prevail.

## **SECTION VI: Severability**

If a court of competent jurisdiction finds any provision or provisions of these policies and procedures to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid and ineffective and all other provisions of these policies and procedures shall be separately and fully effective.

## **SECTION VII: Permitted Uses**

### **A. Keahole Point**

Keahole Point shall be divided into three types of use areas, designated ocean water area, industrial support area, and education/information area. The following uses are guidelines to be used in the placement of new projects.

### **B. The ocean water area**

The ocean water area is designated for research and development and/or commercialization of projects that utilize the ocean water resources available at Keahole Point. Priority is given to those projects utilizing the cold seawater resource. Permitted uses within the ocean water use area shall include but not be limited to:

- (1) Aquacultural applications such as production of abalone, clam, oyster and other mollusks; lobster, shrimp, prawn and other crustaceans; micro- and macro-algae; and finfish;
- (2) Agricultural applications which use the ocean water or brackish water resources;
- (3) Research, development and commercialization of ocean related technologies;
- (4) Oceanography;
- (5) Alternate energy applications;
- (6) Desalination of ocean water or brackish water.
- (7) Research, development and commercial technologies which use the ocean water as an integral part of the process.

### C. The industrial support area

The industrial support area is designated for ocean related science and technology uses and tenant support services that require smaller acreage of land. This area is intended to be developed as low density industrial area with low lying buildings and planned landscaping to convey a park like atmosphere. Permitted uses within the industrial/support area shall include but not be limited to:

- (1) Biotechnological, microbiological and pharmaceutical businesses;
- (2) Design, manufacture and assembly of ocean related equipment of an electrical, electronic, electromechanical or optic nature, only if such equipment requires the special facilities of the HOST Park for its manufacture and/or testing;
- (3) Support businesses, including but not limited to:
- (4) Restaurant operations specializing in the preparation of species produced in the ocean water use area; and
- (5) Office buildings.

### D. The education/information area

The education/information area is intended to be developed as a low-density area primarily for educational, training and public information disseminating uses. Permitted uses within the education/information area shall include but not be limited to:

- (1) Research and training facilities;
- (2) Visitor information center;
- (3) Libraries; and
- (4) Administrative offices and laboratory facilities of tenants who maintain operations within other NELHA areas.

### E. The following operations

The following operations that are accessory to the principal permitted activities are permitted within the three designated areas:

- (1) Administrative offices;



- (2) Warehousing and distribution;
- (3) Research and development operations;
- (4) Product testing;
- (5) Marketing of products;
- (6) Incidental and necessary services for the convenience of persons working at the site that are conducted within an integral part of a principal building with entrances from the interior of the building and having no display or advertising visible from the street;
- (7) Manufacture, assembly, testing and repair of testing and repair of testing equipment;
- (8) Equipment and instrument storage; and
- (9) Other buildings and uses normally considered accessory to the permitted uses.

## **Prohibited Uses**

The following uses and operations, including uses not listed that are similar in character or effect, shall not be permitted on any lot:

- (1) Airport and heliports;
- (2) Residential and commercial hotel uses of any type;
- (3) Auctions;
- (4) Junk yards or recycling facilities provided, however, that the foregoing does not prohibit recycling that is carried out in conjunction with a primary permitted use when necessary to comply with emissions control standards, or required as an element of waste control facilities;
- (5) Commercial excavation of building or construction materials or quarrying of any material except in the course of approved site preparation and construction;
- (6) Dumping, disposal, incineration or reduction of garbage or other forms of refuse;
- (7) The raising, fattening, fat rendering, stockyard or slaughter or non-aquatic animals such as cattle, swine, fowl and the like;

- (8) Refining of petroleum or its products;
- (9) Smelting of iron, tin, zinc, or other metallic ores;
- (10) Saw or wood planning mills;
- (11) Manufacturing or production of cement, lime, asphalt, gypsum, firewood, wood pulp, etc;
- (12) Cemeteries;
- (13) Truck or bus maintenance or storage facilities not related to approved operation of the tenant;
- (14) Automobile, go cart, motorcycle, or other motorized vehicle race tracks;
- (15) Oil or propane storage facilities except in an enclosed yard of a tenant's lot only when such tanks are limited for use in the approved operation of the tenant;
- (16) Processing of sugar or pineapple;
- (17) Automobile or truck dealerships, auto wrecking, auto repair or auto painting establishments, or car wash facilities;
- (18) Jail or honor farms;
- (19) Labor of migrant worker farms;
- (20) Storage and handling of radioactive and other hazardous substances unless incidental to a permitted use, and then only in accordance with applicable governmental regulations and the hazardous materials standards established by the corporation;
- (21) Contractor's construction yards;
- (22) Establishments that rent, sell, or service heavy equipment; and
- (23) Veterinary establishments and commercial kennels.

## **Uses and Operations Not Listed**

A use or operation that is neither specifically prohibited nor specially authorized by these rules may be permitted in a specific case if it is consistent with the intent and purpose of the Authority and the county zoning code. An application for such use or operation shall be

submitted in writing to the Authority in accordance with the procedures set forth in these rules. Approval or disapproval of the application shall be based upon the effect of the applicant's operations or uses on other properties and operations at the site or on the tenants, and shall be at the sole discretion of NELHA.

### **Non-conforming Uses**

Non-conforming uses shall be permitted and regulated in accordance with the county zoning code.

### **Lots**

- A. Resubdivision of any lot by any tenant is prohibited except if approved by the Authority.
- B. Whenever two or more adjacent lots are developed by one tenant, they shall be treated and considered as one development lot for the purpose of these rules.

### **Height Limitation**

- A. The maximum height of all buildings and structures, excluding ponds and other water containment structures, shall be forty feet as measured from the finished ground level to the roof of the building including mechanical penthouse.
- B. No fence, wall, hedge, shrub, bush, tree or other obstruction shall be permitted at street corners or at driveway entrances that will obstruct the sightlines for drivers so as to constitute a safety hazard.

### **Setback**

- A. The minimum distance between improvements and property boundaries on leased or subleased land shall be as follows:
  - (1) From lot boundaries that abut the main access road and other streets, the minimum setback for principal buildings shall be thirty-five feet.
  - (2) For all other lot boundaries the setbacks for all improvements shall be twenty feet.
- B. The following improvements may extend into the setback area as follows:

- (1) Roof overhangs, balconies and decks, subject to the approval of the Authority provided that the overhangs, balconies or decks do not extend more than six feet into the setback area;
- (2) Exterior stairs, ramps, driveways, parking areas, and walkways;
- (3) Fences that are constructed of strand material which allow “see-through” visibility, such as chain-link;
- (4) Landscaping and irrigation systems;
- (5) Planters, not to exceed three feet in height and except with the approval of the Authority;
- (6) Signs identifying the tenant of a lot and directional, parking and security signs, subject to the approval of the Authority;
- (7) Lighting facilities, subject to the approval of the Authority; and
- (8) Above and below ground utility facilities and sewers.

### Buildings Coverage

The maximum lot area covered by buildings and other structures on leased or subleased property shall not exceed fifty per cent of the total area. This limitation shall not apply to production facilities such as raceways, shade cloth structures, tanks or greenhouses.

### Special Structure

Special structures related to permitted uses, such as shade cloth structures and portable structures, may be permitted subject to the approval of the Authority.

### Temporary Structures

- A. No structure of a temporary character shall be erected on any lot except those required during construction of permanent structures.
- B. No trailer shall be placed or used on any lot within the HOST Park area except when in use as a construction office during the course of approved construction. Mobile structures and portable containers may be used in the NELH area on a temporary basis as determined by the Authority on a case by case basis.

## Permanent Structures

All structures must conform to all applicable County, state, and Federal permits, regulations and laws and require the approval of the Authority.

## Driveways

- A. Access to any lot shall be permitted only from designated streets. The Authority may specify the location of each driveway.
- B. Unless limited to one driveway by the Authority, each lot shall be permitted to have two driveways on a street upon which the lot abuts. A tenant may be permitted more than two driveways subject to the approval of the Authority.
- C. The Authority shall determine which lots will be required to have paved driveways.

## Ocean Water Supply

- A. Authority supplied ocean water:
  - (1) A supply of ocean water may be made available by the Authority for tenant use;
  - (2) Tenants shall be responsible for constructing and maintaining a transmission system from the distribution point of the ocean water supply to the tenant's facility;
  - (3) Tenants who use more than fifty (50) gpm of seawater are required to install a flow meter that is easily accessible to Authority staff. The Authority will provide a flow meter or the tenant may install a flow meter approved by the Authority. The tenant is responsible for the cost of the meter and for any installation costs.  
  
Tenants that use less than fifty (50) gpm of seawater are not required to install a flow meter.
  - (4) It is preferred that transmission of the ocean water supply be by a completely buried pipe. The Authority may allow above ground pipes provided that measures for addressing aesthetic and safety considerations are included;
- B. Tenant supplied ocean water:

- (1) Under some circumstances, a tenant may have the option of constructing and maintaining its own ocean water supply system. Approval of the Authority shall be required prior to the construction of such a system; the Authority is not responsible for the quality or consistency of water from private pipes;
- (2) The offshore segment of the supply system, including pipe and pump station, shall be subject to the conditions of all applicable permits. Therefore, the design and construction of the offshore segment of the supply system, including sizes, locations, and methods of deployment and installation of any pipes and pump stations, shall be subject to the review and approval of the Authority. Design plans and specifications shall be prepared under the supervision of a qualified person with expertise in the field;
- (3) The design and construction of the onshore segment of the supply system, including the sizes, locations, and method of installation of any pipes, tanks and pump stations, shall be subject to the approval of the Authority.

C. Reused Ocean Water Supply:

- (1) Tenants are encouraged to maximize the use of the ocean water resources by reusing or recycling the ocean water as often as practicable before its disposal. Ocean water reuse may be by one tenant or among several tenants;
- (2) The method of transmission of used ocean water from one tenant to another tenant for reuse shall require notification of the Authority. This notification must include the terms of the agreement between the tenants. NELHA does not assume any liability resulting from the transfer of seawater between tenants;
- (3) The design and construction of the onshore segment of the supply system, including the sizes, locations, and method of installation of any pipes, tanks and pump stations, shall be subject to the approval of the Authority.

D. Reused Ocean Water Supply:

- (1) Tenants are encouraged to maximize the use of the ocean water resources by reusing or recycling the ocean water as often as practicable before its disposal. Ocean water reuse may be by one tenant or among several tenants;
- (2) The method of transmission of used ocean water from one tenant to another tenant for reuse shall require notification of the Authority. This

notification must include the terms of the agreement between the tenants. NELHA does not assume any liability resulting from the transfer of seawater between tenants;

- (3) It is preferred that transmission of reused ocean water from the supplying tenant to the receiving tenant by means of a completely buried pipe. Unburied pipes of a temporary nature may be used in the HOST Park area for a period not to exceed three months, unless otherwise approved by the Authority. Above the ground pipes may be permitted subject to the approval of the Authority in the NELH area;
  - (4) The responsibility of the quality of the return water lies with the last user.
- E. Tenants may be permitted to install transmission pipes within the Authority's utility corridor or other approved area. The locations for such installation shall be approved by the Authority.

### Ponds and Other Water-Containment Structures

- A. Ponds, raceways, tanks, holding basins, ditches and other water containment structures shall be designed adequately for structural stability and for the prevention of unplanned overflows, leakage and infiltration into the subsurface. Ponds shall be designed as an integrated part of the total tenant facilities.
- B. All ponds shall be lined with suitable impervious material unless otherwise approved by the Authority.
- C. The Authority may require a cover or screen over ponds to prevent water surface reflection or the attraction of birds, both of which are hazardous to nearby airport operations.

### Return Ocean Water: Disposal

- A. Disposal of used seawater will be by an approved method.
- B. If disposal is by Authority supplied method, the tenant shall be responsible for constructing and maintaining a transmission system from the tenant's facility to the designated receiving point of the return ocean water disposal system supplied by the Authority. NELHA intends to have a common collection system which will abut a property line of each lot which is scheduled to receive ocean water.
- C. A tenant may install his own ocean water disposal system, but only with the notification of the Authority and only if such disposal system is in accordance

with the approved disposal methods, applicable County, State and Federal permits, regulations and laws

### Return Ocean Water: Water Quality

- A. It is the intent of the Authority to minimize adverse environmental effects in the return of the ocean water to the ocean. Therefore, used ocean water discharged into the Authority's disposal system or tenants own disposal system shall meet the basic water quality criteria applicable to all waters as described in the State Department of Health rules relating to water quality standards as set forth in section 11-54-04 a, Hawaii Administrative Rules. The Authority shall review, approve, and have the right to monitor the discharge water quality requirements for each tenant on a case by case basis.
- B. Tenants shall be responsible for pretreating their return ocean water discharge, as necessary, to meet these standards.
- C. If deemed necessary, and/or evidence exists of non-compliance with water quality standards, the Authority may enter the tenant's premises with the tenant's approval for the purpose of taking samples of the tenant's return ocean water discharge for independent water quality analysis.
- D. In the event that monitoring indicates the discharge of substances at levels which exceed the predetermined water quality standards, the Authority shall have the right to order the tenant to cease operations until the discharge problem has been corrected to the satisfaction of the Authority. In the event that a cessation of operations would result in substantial damage to the particular mariculture species or crop, the Authority and the tenant shall work together to correct the water quality problem as expeditiously as possible, and cessation of operations will only be required if irreversible damage to area ocean resources would result from the problem discharges.
- E. Tenant may be restricted to a maximum allowable discharge rate for the purpose of preventing overflows at the return ocean water disposal site. The maximum allowable discharge rate for each tenant will be individually established by the Authority at the time of final design approval. Such maximum allowable discharge rates notwithstanding, it is recognized that aquaculture operations may sometimes require the "dumping" of large quantities of water in the event of unforeseen problems. This "dumping" of ocean water will be allowed. However, the tenant shall be liable for any property damage or environmental damage that may result from such action.



## Use of Brackish Water

- A. A tenant may be permitted to construct, maintain and use its own brackish water supply system. This activity must be in accordance with any applicable County and State Regulations. Notification of the Authority is required prior to construction of such a system.
- B. The Authority will not guarantee any aspect of the quality, accessible depth or abundance of the groundwater at any time.
- C. The Authority will not be responsible for any changes in the groundwater, including quality, nor take action to correct or alter changes except in cases where there is potential harm to the environment.
- D. Sale of the used brackish water to another tenant for reuse is permitted under the same conditions of the sale of used seawater.

## Grading and Drainage

- A. All surface drainage shall be designed to conform to the overall drainage systems for the site.
- B. Site grading shall conform with county grading requirements and tenants are responsible for obtaining applicable permits.
- C. Grading and drainage improvements shall be designed and constructed to minimize adverse dust and runoff impacts on adjacent and downslope lots.

## Potable Water Supply

- A. Due to the limited supply of potable water in the West Hawaii area, tenants shall use water saving devices on potable water supply lines wherever practicable.
- B. The Authority may issue guidelines to tenants concerning use levels of potable water.
- C. Tenants will notify the Authority if increases in potable water use are anticipated
- D. Tenant will supply the Authority with fresh water use data and projections as requested.
- E. It is the tenant's responsibility to install a backflow preventer in the potable water line as required by the County.

## Wastewater Treatment and Disposal

- A. Sanitary wastewater generated by the tenant shall be treated and disposed of at a private treatment and disposal system located within the boundaries of the tenant's lot unless a central sewage treatment plant is provided by the Authority. Collection lines to a central sewage treatment plant are the responsibility of the Tenant.
- B. The design, construction, operation, maintenance and disposal system shall be the responsibility of the tenant and shall comply with State Department of Health and County requirements.
- C. The treatment and disposal of industrial wastewater generated by the tenant in the course of product processing or other industrial activities shall be the responsibility of the tenant. Treatment and disposal methods shall comply with state Department of Health and County requirements. Industrial waste shall not be mixed with return ocean water for disposal.

## Refuse

- A. The disposal of refuse generated by each tenant shall be the responsibility of the tenant and shall comply with State Department of Health and County requirements.
- B. On-site disposal of refuse shall be prohibited.

## Hazardous Materials Use, Handling and Storage

The use, handling, and storage of hazardous materials must comply with Federal, state and County regulations. NELHA must be provided a list of all hazardous materials used by a tenant.

## Air Pollutants

- A. Requirements for visible emissions, motor vehicle emissions, burning, fugitive dust, process industry emissions, waste gases, and other emissions shall be in accordance with State Department of Health rules entitled "Air Pollution Control."
- B. No fumes, odors, vapors, volatile acids or other invisible emission shall be permitted to escape or be discharged into the atmosphere that may be hazardous or detrimental to the health, safety or welfare of persons, or that may interfere

with the comfort of persons within the area, or that may be harmful to property or vegetation.

## Glare and Heat

Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat or radiation emitted will not be discernible from any point exterior to the lot upon which the operation is conducted. Glare conditions must meet FAA requirements.

## Noise

At no point outside of the tenant's property line shall the sound pressure level of any machine, device, or any combination of same, from any individual plant or operation exceed the decibel levels permitted under existing laws, ordinances and rules of any public agency or body having jurisdiction.

## Vibration

Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point along any of the property lines.

## Non-production Animals

Non-production animals, including pets, shall be kept under positive control at all times. Security dogs shall be allowed unrestrained movement, but only within securely fenced premises or within a building not accessible to the public.

## Archaeological Mitigation

- A. Tenants are advised that several sites of archaeological value have been found at Keahole Point and have been recorded and preserved accordingly through an archaeological mitigation program implemented by the Authority. In the course of excavation activities, whenever the tenant encounters findings that have or that appear to have possible archaeological value, the tenant shall temporarily suspend all operations that would disturb those findings. The tenant shall contact the Authority so that the County Planning Department and the state Historic Preservation Office can be notified to evaluate such findings and determine the course of action. Any item of archaeological value found within the site shall be

the property of the State. Tenants shall be responsible for the cost of performing archaeological mitigation activities and for the cost due to delays in construction.

- B. When deemed necessary by the state, the State may have an archaeologist present to monitor grading work to ensure that no damage occurs to archaeological sites within the boundaries of the site.
- C. A portion of the historic Mamalahoa trail is located within the HOST Park area and is delineated in the Master Plan. It is the intent of the Authority to protect and to preserve this historic trail. Therefore, tenants of properties that are adjacent to Mamalahoa trail shall be prohibited from constructing any improvements that cross the trail, except where needed to provide access and ocean water and utilities connections, and in such cases only with the approval of the Authority and the approval of the County Planning Department.
- D. Tenants will be advised of known archaeological sites on property they wish to lease.

### Protection of Conservation Corridor

No tenant shall construct any improvements or in any way develop within the area designated as the conservation corridor as shown in the Master Plan. This corridor is a one-hundred foot wide strip of land that runs along the entire eastern boundary.

### Maintenance

The tenant shall have the duty and responsibility, at its sole expense, to keep all buildings, grounds, improvements, landscaping and appurtenances, in a secure, well-maintained, safe, and clean condition at all times. Such maintenance shall include but not be limited to the following:

- (1) Removing all litter, trash, refuse and waster promptly;
- (2) Lawn mowing on a regular basis;
- (3) Tree and shrub pruning;
- (4) Keeping exterior lighting and mechanical facilities in working order;
- (5) Keeping lawn and garden areas alive, and any adjoining drainage ditches free to weeds and debris;
- (6) Removing and replacing any dead plant material;

- (7) Keeping vacant sections of the lot well maintained, and free of trash and tall weeds;
- (8) Maintaining all ocean water transmission systems;
- (9) Keeping parking area, driveways, walkways and roads in good repair;
- (10) Complying with all governmental, health, fire and police requirements and directives;
- (11) Striping of parking areas;
- (12) Maintaining signs; and
- (13) Maintaining the lot boundary pins established for the lot.

### Repair of Improvements

- A. No building, structure or improvement upon any lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- B. Nothing within these rules shall prevent a tenant from performing repair work on the tenant's pipes within the utility corridor. Tenant shall notify the Authority in writing at least thirty days before the start of construction or repair work within the utility corridor, except in case of emergency involving public health or public safety or involving viability of the commercial operation that requires immediate attention, in which case notice to the Authority shall be submitted within one day after the commencement of the emergency repair work.

### Approval of Improvements

- A. No improvements shall be erected, placed, altered, maintained or permitted to remain on any lot by any person until final plans and specifications shall have been submitted to and approved by the Authority, except that minor improvements with a valuation not in excess of twenty-five thousand dollars, shall be permitted with the approval of the Authority. All improvements must be in compliance with applicable County codes and requirements and must have a building permit as required by the County. Applications for County building permits must be submitted through the office of the Authority director.
- B. Any interested person that desires to occupy a parcel of land for the purpose of new development, or any tenant that desires to make a change in use of the

tenant's existing development, shall follow a two step process for review and approval of the proposed project as described in these rules. The director of the Authority will determine whether action requires Board approval and inform the tenant.

- C. Any tenants that desires to construct an expansion of, addition, to, or modification of his existing development, without changing the use of the development as permitted by prior approval, shall be required to submit only a final design application for review and approval by the Authority. A modification to the existing use includes adding new species, changing the original configuration (such as using more or less seawater) and change in management which affects the sublease (such as buy out or name change).

### Basis for Approval

Approval of plans and specifications shall be based, among other things, upon general adequacy of site dimensions, conformity and harmony of the exterior design and location with neighboring structures, relation of finished grades and elevations to neighboring sites, compliance with applicable governmental requirements, and conformity to both the specific requirements and general intent of the provisions set forth therein. The Authority shall have the right to disapprove any plans or specifications submitted on any reasonable grounds including any matter which, in the judgement of the Authority, would render the proposed improvements or use inharmonious with the Master Plan for improvement of the NELH/HOST Park or with improvements located upon other lots or other property in the vicinity, or with the purposes or intent of these rules.

### Procedures for Review and Approval

- A. For all proposed new developments of more than a twenty-five thousand dollar value a conceptual design application shall be submitted to the Authority to obtain approval of the concept for the proposed project. Upon receipt of the conceptual design approval, the applicant shall prepare a final design application.
- B. The conceptual design application shall include the following information:
  - (1) A list of proposed uses, major resources to be used, hazardous materials use, products and by-products to be produced, special wastes generated, and other information pertinent to the development of the property;
  - (2) Site plan showing buildings, ponds, tanks, raceways and other major structures, circulation and utility service points, with relationships to existing structures and conditions;
  - (3) Preliminary subdivision plat map if the development requires a new subdivision;

- (4) Grading maps;
  - (5) Conceptual grading and drainage plan;
  - (6) Conceptual landscape plan, if required; and
  - (7) Schematic of ocean water and return ocean water transmission systems.
- C. The Director and the Research Advisory Committee (RAC) are responsible for reviewing and recommending approval of the conceptual design to the Board of Directors. The Board of Directors shall be responsible for approving the conceptual design application. The Board of Directors shall reach a final decision on the conceptual design application and shall notify the applicant of such decision within forty-five days after receipt of the complete conceptual design application by the Authority.
- D. Upon approval of the conceptual design application, a final design application shall be developed and submitted to the Authority. The final design application shall include plans and specifications with the following information:
- (1) Proposed use of lot;
  - (2) Topographical plat showing contour lines (with two-foot contour intervals) and showing the location of all improvements. Existing and finished grades shall be shown at lot corners of proposed improvements. Lot drainage provisions shall be included as well as cut and fill details if any appreciable change in the lot contours is contemplated;
  - (3) Proposed ground elevations;
  - (4) Exterior materials, colors, textures and shapes, including the submittal of samples where practicable;
  - (5) Structural design concept with building elevation plans;
  - (6) Landscaping plan, including walkways, fences and walls, elevation changes, landscape irrigation systems, vegetation and ground cover;
  - (7) Parking area and driveway plan;
  - (8) Screening, including size, location, method and materials;
  - (9) Utility connections, including routing of electrical and telephone cables and connections to potable water supply;

- (10) Flow requirements and transmission systems design for the ocean water systems including ocean water supply, reused ocean water and return ocean water;
- (11) Brackish water system, if applicable;
- (12) Exterior illumination;
- (13) Details on proposed uses and qualities of potable water;
- (14) Wastewater treatment and disposal systems;
- (15) Solid waste treatment and disposal systems;
- (16) Facilities and procedures for the containment, storage and disposal of hazardous materials;
- (17) Signs, including size, location, orientation, shape, color, character and materials;
- (18) Outside storage and refuse collection area and related screening;
- (19) Location and installation of heavy equipment'
- (20) Security program; and,
- (21) Other information as may be required by other applicable governmental regulations.

E. The Director shall be responsible for reviewing and recommending approval of final design applications to the Board of Directors. Approval of the final design application shall be made by the Board of Directors in accordance with the Authority's rules and design guide. If the final design application is not sufficiently complete or is otherwise inadequate, the Board of Directors may reject it as being inadequate or may approve or disapprove part, conditionally, and reject the balance. The Authority shall reach a final decision on the final design application and shall notify the applicant of such decision within thirty days after receipt of the complete final design application by the Board of Directors, unless an extension for time has been agreed to by the applicant.

### Construction Without Approval

If any improvement with a construction cost in excess of twenty-five thousand dollars is erected, placed or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with approval by the Authority pursuant to these rules, such improvement or use



shall be deemed to have been undertaken in violation of these rules, and upon written notice from the Authority, any such improvement in violation of these rules shall be removed or altered so as to conform to these rules, and such use shall cease or be amended so as to conform to these rules. Should such removal, alteration, cessation or amendment of use not be accomplished within thirty days after receipt of such notice, then the person in breach of these rules shall be subject to the enforcement procedures.

### Construction Activities

- A. Construction activities shall be conducted in a manner as to minimize adverse or nuisance effects of noise, dust, soil erosion, traffic and other safety considerations. The Authority shall have the jurisdiction to place specific conditions on the tenant's construction schedule and methods, if, in the judgement of the Authority, the particular construction work could cause significant adverse impacts on other properties and operations of Keahole Point.
- B. Construction zones, especially those which impact the public areas, will be clearly marked with caution signs. Construction is to be carried out observing all standard safety procedures such as the wearing of hard hats.

### Construction Schedule

- A. All improvement work approved by the Authority shall be diligently completed and constructed in accordance with approved plans and specifications.
- B. Upon receipt of approval from the Authority, the tenant and any person to whom the same is given shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved work.
- C. In all cases, work shall commence within one year from the date of such approval. If there is a failure to comply with this paragraph, then the approval given for construction shall be deemed revoked unless the Authority, upon request made prior to the expiration of said one year period, extends the time for commencing work.
- D. All improvement work shall be completed within two years after the commencement thereof except for so long as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, natural calamities or other supervening forces, including unfavorable weather and unfavorable ocean conditions, beyond the control of the tenant. Failure to comply with this paragraph shall constitute a breach of these rules and shall subject the defaulting person to all enforcement procedures set forth in these rules and any other remedies provided by law or in equity.

- E. If any tenant fails to commence construction, or once having commenced construction, fails to diligently proceed to complete construction within one year from the execution date of the lease agreement, and provided that such tenant did not obtain, in the contract documents for lease of the lot, approval for phased building plan, then the corporation may revoke the approval for construction.
- F. After a revocation of approval, such person that desires to commence or continue construction shall be required to resubmit to the Authority applications for final design approvals.
- G. “Commencement of construction” as defined in this paragraph means that the tenant of the lot:
  - (1) Obtained approval of the Authority as set forth in these rules;
  - (2) Obtained building permits from the appropriate governmental authorities authorizing construction of a building and improvements as approved by the Authority;
  - (3) Expended at least the sum of ten thousand dollars pursuant to such construction contract for on-site construction work.

## Bonds

The Authority may require from the tenant the posting of a bond in a sufficient amount as decided upon by the Authority, to ensure that the improvements as proposed and approved in the final design application will be constructed in their entirety.

## Construction Completion

- A. Upon the substantial completion of any work for which approved plans are required pursuant to these rules, the tenant shall give written notice to the Authority which shall within thirty days inspect the work to determine whether it was completed in compliance with these rules and the overall approved design.
- B. If the Authority finds that the work was done in substantial compliance with such approved plans, it shall, if requested in writing by the tenant, provide to the tenant a notice of this concurrence that the work has been satisfactorily completed.
- C. If the Authority finds that the work was not done in substantial compliance with approved plans, it shall notify the tenant of the noncompliance and require the tenant to remedy the noncompliance within thirty days from the day of notification, or such longer time as may reasonable be required and as approved by the Authority.

- D. If the tenant shall not have commenced remedial action within the thirty-day period, and thereafter diligently and continuously prosecute the same to completion, the Authority shall have the rights of enforcement.

## Variances

- A. A variance to these rules may be granted by the Authority if it is determined that the variance will be consistent with the general purpose and intent of these rules. The following circumstances will be considered by the Authority as reasons for granting a variance:
  - (1) The variance will not cause significant adverse impact to the area of to adjacent properties;
  - (2) The variance is required as a response to new technological developments;
  - (3) The variance is required because of special economic or financial circumstances; or
  - (4) There are special or unusual circumstances applying to the lot which require a variance to ensure the best use or manner of development of the lot.
- B. Application for a variance shall be in the form of a written request submitted to the Authority for approval. The circumstances which cause the need for a variance must be included.
- C. In the event that the Authority rejects a variance request, the applicant may appeal the decision by submitting a letter of appeal and supporting documents to the Authority. The Board of Directors of the Authority shall then consider and act upon the appeal within thirty days of receiving the letter of appeal.

## General Enforcement

- A. Except as otherwise expressly provided in these rules, the Authority shall have the right to enforce upon the tenant or upon any property within the NELH/HOST Park any and all of the provisions of these rules.
- B. No entry upon the lot of any tenant or other action to enforce these rules shall be made or taken without first giving at least ten days prior written notice to the tenant concerned to cure or rectify the violation involved, except when the corporation's sole discretion determines that an emergency situation or potential

emergency situation exists where the health, safety or welfare of the environment or the tenants of the NELH/HOST Park is threatened.

- C. Any act or omission that results in the violation of these rules, or any situation or condition created by a tenant that poses a risk to the health or safety of the NELH/HOST Park or its tenants, may be abated by the Authority or by a tenant as provided for in these rules provided that only the Authority may enforce these rules without the authority of a court.
- D. The failure in any case to enforce any provision of this chapter shall not constitute a waiver of any right to enforce the same provision or any other provisions in another case against the same tenant or any other tenant.

### Inspection

During reasonable hours, and subject to reasonable security requirements and reasonable advance notice, the Authority shall have the right to enter upon and inspect any lot and the improvements thereon for the purpose of ascertaining whether the provisions of these rules have been or are being complied with, and shall not be deemed guilty of trespass or other wrongful act by reason of the entry or inspection.

### Notice of Violation

Notice of any violation of the provisions of these rules shall be given by the Authority by sending the notice by certified mail to the address of the tenant as shown on the lease and by leaving a copy of the notice in a conspicuous place on the tenant's property. If the tenant fails to correct the violation as determined by the Authority within thirty days after receipt of the said notice, then subject to the provisions the Authority shall be free to pursue any available remedies in law or equity.

### Enforcement by Authority

- A. Violation of any provision of these rules shall give to the Authority the right to enter upon the property upon which the violation exists and to summarily:
  - (1) Abate or remove at the expense of the tenant any structure or condition to remedy the violation; or
  - (2) Prosecute a proceeding at law or in equity against the tenant who has violated any of these provisions in order to cause the violation to be remedied or to recover damages for the violation.
- B. The right-of-entry shall be without liability for damages for wrongful entry, or trespass, to any person.

## Reimbursement to Authority

- A. The tenant of any lot in the NELH/HOST Park on which remedial work is performed by the Authority shall be liable for the cost of enforcement, and shall promptly reimburse the Authority for such cost.
- B. The cost of enforcement shall be the cost of the remedial work performed by the Authority together with interest at the rate of ten per cent per year from the date of the Authority's advancement of funds for the work to the date of reimbursement of the Authority by the tenant.
- C. If the tenant fails to make reimbursement to the Authority within thirty days after receipt of a statement for the remedial work from the Authority, then the Authority may order the immediate cessation of operations.

## Enforcement by Tenants

- A. Each tenant, by maintaining operations on a lot and therefore having an interest in the overall success of Keahole Point, shall be assured that these rules are enforceable upon all tenants equally. If any NELH/HOST Park tenant (hereinafter referred to as the "enforcing tenant") finds that another tenant is in violation of any part of these rules, and that the violation is detrimental to his own operations, and that the Authority has not taken action upon the violating tenant to enforce these rules, then the enforcing tenant shall have the right to address the Authority in writing to request that the Authority initiate enforcement action.
- B. The Authority shall take prompt action to investigate the violation.
- C. If the Authority is of the opinion that no violation has been committed, then the Authority shall inform the enforcing tenant of such finding in writing.
- D. In the event that the Authority does not respond to the request of the enforcing tenant in a timely fashion, the enforcing tenant is not precluded from independently taking action by proper legal proceedings brought in a court of competent jurisdiction.

## Finders Fee to Agents

The Authority will, under no circumstances, pay a finders fee or commission to any agent or representative for locating and/or negotiating a lease at NELHA.

## Spoils in Unleased Land

With a written request to the Authority, a tenant may receive permission to use unleased lands as a depository for excavated materials (spoils), either for permanent or temporary use. If permission is not granted, the tenant must remove all spoils from their site.

## Lease Agreements

A lease is required for all commercial tenants occupying more than one acre of land for a specified period of time.

Obtaining a lease is a lengthy process. All documents must be approved by the following agencies: (1) the Authority, (2) the NELHA Board of Directors, (3) the State Attorney General's office, and (4) the Department of Land and Natural Resources.

A certified survey of the parcel must be attached to the lease document. The costs of the survey are borne by the tenant.

## Option Agreements

The Authority will consider option agreements on unleased land. Terms of these agreements will be negotiated on a case by case basis but will generally be charged a reduced rate. Agreements will usually include a "first right of refusal clause" stating that if an existing or potential tenant desires the option land, it will be developed immediately, and will be leased at a non-reduced rate. The option holder can retain the land by leasing at full rate.

## Tenant Request to Have New Service or Infrastructure Provided

In the event a tenant requests a new service or infrastructure which is not currently offered by the Authority, the tenant shall make a formal request in writing to the Authority to provide such infrastructure or service.

- A. The Authority will assess the need for such a service or infrastructure through contact with other tenants either individually or through the Keahole Point Association.
- B. If deemed necessary and determined feasible, the Authority will use its best efforts to comply with the request.
- C. Any request for service or infrastructure should be of a general application nature, and not for the benefit of one tenant.

## Default on Lease or Rental Agreements

Tenant responsibilities in the event of voluntary or involuntary default or termination of a lease, sublease, facility rental agreement, or facilities use agreements include:

- A. A date for vacating premises will be mutually determined by the Authority and Tenant.
- B. As per provisions of the agreement, all improvements of whatsoever kind or nature located on the land prior to or on the commencement date of the lease or sublease shall belong to lessor. However, if tenant does not want improvements, the tenant shall notify the Authority in writing of its intent to abandon the improvements. The Authority is under no obligation to accept such improvements, and may require their removal at the cost of the tenant.
- C. If improvements are not removed by the specified date, they shall be property of the Authority or they will be removed and the tenant will be charged for the removal.

## Tenant Presentation to Board of Directors

In the event a tenant desires to approach the Board of Directors for any reason which requires Board action, the tenant must notify the Authority in writing at least 10 working days prior to the next scheduled Board meeting for inclusion on the agenda.

- A. The Authority reserves the right to deny such a request if it deems inappropriate or unnecessary.
- B. A tenant or prospective tenant may request an executive session for Board discussion of proprietary information.

## Changes to Facilities Use Manual

The Authority and its Board of Directors reserve the right to amend or to make exceptions to the Manual.

Periodic review and updating of this Manual is necessary in order to respond to constantly changing conditions, new information, state departmental priorities, and necessary regional priorities.

Any changes and or revisions will incorporate new information and new developments so that the Manual and its implementation can be a flexible and therefore, responsive working document.