

## **Article 5. Preservation of Exceptional Trees**

### **Sec. 22-5.1 Findings and Purpose.**

(a) The County Council finds that the General Plan for the island of Kaua'i has for its objective the improved quality of life for present and future generations of mankind. The plan recognizes the intrinsic beauty of the landscape and the need to protect scenic and historic resources so that the island will maintain its rural character and continue to attract vacationers and travelers. In order to better control problems of flooding and soil conservation and to maintain the concept of Kaua'i as the "Garden Isle" by ensuring that all physical growth is carried out so as to maintain the natural ecology, we believe this Article establishing protective regulations for certain exceptional and historical trees is a necessary and constructive approach toward achieving the General Plan's purpose and can be lived with more easily than a "blanket" tree ordinance.

(b) Changes in land use are inevitable, and changes will be made; however, the Council feels strongly that change must go hand in hand with concern for the environment, heritage, culture, aesthetics, and other similar concepts. In the belief that wisdom and careful planning will serve both ends, and having determined that these regulations will promote the health, safety and general welfare of the community and are in the best interest of the citizens of Kaua'i, the Council enacts this Article as a means of preserving the environmental character of Kaua'i. (Ord. No. 240, December 27, 1974; Sec. 22-5.1, R.C.O. 1976)

### **Sec. 22-5.2 Definitions.**

When used in this Article, the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended: "exceptional trees" means a tree or group of trees with historical or cultural value, or which by reason of its age, rarity, location, size, aesthetic quality or endemic status has been designated by the County Council to be preserved and so earmarked on maps of Kaua'i to be kept on file in the County Planning Department and the Department of Public Works, Building Division. (Ord. No. 240, December 27, 1974; Sec. 22-5.2, R.C.O. 1976)

### **Sec. 22-5.3 County Arborist Advisory Committee.**

(a) A County Arborist Advisory Committee is created to advise the Council in determining which trees are to be designated "exceptional trees" by reason of historical or cultural value, aesthetic quality, endemic status, age, rarity, location, or size and are to be reserved for posterity.

(b) The County Arborist Advisory Committee shall be composed of five (5) members as follows: One (1) member shall be the head of the Kaua'i Division of Forestry, State Land and Natural Resources, or his or her authorized delegate; one (1) member shall be an official of the National Tropical Botanical Garden, Lawai, Kaua'i; one (1) member shall be the Planning Director of the County of Kaua'i or his/her authorized delegate; two (2) members shall be members of the public who have been interested or engaged in horticultural beautification and recommended by one (1) or more of the following organizations: Mayor's Beautification Task Force, Mokihana Club, Governor's Environmental Council, the National Tropical Botanical Garden, and the State Forestry Department of Kaua'i. Each member from the public shall be appointed to the committee by the Mayor from the list of nominees submitted by the foregoing organizations, for a term coterminous with the term of the appointing authority. Any vacancy will be filled by the Mayor from the same list of nominees. No member of the Committee shall use his or her position for personal gain or benefit.

(c) The County Arborist Advisory Committee shall compile a list and location of those trees which it deems exceptional for review by the Council and strive to obtain written accord from the owner of the property. Upon approval by the County Council, the committee shall prepare official maps designating thereon those trees which have been determined to be exceptional and shall file the maps with the County Planning Department and the Department of Public Works, Building Division.

- (d) Upon designation by the County Council as an exceptional tree, the County Clerk, by registered letter, shall notify all property owners and occupants that a designation has been made.
- (e) If any disagreement with the designation shall arise, the property owner may appeal the designation to the County Council within thirty (30) days of the receipt of notification. The County Council shall hear and determine the matter and may affirm, modify, or disaffirm the designation as an exceptional tree within sixty (60) days of the filing of the notice of appeal.
- (f) Any citizen or citizen group may petition the Committee to examine a particular tree or group of trees for the purpose of having it recommended as an exceptional tree.
- (g) From time to time the County Arborist Advisory Committee may recommend to the County Council the addition or removal of exceptional trees from the maps.
- (h) In the event it should be found that the designation as an exceptional tree is a total denial of the reasonable economic use of the property, the County Council may remove the tree from the protection of this Article.
- (i) The initial list of exceptional trees shall be officially adopted by ordinance. Any additions or deletions to the list shall also be by ordinance. (Ord. No. 240, December 27, 1974; Sec. 22-5.3, R.C.O. 1976)

#### Sec. 22-5.4 Designation of Exceptional Trees.

The following trees are designated as "exceptional trees" for the County of Kaua'i. They are:

Exceptional Tree No.	Location
K-1 - Tropical Almond (otherwise known as False Kamani, Kamani Ula or Terminalia Catappa)	Along Ahukini Road (north side) about 75 yards East of Kūhiō Highway, near the Southeast corner of Ala Moana Bowling Alley; TMK: 3-6-06 and 3-7-01-1
K-2 - Swamp Mahogany (otherwise known as Robusta Eucalyptus or Eucalyptus Robusta)	Along both sides of Maluhia Road extending 3/4 of a mile southward from Knudsen Gap; TMK: 2-7-02-1 and 2-8-01-5
K-3 - Ginkgo (otherwise known as Maidenhair tree, Sacred Tree of China or Ginkgo Diloba)	Kokee State Park on Kaunuoha Ridge near the Kokee Road; TMK: 1-4-01-13 and Por. Tax Key 1-4-01
K-4 - Chinese Banyan (otherwise known as India-laurel fig or Ficus microcarpa [was known as F. retusa])	At Nāwiliwili north of Highway 501 on the hillside south of Kaua'i High School, at Menhune Gardens; TMK: 3-2-05-8 and 3-2-05-17
K-5 - Baobab (otherwise known as Bottle tree, Monkey-bread tree)	Behind the Kōloa Missionary Church yard near the southeast corner; TMK: 2-8-10-1
K-6 - Norfolk Island Pine or Cook Pine (otherwise known as Araucaria heterophylla or columnaris)	Begins at the end of the Kipu County Road and extends 3/4 of a mile along the Kipu Ranch driveway; TMK: 3-1-03-1
K-7 - King Kalakaua's Durian (otherwise known as Durian or Durio zibethinus)	On the Grove Farm Homestead grounds among other interesting trees planted by G.N. Wilcox near Highway 501 at Ukukukui; TMK: 3-6-01-2
K-8 - Earpod (otherwise known as Elephant's ear or Enterlobium cyclocarpum)	In Kōloa along Po'ipū Road in front of the Kaua'i Mortuary, Inc.; TMK: 2-8-10-15
K-9 - Monkeypod (otherwise known as Raintree, Ohai or Pithecellobium saman)	In Waimea in front of the historical Gulick-Towell home; TMK: 1-2-06-34
K-10 - Siris tree (otherwise known as Woman's tongue, white monkey pod, lebbek or Albizia lebeck)	In Waimea Valley on the Gay's Estate grounds at the end of Gay Road (also known as Oli Oli Road); TMK: 1-6-01-29
K-11 - Kamani (otherwise known as Alexandrian Laurel, Kamanu or Calophyllum inophyllum)	In Hanalei near the Waioli Mission House. There are two Kamani trees behind the white picket fence and in front of the Mission House. K-11 is the tree located northeast of the house; TMK: 5-5-06-8
K-12 - Coconut Grove (otherwise known as Niu, Coconut-palm or Cocos nucifera)	The grove extends both makai and mauka of Highway 56 (Kūhiō Highway) at Waipouli; TMK: 4-3-6-2, 4-3-7-27, 28, and 29
K-13 - Tropical Almond (otherwise known as False Kamani,	Along Kūhiō Highway in Hā'ena on TMK: 5-09-05:2

Kamani Ula or Terminalia Catappa)	(1990) approximately 80 feet mauka of the highway
K-14 - Indian Banyan (otherwise known as Ficus Benghalensis)	Approximately 84 feet east of Hulemanu Road in Niunalu, on the western boundary of TMK: 3-2-02:26. A portion of the tree is located within TMK: 3-2-02:26, and the remainder of the tree is located within TMK: 3-2-02:02
K-15 - Kauila (otherwise known as Alphitonia ponderosa)	Waimea Canyon State Park, at eastern end of Kauhao Ridge, just north-west of Kokee Ditch gaging station, 3,300 feet elevation; TMK: 1-4-01:3
K-16 - Paired Moreton Bay Fig Trees (otherwise known as Ficus macrophylla)	The two trees flank the two entrances into Kīlauea School; TMK: 5-2-09:6 (1991)
K-17 - Breadfruit Tree (otherwise known as Artocarpus incisus)	On the grounds of Kīlauea School; TMK: 5-2-09:6 (1991)
K-18 - Royal Poinciana (otherwise known as Debonix regina)	In Kīlauea on the grounds of the Mary N. Lucas Trust Estate; TMK: 5-2-21:22 (1991)
K-19 - Teak (otherwise known as Tectona grandis)	In Līhu‘e at 3621 Nokekula Circle, off Nāwiliwili Road; TMK: none
K-20 - Monkey-Pod (otherwise known as Pithecellobium saman)	In Kōloa behind old Yamamoto Store next to river; TMK: 2-8-07-16
K-21 - Monkey-Pod (otherwise known as Samanea saman)	In Old Kōloa Town, Honpa Hongwanji Mission and Kōloa Early School; TMK: 2-8-004:056
K-22 - Monkey-Pod (otherwise known as Samanea saman)	In Old Kōloa Town, Honpa Hongwanji Mission and Kōloa Early School; TMK: 2-8-004:056
K-23 - Monkey-Pod (otherwise known as Samanea saman)	In Old Kōloa Town; TMK: 2-8-004:053

(Ord. No. 277, April 7, 1976; Appendix “B,” 1978 Cumulative Supplement; Ord. No. 578, October 9, 1990; Ord. No. 581, November 30, 1990; Ord. No. 585, March 25, 1991; Ord. No. 590, August 12, 1991; Ord. No. 602, April 4, 1992; Ord. No. 797, November 26, 2002; Ord. No. 868, August 13, 2008; Ord. No. 874, October 8, 2008)

**Sec. 22-5.5 Consultation with County Arborist Advisory Committee.**

Prior to the issuance of any building, zoning, or subdivision permit, the County Planning Department and the Department of Public Works, Building Division, may request advice from the County Arborist Committee concerning trees within any proposed development to assure that exceptional trees are retained and to prevent the unnecessary destruction of those trees during development or redevelopment of any tract or lot within the County of Kaua‘i. The lack of designation as “exceptional tree” does not diminish the responsibility and the authority of the County Planning Department and the Department of Public Works, Building Division, to recommend trees to be incorporated into a development plan. (Ord. No. 240, December 27, 1974; Sec. 22-5.4, R.C.O. 1976)

**Sec. 22-5.6 Enforcing Authority.**

The County Planning Department and the Department of Public Works, Building Division, in their respective spheres of authority, shall be charged with police power to do all acts necessary to ensure that the provisions of this Article are not violated, including, but not limited to, the issuance of citations for the violation of any provisions of this Article. The provisions of this Article shall not be superseded by any permit issued by any County agency under any other ordinance. (Ord. No. 240, December 27, 1974; Sec. 22-5.5, R.C.O. 1976)

**Sec. 22-5.7 Violation and Penalty.**

- (a) It shall be unlawful for any person to damage, remove, or otherwise destroy any tree in the County of Kaua'i which has been designated "exceptional" without approval from the County Council. Any person convicted of violating any provision of this Article shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than ninety (90) days or both for each offense.
- (b) The terms "damage" and "or otherwise destroy" shall not include normal maintenance of the tree by the owner thereof, including trimming, pruning or shaping of the branches or roots.
- (c) Trees in a grove may be removed, subject to approval of the County Planning Department. (Ord. No. 240, December 27, 1974; Ord. No. 282, May 6, 1976; Sec. 22-5.6, R.C.O. 1976)

**Sec. 22-5.8 Injunctive Enforcement.**

Any threatened violation of the provisions of this Article is declared to be a public nuisance and may be abated through proceedings for injunctive relief or similar relief in Circuit Court or other court of competent jurisdiction. (Ord. No. 240, December 27, 1974; Sec. 22-5.7, R.C.O. 1976)

**Sec. 22-5.9 Appeals.**

Any person aggrieved by any action of the County Council may within thirty (30) days of action file an appeal to the Circuit Court. (Ord. No. 240, December 27, 1974; Sec. 22-5.8, R.C.O. 1976)