

RECEIVED

Roy Ho  
Chair

Member:  
Francis DeGracia

'20 JUN -2 A11 :14

Donna Apisa  
Vice Chair

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

**COUNTY OF KAUAI PLANNING COMMISSION**  
**NOTICE OF SUBDIVISION COMMITTEE TELECONFERENCE AGENDA**

Tuesday, June 9, 2020  
8:30 a.m. or shortly thereafter

Microsoft Teams Audio: +1 469-848-0234, Conference ID: 586 282 627#

The meeting will be held via Microsoft Teams conference only. Members of the public are invited to join this meeting by calling the number above with the conference ID information. You may testify during the video conference or submit written testimony in advance of the meeting via e-mail or mail. To avoid excessive noise/feedback, please mute your microphone except to testify.

- A. **CALL TO ORDER**
- B. **ROLL CALL**
- C. **APPROVAL OF THE AGENDA**
- D. **MINUTES of the meeting(s) of the Planning Commission**
- E. **RECEIPT OF ITEMS FOR THE RECORD**
- F. **HEARINGS AND PUBLIC COMMENT** The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov) or mailed to the County of Kauai Planning Department, 4444 Rice Street, Suite 473, Lihue, Hawaii 96766. Written testimony received by the Planning Department before 8:30 a.m. on Monday, June 8, 2020, will be distributed to Planning Commissioners prior to the meeting. Written testimony received after 8:30 a.m. on Monday, June 8, 2020, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.
- G. **GENERAL BUSINESSS MATTERS**
- H. **UNFINISHED BUSINESS**

**I. NEW BUSINESS (For Action)**

**1. Tentative Subdivision Map Approval**

- a. Subdivision Application No. S-2020-07  
**State of Hawaii, DLNR – Forestry Division**  
Proposed 2-lot Subdivision  
TMK: (4) 1-8-008:020 (Por.)  
Hanapepe, Kauai

- 1. Subdivision Report pertaining to this matter.

**J. ADJOURNMENT**

NOTE: IF YOU NEED AN AUXILLARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSON, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR [ASEGRETI@KAUAI.GOV](mailto:ASEGRETI@KAUAI.GOV) AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATIVE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.



COUNTY OF KAUA'I  
PLANNING DEPARTMENT

**SUBJECT TO CHANGE**

SUBDIVISION REPORT

I. SUMMARY

**Action Required by Planning Commission:** Consideration of Subdivision Application No. S-2020-7 that subdivides a parcel into two (2) lots.

**Subdivision Permit No.** Application No. S-2020-7

**Name of Applicant(s)** STATE OF HAWAII DLNR - FORESTRY

II. PROJECT INFORMATION

<b>Map Title</b>	Designation of lot B Being a portion of Hanapepe Government Lands, Section A (C.S.F. 9976-9979) Hanapēpē, Waimea, Kaua'i, Hawai'i				
<b>Tax Map Key(s):</b>	1-8-008:020 (Por.)	<b>Area:</b>	379 Acres		
<b>Zoning:</b>	Agriculture/Open				
<b>State Land Use District(s):</b>	Agricultural	<b>General Plan Designation:</b>	Agricultural/Open		
<b>AGENCY COMMENTS</b>					
<input checked="" type="checkbox"/> <b>COK Public Works</b>	4/6/2020	<input type="checkbox"/> <b>State DOT-Highways:</b>			
<input checked="" type="checkbox"/> <b>COK Water:</b>	5/2/2020	<input checked="" type="checkbox"/> <b>State Health:</b>	4/23/2020		
<input type="checkbox"/> <b>Other(s)</b>		<input type="checkbox"/> <b>DLNR – SHPD:</b>			
<b>EXISTING ROAD RIGHT-OF-WAY(S)</b>					
<b>Road Name</b>	<b>Existing Width</b>	<b>Required Width</b>	<b>Pavement YES</b>	<b>NO</b>	<b>Reserve</b>
Lele Road	40 feet	56 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	8 feet
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
<b>APPLICABLE FEES</b>					
<b>Environmental Impact Assessment (EIA)</b>	N/A				
<b>Park Dedication</b>	N/A				
<b>Appraisal Report Required</b>	N/A				

III. EVALUATION

The proposed development subdivides a parcel into two (2) lots and the primary intent is to establish a ten (10) acre parcel to be utilized by the State of Hawai'i, Department of Land and Natural Resources (DLNR) as a baseyard facility.

IV. RECOMMENDATION

TENTATIVE APPROVAL	FINAL APPROVAL
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denied	<input type="checkbox"/> Approval <input type="checkbox"/> Denied
Tentative Approval subject to all requirements as noted on the follow pages:	All conditions have been complied with
 Director of Planning	Date
6/2/2020	Director of Planning
Date	Date

## V. AGENCY REQUIREMENTS

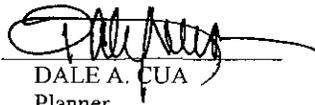
1. Requirements of the Planning Department:
  - a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
  - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
  - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
  - d. An eight (8) foot wide future road widening reserve shall be established along the frontage of Lele Road. There shall be no new structures permitted within the reserves, and any new structures should be setback from the reserves. The reserves, along with the restrictions, shall be incorporated into the deed descriptions of the affected lots, of which draft copies shall be submitted to the Planning Department for review and approval.
2. Requirements of the Department of Water (DOW):
  - a. The subdivider shall pay the Department of Water the applicable charges and/or any rate increase in effect at the time of receipt:
    - 1) A Facilities Reserve Charge of \$28,230.00 (2 lots at \$14,115 per lot)
  - b. The subdivider shall prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct said facilities or post performance bond for construction.
  - c. If bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds:

*"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kauai."*

This deed restriction shall be recorded with the Bureau of Conveyances within (90) days of final subdivision approval by the Planning Department.
  - d. Requests for additional water meters or an increase in water meters or an increase in water meter size will be dependent on the adequacy of the source, storage, and transmission facilities at that time.
3. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
4. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for JUNE 9, 2020 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

By   
DALE A. CUA  
Planner

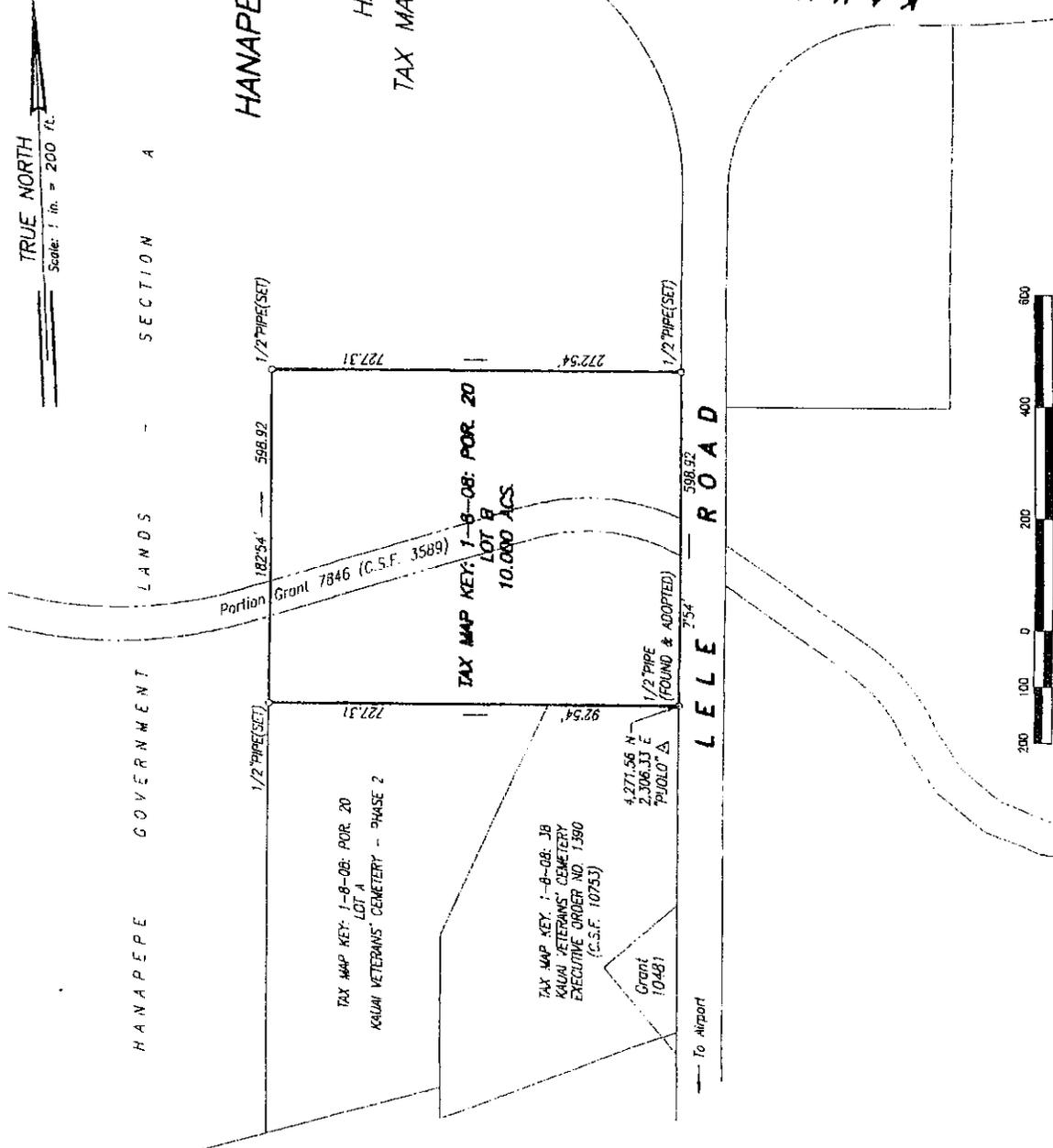
TRUE NORTH  
Scale: 1 in. = 200 ft.

# SUBDIVISION MAP

HANAPEPE GOVERNMENT LANDS SECTION 4  
DESIGNATION OF LOT B  
BEING A PORTION OF  
HANAPEPE GOVERNMENT LANDS, SECTION A  
(C.S.F. 9976-9979)

HANAPEPE, WAIMEA, KAUAI, HAWAII

TAX MAP KEY: (4TH DIV.) 1-8-08: POR. 20



This work was prepared by me or under my direct supervision.

By: George S. Yoshimura  
Licensed Professional Land Surveyor  
Certificate No. 2527 Exp. 04/2018



Date: November 5, 2014

1001 Bishop Street, Suite 1800  
Honolulu, Hawaii 96813



Job Number: 5013529 0250  
Final Draw

COUNTY OF KAUAI  
DEPARTMENT OF PUBLIC WORKS

TO: PLANNING DIRECTOR

S-2020-07  
SUBDIVISION NO.

FROM: ENGINEERING DIVISION  
VIA: COUNTY ENGINEER

OWNER: State of Hawaii  
REGISTERED PROFESSIONAL LAND  
SURVEYOR: George S. Yoshimura, PLS

DATE: March 18, 2020

TAX MAP KEY: (4)1-8-008:020Por

RE: Subdivision Map designation of Lot-B being a  
portion of Hanapēpē Government Lands, Section-A  
(C.S.F. 9976-9979) Hanapēpē, Kaua'i, Hawai'i

PRELIMINARY MAP	<u>  X  </u>
CONSTRUCTION PLANS (TITLE SHEET)	<u>          </u>
CONSTRUCTION INSPECTION FEE AGREEMENT & BOND	<u>          </u>
COMPLETION OF IMPROVEMENT	<u>          </u>
FINAL MAP	<u>          </u>
DEDICATION	<u>          </u>

PW 03.20.026

COMMENTS:

1. FORM & CONTENT OF MAP & SUPPLEMENTAL DOCUMENTS:
2. SEWER:
3. PARK:
4. DRAINAGE:
5. ROAD:
6. OTHERS: No Comments.

- a. Transmitted herewith for your review & approval is the approved construction plan Title Sheets for:
- b. Engineer Estimate for Construction of Roads, Drainage and Sewer is estimated at
- c. Request Developer to deposit with Public Works Department a Construction Inspection Fee of
- d. As-built tracings have (not) been received
- e. Deed is approved
- f. Attached Deed requires revision(s) as follows

Sincerely:



MICHAEL MOULE, P.E.  
Chief, Engineering Division

RECEIVED  
20 APR 6 4 57 Z

MM/SI/PT  
cc: S-2020-07



4398 PUA LOKE STREET  
 LIHU'E, KAUA'I, HAWAII 96766  
 PHONE: (808) 245-5400 / FAX: (808) 245-5813

Water has no substitute Conserve It!

### SUBDIVISION REPORT

TO: PLANNING DEPARTMENT  
 FROM: DEPARTMENT OF WATER

TMK: 1-8-08:020 NAME: State of HI-DLNR Forestry SURVEYOR: AECOM REPORT NO: S-2020-7

- 1. Tentative approval is recommended.
- 2. All requirements have been fully met and; therefore, Final approval is recommended.
- 3. Before final approval can be recommended, the subdivider must: 
  - A. Pay the Department of Water (DOW) the following charges in effect at the time of receipt. At the present time, these charges include: 
    - 1) The Facilities Reserve Charge (FRC):   
 $\underline{2}$  Lots @ \$14,115 per lot = \$ 28,230
    - 2) Payment to install \_\_\_\_\_, or relocate \_\_\_\_\_, service connections(s) at the fixed cost of \$ \_\_\_\_\_. If the subdivider causes a delay in the service connection installation after one year since final map approval, the subdivider shall be charged the increase in the fixed cost, if any.
    - 3) Deposit (the subdivider will either be billed or returned the difference between this deposit and the actual cost of construction of \$ \_\_\_\_\_ for construction by the DOW.
  - B. Submit to the DOW a copy of the subdivider's permit to perform work upon a State highway from the State Highways Division
  - C. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include: 
    - 1) The domestic service connection(s).
    - 2) The fire service connection, if applicable.
    - 3) The interior plumbing with the appropriate backflow prevention device for the proposed water meter.
  - D. Prepare and convey to the DOW a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance, and operation of the subdivision water system improvements installed in other than County-owned property.
  - E. If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds: 

"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kaua'i."

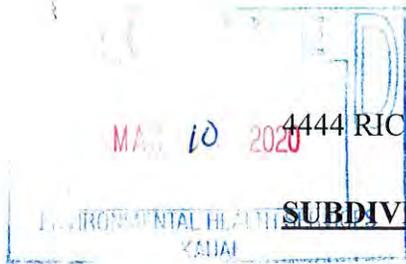
This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.
- 4. Installation of service connections will not be required until request for water service is made. The applicant for service will be charged the applicable service connection charges at that time.
- 5. Other (or remarks): 
  - i. Requests for additional water meters or an increase in water meter size will be dependent on the adequacy of the source, storage, and transmission facilities at that time.

REVIEW 20 MAY -4 19:19

Edward Doi  
 Edward Doi, P.E.  
 Chief of Water Resources & Planning

4/16/2020  
 Date

SUBDIVISION REPORT NO. S-2020-7



COUNTY OF KAUAI  
PLANNING DEPARTMENT

4444 RICE STREET, SUITE A473, LIHUE, HI 96766  
(808) 241-4050

PLANNING DEPT

**SUBDIVISION APPLICATION ROUTING FORM**

DATE: Friday, March 06, 2020

20 ABR -3 P1:22

<b>Subdivision Map Review and Approval</b>			
<b>REQUEST:</b>	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> Final	RECEIVED
	<input type="checkbox"/> Pre-Final	<input type="checkbox"/> Extension	
SUBDIVISION APPLICATION NO:	S-2020-7		
Owner(s)/Applicant(s):	State of Hawai'i/DLNR Forestry and Wildlife		
Name of Surveyor/Engineer/Authorized Agent:	AECOM		
Tax Map Key:	418008020	Assigned To:	Chance
Improvements:			

ROUTE TO:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> County DPW-Engineering | <input checked="" type="checkbox"/> State Highway Division-DOT |
| <input type="checkbox"/> County DPW-Solidwaste             | <input type="checkbox"/> DOT-STP                               |
| <input checked="" type="checkbox"/> County DPW-Wastewater  | <input checked="" type="checkbox"/> State Health Dept.         |
| <input type="checkbox"/> County Fire Department            | <input type="checkbox"/> State Historic Preservation Div.      |
| <input type="checkbox"/> County Housing Agency             | <input checked="" type="checkbox"/> U.S. Postal Service        |
| <input type="checkbox"/> County Dept. of Parks and Rec.    | <input type="checkbox"/> Other                                 |
| <input type="checkbox"/> KHPRC                             |  |
| <input checked="" type="checkbox"/> County Water Dept.     |  |
| <input checked="" type="checkbox"/> County Transportation  |  |

COMMENTS: ( *Comment Due Date: 4/5/2020* )

See comments on attached sheet.

March 20, 2020

Patrick Peck, Chief  
District Environmental Health Program Kauai

Subdivision Application No.: **S-2020-7**

Applicant: **State of Hawaii DLNR/Land and Division of Forestry and Wildlife**

Based on our review of the application at this time, we have no environmental health concerns or comments for your consideration at this time.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions as additional detailed information becomes available.

Glenda Nogami Streufert  
Chair

Donna Apisa  
Vice Chair

Members:  
Melvin Chiba  
Helen Cox  
Francis DeGracia  
Roy Ho  
Lori Otsuka

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  1. **Continued Agency Hearing**
  2. **New Agency Hearing**

**F. HEARINGS AND PUBLIC COMMENT (Cont'd)**

**3. Continued Public Hearing**

- a. Zoning Amendment ZA-2020-14: A bill for an ordinance amending Chapter 8, Kauai County Code, 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-27 of the CZO relating to Shoreline Setback and Coastal Protection = *County of Kauai, Planning Department*. [Meeting cancelled 3/24/20, Director's Report received and hearing continued 5/12/20.]

**4. New Public Hearing**

- a. Zoning Amendment ZA-2020-16: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends CZO Section 8-1.5 relating to the definitions of "Applicant" and "Owner," CZO Section 8-3.1 relating to Zoning Applications, and CZO Section 8-3.2(g) relating to the time to file appeals = *County of Kauai, Planning Department*.

1. Director's Report pertaining to this matter.

**5. All remaining public testimony pursuant to HRS 92 (Sunshine Law)**

**G. CONSENT CALENDAR**

**1. Status Reports**

- a. Status Report (4/30/20) for Project Development Use Permit PDU-2008-11, Use Permit U-2008-10, and Class IV Zoning Permit Z-IV-2008-12, Tax Map Key No. 2-8-08:01 (Lot 185) from Ian K. Jung, attorney for *Koloa Village, LLC, as successor to Koloa Town LLC (original Permittee)*.

1. Director's Report pertaining to this matter.

**H. EXECUTIVE SESSION**

1. Pursuant to Hawaii Revised Statutes 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to Civil No. 18-0192 (JKW), Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-1 for property located at Tax Map Key No. (4) 2-8-002: por. 005: *Kauai Springs, Inc.*

**H. EXECUTIVE SESSION (Cont'd)**

2. Pursuant to Hawaii Revised Statutes 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on the powers, duties, privileges, immunities, and/or liabilities of the Commission as they relate to Contested Case Proceedings.

**I. GENERAL BUSINESS MATTERS**

1. Planning Director briefing to the Commission on the Planning Department's COVID 19 operations and logistics, as well as the Planning Department's coordinated efforts with the Kauai Emergency Management Agency (KEMA).
2. Request for Time Extension for Project Development Use Permit PDU-2008-11, Use Permit U-2008-10, and Class IV Zoning Permit Z-IV-2008-12, Tax Map Key No. 2-8-08:01 (Lot 185) from Ian K. Jung, attorney for *Koloa Village, LLC, as successor to Koloa Town LLC (original Permittee)*.
  - a. Director's Report pertaining to this matter.
3. Petition to Appeal Decision of the Planning Director; Exhibits "A" – "I"; Certificate of Service (5/6/20) by Jonathan J. Chun, Attorney for Appellant *David Houston 1997 Trust*, in the matter of the application of *David Houston 1997 Trust* appealing Notice of Violation & Order To Pay Fines executed on April 27, 2020 for property located in Moloaa Hui Lots, Kawaihau, Kauai, Hawaii, Tax Map Key No. (4) 4-9-014:020 0001.
  - a. Memorandum (6/2/20) from Kaaina S. Hull, Clerk of the Commission, to Honorable Commissioners of the Kauai Planning Commission recommending referral of an Appeal of the Planning Director's Decision Related to the Planning Director's Notice of Violation & Order to Pay Fines for the unpermitted construction of a retaining wall along Moloaa Stream in Special Management Area of Moloaa, *David Houston 1997 Trust*, Tax Map Key (4) 49014020, Moloaa Hui Lots, Kauai, received on May 18, 2020, for referral to Board and Commissions as Contested Case File No. CC-2020-6.

**J. COMMUNICATION (For Action)**

**K. COMMITTEE REPORTS**

1. Subdivision Subdivision Action matters listed in the Subdivision Agenda (attached).

**L. UNFINISHED BUSINESS (For Action)**

**M. NEW BUSINESS**

1. For Action – See Agenda F for Project Descriptions

**N. ANNOUNCEMENTS**

1. Topics for Future Meetings
2. The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on June 23, 2020. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting via an agenda electronically posted at least six days prior to the meeting date.

**O. ADJOURNMENT**

EXECUTIVE SESSION: The Commission may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawaii Revised Statutes (“H.R.S.”), without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

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Pursuant to Section 8-27.8 (6) of the Kaua‘i County Code (1987), as amended, the following shoreline setback determinations by the Director are disclosed for purposes of public notification.

June 9, 2020

SHORELINE SETBACK DETERMINATIONS

<b>Application No.</b>	<b>Name of Applicant(s)</b>	<b>Property I.D. (Tax Map Key)</b>	<b>Location</b>	<b>Reasons</b>
SSD-2020-44	County of Kauai	(4) 4-8-018:028, 029	‘Aliomanu	Road repair, bank stabilization (rock revetment)
SSD-2020-45	David Bassett	(4) 5-3-004:029	‘Anini	Interior renovations and Lāna‘i additions
SSD-2020-46	Alisha Green	(4) 5-8-012:032	Wainiha	New Single-family dwelling
SSD-2020-47	Keālia Properties, LLC	(4) 4-7-003:006	Keālia	Demolition of school
SSD-2020-48	Matthew Hunter	(4) 5-8-008:013	Hanalei	Roof addition over existing guest house deck
SSD-2020-49	David Andighetto	(4) 5-3-006:009	‘Anini	Renovation of existing residence and septic system

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987,  
AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE  
(ZA-2020-14)

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. The Council finds that Kauai's coastline is subject to a wide variety of natural hazards, such as tsunamis, high surf, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose dangers to people and property located near the shoreline. Proper siting of structures based on hazard recognition and long term planning principles is critical to the protection of life and property, the mitigation of coastal hazards, and the preservation of coastal resources.

Until recently, development and other improvements on coastal lands occurred without regard to erosion hazards. In some cases, chronically retreating shorelines eventually threatened these improvements causing strong pressure to build shore protection structures such as seawalls and revetments. These structures distorted the natural shoreline environment, often leading to accelerated erosion on adjoining properties, beach loss, and reduced public access. This pattern of coastal zone development has seriously degraded the natural attributes of the Kauai Coast as documented in the Kauai Shoreline Erosion Management Study (September, 1990).

On January 25, 2008, the first shoreline setback ordinance (Ordinance No. 863) was signed into law. The purpose of the ordinance was to properly site structures to protect life, property, and resources along Kauai's shorelines from a wide variety of natural hazards, including high surf, hurricanes, flooding, and erosion. The Council envisioned Ordinance No. 863 as an initial effort to establish shoreline setbacks while science-based coastal erosion hazards maps were being completed. On December 2, 2009, Ordinance No. 887 became effective, amending the original shoreline setback ordinance. The purpose of Ordinance No. 887 was to streamline permit procedures by removing unnecessary requirements for structures and activities permitted within the shoreline setback area.

In 2010, the University of Hawaii Coastal Geology Group completed the Kauai Coastal Erosion Study that mapped historical shoreline positions to calculate shoreline change data along most of Kauai's sandy shorelines, thus making available documented rates of shoreline erosion.

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On December 5, 2014, The Council adopted Ordinance 979, which incorporated the shoreline change data from the Kauai Coastal Erosion Study and various coastal hazard mitigation best practices and strategies.

In December of 2018, The University of Hawaii Coastal Geology Group completed an update of the Kauai Coastal Erosion Study, providing new historical erosion rates based on recently mapped shoreline positions.

On February 7, 2018 The Council adopted Kauai Kakou – an update to the General Plan for the County of Kauai, which charts the course of the island for the next 20 years. This plan incorporates Policy #14: Prepare For Climate Change. As an island with the majority of residences and activities located on or close to the coastline, it is important to provide direction to prepare our island for increased coastal hazards and their impacts to business, homes, roadways, drinking water, and ultimately health and safety. Additionally, Policy #16: Protect Access to Kauai’s Treasured Places outlines the need to protect access to and customary use of the shoreline areas, trail, and places for religious and cultural observances, fishing, gathering, hunting, and recreation activities, such as hiking and surfing.

The Council finds that the shoreline environment is one of Kauai’s most important economic and natural resources. Kauai’s beaches provide scenic beauty and recreational opportunities for residents and visitors. They are culturally important to the people of Hawaii. Beaches, dunes, and offshore topographic features also help to minimize risks from coastal hazards by dissipating wave energy, which could otherwise cause significant damage to coastal property. Beaches provide important habitat for seabirds, turtles, monk seals, and other animals and plants. In all of the abovementioned ways, beaches and coastal areas are part of the public trust, and it is government’s fiduciary responsibility to protect beaches and coastal areas.

The Council also finds a serious threat to the safety of coastal structures, infrastructure and residents. It is important that information regarding natural hazards such as coastal erosion and sea level rise data be incorporated into the planning process at the early stage of development, i.e., at the time of subdivision before lot sizes and shapes are established, so as to give landowners more environmentally sound options and to save decision makers from the agonizing dilemma of choosing between protection of one owner to the detriment of another owner and/or the public.

The purpose of this bill is to:

- (1) To protect life and property and to ensure the longevity and integrity of Kauai’s coastal and beach resources along Kauai’s shoreline.
- (2) To strengthen shoreline setback requirements in Chapter 8, Article 27 of the Kauai County Code, 1987, as amended, by incorporating science-based erosion rates established in the Kauai Coastal Erosion Study and current coastal hazard mitigation best practices and strategies.

[(3) To align the Shoreline Setback Ordinance with the County Flood Ordinance to improve coordination between the Departments of Planning and Public Works.]

[(4) To protect against episodic shoreline erosion that is not accounted for in the Kauai Coastal Erosion Study until such time as studies providing additional guidance and information are completed.]

(3) To create consistency with recent amendments to Hawaii Revised Statutes, Chapter 205A, as prescribed in [Act 120 of the 2013 Legislature] by Act 32 of the 2017 Legislature.

(4) To incorporate the intent of the Policies and Actions by Sector of The Kauai County General Plan Update regarding the protection of coastal resources and minimizing risks and development in areas impacted by coastal hazards.

(5) To ensure beach access for the public when possible.

The County is authorized to protect the coastal area pursuant to Public Law No. 92-583, as amended, ("Coastal Zone Management Act"), Chapter 205A, Hawaii Revised Statutes, as amended, ("Shoreline Protection Act"), Article XI Section 1 of the Hawaii State Constitution, Public Law 92-583, and the County's police powers to protect public health and safety. This ordinance shall be known as the "Shoreline Setback Ordinance."

SECTION 2. Chapter 8, Article 27 of the Kauai County Code 1987, as amended, is hereby amended as follows:

## **ARTICLE 27. SHORELINE SETBACK AND COASTAL PROTECTION**

Sec. 8-27.0 Purpose. The purpose of this Article is to protect life and property, provide access to and along the shoreline, ensure the longevity and integrity of Kauai's coastal and beach resources along Kauai's shoreline and to strengthen shoreline setback requirements in this Article by incorporating science-based erosion rates established in the Kauai Coastal Erosion Study and current coastal hazard mitigation best practices and strategies.

### **Sec. 8-27.1 Applicability.**

This Article shall be applicable to all structures proposed within five hundred fifty (550) feet of the shoreline [lands] within the County of Kauai, State of Hawaii. [that are:

(a) abutting the shoreline where structures and/or prohibited activities are proposed within five hundred (500) feet of the shoreline, or

(b) not abutting the shoreline where structures and/or prohibited activities are proposed within approximately five hundred fifty (550) feet of the shoreline.]

**Sec. 8-27.2 Definitions.**

For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

“Adversely affect beach processes” means to pose a potential immediate or future adverse effect on beach processes as a result of a structure and/or landscaping located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

“Annual coastal erosion rate” means the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012). Annual coastal erosion rates are available for all lots on Kauai fronted by a sandy beach from the Kauai Planning Department website. [These rates were calculated by the University of Hawaii’s Coastal Geology Group for the Kauai Coastal Erosion Study [(2010).] The Planning Director may designate a qualified professional to review and, subject to the Planning Director’s approval, update annual coastal erosion rates.

“Average lot depth” means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

“Board” shall mean the Board of Land and Natural Resources, State of Hawaii.

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay window with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

“Certified shoreline” means the shoreline established by Board pursuant to HRS 205A-42, as amended.

“Coastal Dune” means one of possible several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

“Coastal erosion” means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

“Coastal erosion hazard zone” shall include all of the land between the shoreline and the shoreline setback line.

“Coastal hazard” means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

“Coastal hazard disclosure statement” means a disclosure statement which is an addendum to the shoreline setback determination application advising of the potential for coastal hazards and further restrictions and limitations on development in the future that may impact their property as well as providing information and resources to educate property owners. This form must be signed by the property owner prior to acceptance of the application.

“Commission” means the Planning Commission of the County of Kauai.

“Department” means the Planning Department of the County of Kauai.

“Director” means the Planning Director of the Planning Department of the County of Kauai.

“Dwelling Unit” means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard Assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawaii Coastal Mitigation Guidebook, (January 2005), which was prepared for the State of Hawaii, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawaii Sea Grant College Program and the Pacific

Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration.

“Historic structure” means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old and designated as such in the state and county records.

“Kauai Coastal Erosion Study” means a quantitative study of Kauai and Niihau’s historical shoreline behavior utilizing ortho-rectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual coastal erosion rate of the Shoreline Change Reference Feature (SCRF). The study was conducted by the University of Hawaii’s Coastal Geology Group for the County of Kauai. The shoreline change data [and shoreline change posters produced by this study] are on file with the Kauai Planning Department. The study followed procedures described in the National Assessment of Shoreline Change: Historic Shoreline Changes in the Hawaiian Islands (Fletcher, et al., [2010] 2012) available from the Kauai Planning Department. In 2018, the Kauai Coastal Erosion Study was updated.

“Landscaping” means the modification of landscape for an aesthetic or functional purpose that includes the planting of vegetation; the installation of irrigation, rock or water features; grading or grubbing.

“Makai” means seaward or in a seaward direction.

“Mauka” means landward or in a landward direction.

“Minimum buildable footprint” means a building footprint of one thousand five hundred (1,500 square feet).

“Minor structure” means:

(1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kauai Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to the beach, shoreline, and/or coastal resource conservation, or

(2) a structure that:

A. costs less than \$125,000; and

B. does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

C. does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

D. is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

E. includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, lifesaving devices, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls, public park facilities (excluding restrooms and septic systems), portable or movable walkway for public access or , as determined by the director, a structure primarily benefitting the public that will not impact coastal erosion processes, and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are located more than forty (40) feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

F. excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

"Natural catastrophe" is a natural disaster qualifying for a governor's declaration of emergency pursuant to Hawaii Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42 USC 5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

"Nonconforming structure or activity" means a structure or activity which is lawfully existing within the shoreline setback area because it:

- (1) Was completely built, in its present form, prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or Shoreline setback area variance prior to June 16, 1989; or
- (3) Was outside the shoreline setback area when it received either a building permit or board approval; [or]

"Plan" or "site plan" means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built [within the shoreline setback area.] The plan shall be based on an accurate instrument by a

surveyor licensed in the State of Hawaii and shall be consist of data including but not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;
- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the Shoreline, [and shoreline setback area];
- (7) Fences, walls, and any other structures [in the shoreline setback Area] and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land.

“Primary Coastal Dune” means the first dune encountered mauka of the beach.

“Prohibited Activities” means those activities prohibited in the shoreline setback area as provided in Section 8-27.6 of this Article. All other activities shall be regulated by the Special Management Area Rules and Regulations of the County of Kauai and the requirement of HRS Chapter 343-5 regarding environmental assessments for any proposed uses within a shoreline area as defined in Section 205A-41.

“Public Park Facilities” means recreational facilities owned and operated by state or county park agencies for the benefit and use of the general public.

“Qualified consultant” means a coastal scientist with a master of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawaii that has experience in coastal processes. If a dune restoration project is proposed, the qualified consultant shall have experience and expertise with dune restoration.[“]

“Qualified Demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and

(6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.

“Repair” means the reconstruction or renewal of any part of an existing structure, but not the entire structure, solely for the purpose of its maintenance. [fixing or regular maintenance of a lawfully existing structure that does not result in an addition to, or enlargement or expansion of, the lawfully existing structure.] A “substantial improvement” as defined herein shall not be considered a repair. In cases where repairs include foundations and/or load bearing walls within the shoreline setback area, the Planning Director may require additional information as outlined in Section 8-27.3(1).

“Revetment” shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky Shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic material, non-erodible material such as basalt, fossil limestone, beach rock, or other non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Shoreline” is as defined in Section 205A-1, Hawaii Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawaii Revised Statutes, as amended means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

“Shoreline Area” means all of the land area between the shoreline and the shoreline setback line, and may include the area between mean sea level and the shoreline, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure is in violation or the part extends seaward of the shoreline, the “shoreline area” shall include the entire structure.

“Shoreline Certification” means a signed statement by the chairperson of the board of land and natural resources that the shoreline is as located and shown on the map as of a certain date.

“Shoreline Hardening” means the process of fortifying the shoreline or shoreline setback area with hard structures including, but not limited to, seawall and revetments.

“Shoreline Change Reference Feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

“Shoreline setback area” means “Shoreline area” as defined in Section 205A-41, Hawaii Revised Statutes, as amended.

“Shoreline setback line” is as defined in Section 205A-41, Hawaii Revised Statutes, as amended, means that line, established by Section 8-27.3, running inland from and parallel to the shoreline at a horizontal plane.

“Storm buffer zone” is the first forty feet (40’) of the shoreline setback area as measured from the shoreline.

“Structure” is as defined in Section 205A-41, Hawaii Revised Statutes, as amended.

“Substantial construction” means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

“Substantial improvement” means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a ten (10) year period, where the cumulative cost equals or exceeds thirty percent (30%) [fifty (50%)] of the market value of the structure before the start of construction of the first improvement during that ten (10) year period. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimension of the structure. The value of any substantial improvement shall be determined by the County Engineer or his/her authorized representative. The term does not however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official, and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

“Temporary structures [or activities]” means structures that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

“Use” means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

**Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.**

Shoreline setback determinations shall be issued, based on the following procedures:

(a) Except in [either of the following two cases] item (1) below and except as permitted in Section 8-27.7, a shoreline setback line [determination] shall be established [required] for all structures and subdivisions proposed on lands covered by this Article.

[(1) In cases where the proposed structure or subdivision satisfies the following four criteria:

(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) V or VE flood zones;

(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above mean sea level or greater;

(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline and that it will not affect or be affected by coastal erosion or hazards; and

(D) The shoreline setback shall be sixty (60) feet from the certified shoreline which has been established not more than twelve (12) months from the date of the application for the exception under this section.]

(1) In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(2) Requests for an exception to a shoreline setback line established by the annual coastal erosion rate shall be submitted to the department on a form prescribed by the Director and shall be accompanied by applicable information to assist in the consideration of the request. This could include, but is not limited to, a certified shoreline survey; construction plans, if any; existing and finish contours; photographs of the shoreline area; written justification addressing compliance with the criteria set forth in these rules; and analysis of coastal erosion and shoreline processes. The director shall approve, approve with conditions, or deny a request for a shoreline setback line amendment in accordance with these rules. The director shall transmit any request for a shoreline setback line exception with all relevant information to appropriate agencies

for review and comment. Upon consultation with various agencies, the director shall approve or approve with conditions, a request for a shoreline setback line amendment if the director finds that based on clear and convincing evidence the best parcel-specific setback differs from the setback established by Table 1. The director shall take action on any application for a shoreline setback line amendment within thirty (30) days from the date final agency comments are received and the application is deemed complete by the director.

(b) Unless otherwise provided in subsection (a) above, no shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a certified shoreline issued within twelve (12) months prior to submission of the application.

(c) Lots Included in the Kauai Coastal Erosion Study. For all structures on lots subject to the Kauai Coastal Erosion Study, the setback shall be calculated as follows:

(1) For lots with an average lot depth of less than one hundred forty (140) feet, the setback line shall be forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kauai Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(2) For lots with an average lot depth of one hundred forty (140) feet to two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kauai Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback determined by taking the average lot depth, subtracting one hundred (100) feet, dividing by two and adding forty (40) feet.

(3) For all lots with an average lot depth of over two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty feet (40) plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kauai Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be

added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of one hundred (100) feet from the certified shoreline.

Table 1. (This table is included for illustrative purposes only.) Lots included in the Kauai Coastal Erosion Study the distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

Average Lot Depth	Setback
Less than 140 feet	40 feet plus (70 x annual coastal erosion rate) plus 20 feet
140 feet to 220 feet	<p style="text-align: center;"><u>Greater of:</u></p> 40 feet plus (70 x annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) divided by 2 plus 40 feet
Greater than 220 feet	<p style="text-align: center;">Greater of:</p> 40 feet plus (70 x annual coastal erosion rate) plus 20 feet -or- 100 feet from the certified shoreline

(d) Lots Not Included in the Kauai Coastal Erosion Study. For all structures on lots that were not included in the Kauai Coastal Erosion Study, the setback shall be calculated by the following formula, (Average Lot Depth minus 100 feet) divided by 2 plus 40 feet, subject to the following:

[(1) For lots with naturally occurring rocky shorelines, the shoreline setback line shall be no less than 40 feet.]

(1) For all [other] lots, the shoreline setback line shall be no less than 60 feet.

(2) For all lots, the maximum setback that can be required shall be 100 feet.

(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot within

approximately five hundred fifty (550) feet of the shoreline. The Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

(f) No subdivision which involves a lot, or any portion of a lot that would be subject to this Article, shall be approved without a coastal erosion study, a certified shoreline, and a shoreline setback line established in accordance with this Article, unless the subdivision is initiated by the County.

(g) Any subdivision with lots abutting the shoreline approved pursuant to Chapter 9 of the Kauai County Code, 1987, as amended, after the adoption of this Ordinance shall have a shoreline setback line as outlined in Section 8.27.3 Table 1. [of forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.]

(h) Each lot abutting the shoreline in a subdivision approved after the effective date of this ordinance shall be designed to achieve a building footprint of five thousand (5,000) square feet of buildable area *mauka* of the shoreline setback line established in accordance with subsection (f) [and g] above.

(i) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii. Any grading or fill that is proposed within the shoreline setback area, must be compatible sediment unless determined by the Engineering Division to be necessary as structural support in flood prone areas. Any such plans shall be reviewed by the Planning Director and may be subject to additional conditions.

(j) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

#### **Sec. 8-27.4 Minimum Shoreline Setback Requirements.**

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty [(40)] (60) feet.

#### **Sec. 8-27.5 Applicable Laws.**

The requirements of this Article shall not abrogate the requirements of Hawaii Revised Statutes Chapter 205A, Hawaii Revised Statutes Chapter 343-5, the Special Management Area Rules and Regulations of the County of Kauai or any other applicable statutes, codes, ordinances, rules and regulations, or other law.

## **Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area**

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

(1) The inadvertent taking from the shoreline setback area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;

(2) Where the mining or taking is authorized by a variance pursuant to Section 205A-46 of the Hawaii Revised Statutes;

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS Section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS Section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;

(5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;

(6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or

(7) For the response to a public emergency or a state or local disaster.

(b) Any primary coastal dune, which lies wholly or partially in the shoreline setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence prior to December 2, 2009. [on the date of enactment of this ordinance.]

(c) The following are prohibited in the shoreline setback area:

(1) Individual wastewater system or subsurface improvement unless the applicant demonstrates to the satisfaction of the Director that no feasible alternative exists, including a redesign of the improvement complies with all statutory and Department of Health requirements.

(2) Landscaping that artificially fixes the shoreline.

(3) Shoreline hardening unless it is approved by the State of Hawaii's Office of Conservation and Coastal Lands.

(4) Expansion of the footprint of a non-conforming structure, unless otherwise provided by law.

**Sec. 8-27.7 Permitted structures within the shoreline setback area.**

(a) The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in this section are prohibited without a variance.

(1) Existing conforming and nonconforming structures [/activities].

(2) Structure or activity that received a shoreline variance or administrative approval prior to February 26, 2008.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary Structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.

(5) A structure that consists of maintenance, repair, reconstruction, and minor additions or alteration of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and Hawaiian fishponds and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes;

(B) The repairs do not constitute a substantial improvement of the structure; and

(C) The repairs are permitted by the Comprehensive Zoning ordinance, Development plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure approved by the Director as a minor structure.

(9) Qualified demolition of existing structures.

(10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.

(11) Scientific studies and surveys, including archaeological surveys.

(12) Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawaii, the Mayor of the County of Kauai or any other public official authorized by law to declare an emergency.

(13) Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within thirty (30) days following the completion of the film production.

(14) Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawaii Revised Statutes.

(15) Structures and improvements necessary to maintain Public Park Facilities, excluding restrooms and septic systems subject to compliance with Sec. 8-27.6(c).

(b) The following conditions shall apply to any new or rebuilt structure permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kauai County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kauai harmless from and against any and all lost, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty feet (40') from the shoreline.

(4) Unless otherwise provided, all new structures and/or landscaping shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, (v) adversely impact neighboring properties, or (vi) alter the grade of the shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along the shoreline.

(6) The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

#### **Sec. 8-27.8 Procedures For Obtaining Shoreline Setback Determinations.**

(a) Unless as otherwise provided in this Article, any structure proposed [in the shoreline setback area] within five hundred fifty feet (550') of the shoreline shall first obtain a shoreline setback determination from the Director in accordance with this Article.

(b) A proposed structure in the shoreline setback area or within five hundred fifty feet (550') of the shoreline shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure.

(1) A request for determination for a proposed structure [within the shoreline setback area or] within five hundred [(500)] (550') fifty feet of the shoreline shall be submitted to the Department on a form prescribed by the Director.

(2) For public structures whose valuation does not exceed \$125,000 and repairs to the lawfully existing private structures as delineated in Section 8-27.7 (a), the request shall include construction and site plans, and written text addressing compliance with the criteria set forth in this Article.

The Director may also require additional information, including, but not limited to a [current shoreline setback determination or a] current certified shoreline survey stamped by a licensed surveyor, registered in the State of Hawaii, [and] coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, sea level rise maps, and an environmental assessment.

(3) For public structures whose valuation exceeds one hundred twenty-five thousand dollars (\$125,000.000 and private structures unless delineated in Sec. 8-27.7(a), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Sec. 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, existing and final contours, photographs, and a written text addressing compliance with the criteria set forth in this Article. The Director may also require a hazard assessment.

(4) Within sixty (60) days from the day the application is deemed complete by the Director, the Director shall make a decision in accordance with the criteria set forth in this Article that the proposed structure is:

- (A) Permitted under Section 8-27.7;
- (B) Permitted under Section 8-27.7 and subject to conditions;
- (C) Not permitted under Section 8-27.7;
- (D) Outside of the shoreline setback area; or
- (E) Not subject to Section 8-27.3.

(5) [All] A list of all applications for a shoreline setback determination or determination of exemption deemed complete by the Director shall be posted within ten (10) working days to a publicized website maintained by the Department.

(6) The Director shall notify the Commission at the Commission's next regularly scheduled meeting of the following:

(A) any shoreline setback determinations for approval of a structure proposed within the shoreline setback area or within five hundred fifty (550) feet of the shoreline.

(B) any approvals or denials by the Director of structures and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure and a discussion of the factors considered in making the decisions; and

(C) any decision by the Director to not require a shoreline setback determination pursuant to Section 8-27.3 except with regard to repairs to structures permitted pursuant to Section 8-27.7(a)(6).

(D) any requests for exceptions to the shoreline setback line and any decisions by the Director related to the request.

(7) All shoreline setback determinations made by the Director shall include, but are not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures depicted on a plan drawn to scale, the purpose of the proposed structures, the current certified shoreline (if required), the setback calculations and setback line drawn on the plan, and copies of a coastal erosion study, if applicable. If the Director, pursuant to Section 8-27.3, makes a determination of exemption, the Director shall state the justification in writing.

(8) Except with regard to repairs to structures permitted pursuant to Section 8-27.7(a)(6), the Director's decisions pursuant to Section 8-27.8(c)(4) shall not be final until posted on the Commission's agenda. Notwithstanding the posting of the decision, if there is an appeal from the Director's decision, the decision shall not be final until the Commission completes its decision-making on the appeal.

(9) Minor structures shall be completed within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(10) For any non-minor structures allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the Director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per shoreline change rates as provided in the Kauai Coastal Erosion Study. In all other cases where substantial construction has not

occurred by the deadline, a new certified shoreline and setback determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(11) All applications for Shoreline Setback Determinations shall include a Coastal Hazard Disclosure Statement signed by the property owner.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kauai, HRS Chapter 205A, as amended, or HRS Chapter 343-5, as amended.

(e) Fees. A non-refundable processing fee of one hundred (\$100.00) shall accompany a request for determination.

#### **Sec. 8-27.9 Variance Application**

(a) A written application for variance shall be made in the form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) A non-refundable administrative application fee of three hundred dollars (\$300.00);

(2) Certification from the owner or lessee of the lot which authorized the application for variance;

(3) An environmental assessment prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii;

(4) The names, addresses, and the tax map key identification of owners of real property situation adjacent to and abutting the boundaries of the land on which the proposed structure and/or landscaping is to be located;

(5) A site plan of the shoreline setback area, drawn to scale, showing;  
(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements.

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the [d] Director; and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; including impacts to neighboring properties, and

(9) Any other information required by the Director.

(b) Upon determination by the Director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the Commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the Commission prior to the matter appearing on an agenda of the Commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to all owners of real property within three hundred feet (300') of [which abut] the parcel that is the subject of the application. Not less than thirty(30) days prior to the public hearing date, the Director shall public a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the Commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures [or activities]; provided that, no person or agency has requested a public hearing within twenty-five (25) calendar days after public

notice of the application. For the purposes of this section “public notice of the application” shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kauai, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the Commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

**Sec. 8-27.10 Criteria for approval of a variance.**

(a) A shoreline setback [area] variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Landscaping; provided that, the [c]Commission finds that the proposed structure will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline and is in compliance with HRS Section 115-5.

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Structures by public agencies or public utilities regulated under HRS Chapter 269;

(7) Private and public structures that are clearly in the public interest;

(8) Private and public structures [which] that will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the Commission also finds that the hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private and public structures that may artificially fix the shoreline but not adversely affect beach processes; provided that, the Commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the

shoreline setback area and all alternative erosion control measures, including retreat, have been considered; and provided further that, the Commission imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or

(10) The Commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the minimum buildable footprint does not allow for a setback in accordance with this Article, the Commission may consider granting a variance under the following guidelines;

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint shall be reduced to no less than one thousand (1,000) square feet.

(D) If the foregoing approaches in subsections (A), (B) and (C) are done to the maximum extent practicable, the calculated shoreline setback may be reduced to the minimum extent required to permit the construction of a house within the reduced footprint, provided that a qualified consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding. Under no circumstance shall the shoreline setback line be less than [~~forty (40)~~] sixty (60) feet.

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding is not prohibited by Article 13, Chapter 8, Kauai County Code 1987, as amended and does not:

- (i) Enlarge the structure beyond its previous building footprint, and
- (ii) Intensify the use of the structure or its impacts on coastal processes.

(B) In the case where the minimum buildable footprint does not

allow for a setback of [forty (40)] sixty (60) feet, the Commission may consider granting a variance under the following guidelines only:

- (i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (iii) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint may be reduced to the lesser of one thousand (1,000) square feet or the actual footprint of the house.

(b) A structure may be considered for a variance upon grounds of hardship if:

- (1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the provisions of the provisions of this Article;
- (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the provisions of this Article; and
- (3) The proposal is the best practicable alternative which best conforms to the purpose of the provisions of this Article.

(c) Before granting a hardship variance, the Commission shall find that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individual or to the public health and safety or to the coastal zone management and resources. The Commission shall consider factors such as coastal hazards shoreline conditions, erosion, surf inundation, flood conditions and the geography of the lot in determining whether the proposal is a reasonable use of the applicant's land. The Commission shall give due consideration to the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012) and any amendments thereto, or Section 4.1 of the Hawaii Coastal Hazard Mitigation Guidebook (Hwang, 2005), The Sea Level Rise Vulnerability & Adaptation Report, and any subsequent amendments thereto.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes and neighboring properties;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kauai County Code 1987, as amended, and Drainage, Chapter 22, Article 16, Kauai County Code 1987, as amended, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kauai harmless from and against any and all loss, liability, claim or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the Special Management Area Rules of the Kauai Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

(j) In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits.

## **Sec. 8-27.11 Enforcement**

(a) The Director shall enforce this article in accordance with Article 24 of the County of Kauai Comprehensive Zoning Ordinance, HRS Chapter 205A, and the Rules of Practice and Procedure of the County of Kauai Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of a unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-2-8 of said rules. Additionally, if the structure would have required a Special Management Area Permit, the Special Management Area Rules and Regulations, as Amended October 2011, would apply.

(2) Following the relevant procedures described in Sec. 8-27/11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater harm to the ecosystem and/or public improvements than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where civil action has been instituted to enforce the civil fine imposed by such order, the Director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The Director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted there under, any permit issued pursuant thereto or any conditions of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for

enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

(f) The Director shall enforce this article in accordance with Article 24 of the County of Kauai Comprehensive Zoning Ordinance and HRS Chapter 205A.

### **Sec. 8-27.12 Civil Fines**

Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32 and Section 8-3.5 of this Chapter.

### **Sec. 8-27.13 Appeal of the Director's Determination**

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probably public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director to the Commission in accordance with the Commission's Rules of Practice and Procedure.

### **Sec. 8-27.14 Promulgation of Rules and Regulations**

Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article.

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinances are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kauai County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect upon approval. The requirements of this ordinance shall not affect any application which has been approved by the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding

subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by:

DATE OF INTRODUCTION  
MARCH 24, 2020



**SUBJECT TO CHANGE**

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

**DIRECTOR'S REPORT**

**I. SUMMARY**

**Action Required by Planning Commission:** Consideration of an Ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-27 Shoreline Setback and Coastal Protection

**Permit Application Nos.** Zoning Amendment ZA-2020-14

**Name of Applicant(s)** COUNTY OF KAUA'I PLANNING DEPARTMENT

**II. PERMIT INFORMATION**

PERMITS REQUIRED	
<input type="checkbox"/> Use Permit	
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input type="checkbox"/> Zoning Permit Class <input type="checkbox"/> IV <input type="checkbox"/> III	
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	
AMENDMENTS	
<input checked="" type="checkbox"/> Zoning Amendment	A Zoning Amendment is necessary to amend the text contained in Section 8-27 of the Kauai County Code 1987.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: N/A

**F.4.a.1.**

**MAR 24 2020**

**Date of Director's Report:** March 24, 2020  
**Date of Public Hearing:** MARCH 24, 2020  
**Deadline Date for PC to Take Action** Not Applicable  
**(90<sup>TH</sup> Day):**

**III. PROJECT DATA**

PROJECT INFORMATION			
<b>Parcel Location:</b>	N/A		
<b>Tax Map Key(s):</b>	N/A	<b>Area:</b>	N/A
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	N/A		
<b>State Land Use District:</b>	N/A		
<b>General Plan Designation:</b>	N/A		
<b>Height Limit:</b>	N/A		
<b>Max. Land Coverage:</b>	N/A		
<b>Parking Requirement:</b>	N/A		
<b>Front Setback:</b>	N/A		
<b>Rear Setback:</b>	N/A		
<b>Side Setback:</b>	N/A		
<b>Community Plan Area:</b>	N/A		
<b>Community Plan Land Use Designation:</b>	N/A.		
<b>Deviations or Variances Requested:</b>	N/A.		

**IV. LEGAL REQUIREMENTS**

<p><b>Section 8-3.1(f), KCC:</b> N/A  <b>Public Hearing Date:</b> MARCH 24, 2020</p>
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**V. PROJECT DESCRIPTION AND USE**

The proposed legislation amends the existing shoreline ordinance by incorporating new scientific information adopted by the Hawaii Climate Change Mitigation & Adaptation Commission (Climate Commission), an update by University of Hawaii Coastal Geology Group of the Kauai Coastal Erosion Study and recommendations outlined in the Policies and Actions in the updated General Plan for the County of Kauai.

**VI. APPLICANT'S REASONS/JUSTIFICATION**

Presently, the island of Kaua'i is facing serious issues regarding the potential impacts of climate change and sea level rise. In an effort to address these issues, the County has taken steps to combat these issues by updating the current shoreline protection ordinance with the

updated science now available. The County is making efforts to incorporate the best available science into the existing ordinance in an effort to provide the most protection to coastal properties and plan for sea level rise when development occurs.

The Hawaii Sea Level Rise Vulnerability and Adaptation Report was initially mandated by the Hawaii Climate Change Adaptation Initiative (Act 83, 2014, and expanded by Act 32, 2017). This report represents the first state-wide vulnerability assessment for sea level rise.

The last update of this ordinance was on December 5, 2014. An update to the Kauai Coastal Erosion Study was completed by Dr. Chip Fletcher at University of Hawaii in December of 2018.

## VII. AGENCY COMMENTS

See Exhibit 'B' attached.

## VIII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects are taken into consideration:

1. The Hawaii Climate Change Mitigation & Adaptation Commission (Climate Commission) adopted the recommendations as outlined in the Hawaii Sea Level Rise Vulnerability Adaptation Report on December 28, 2017. Island specific adaptation recommendations are given to help reduce Hawaii's exposure to sea level rise and increase coastal hazard resilience. These recommendations support sustainable and resilient land use and community development while limiting exposure to hazards.
2. The University of Hawaii Coastal Geology Group updated Kauai Coastal Erosion Study, providing new historical erosion rates based on recently mapped shoreline positions.
3. General Plan 2018

A. Section 1.3 entitled "Vision and Goals" specifies:

- **Goal #1: A Sustainable Island**  
Sustainability also means recognizing the County's role in the larger world. For example, sustainability is threatened by global climate change, and Kauai must adapt in ways that are sensitive to the environment.
- **Goal #2: A Unique and Beautiful Place**  
For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall

promote the development and utilizations of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

B. Section 1.4 entitled “Policies to Guide Growth” identify:

- **Policy #14: Prepare for Climate Change**

Climate change and resulting sea level rise (SLR) are evidenced and documented on global, national, as well as local levels. While data forecasts are in flux, the best available science for our island indicates we should plan for at least three feet of sea level rise. As an island with the majority of residences and activities close to the coastline, it is important to provide direction to prepare our island for increased coastal hazards and their impacts to business, homes roadways, drinking water, and ultimately health and safety.

- **Policy #16: Protect Access to Kauai’s Treasured Places**

The beaches, mountains, and other natural areas of Kauai are cherished by its people for recreation, physical, mental, and spiritual rejuvenation, and family and cultural connections. In addition, many community members continue to provide for themselves and their families through subsistence practices – fishing, hunting, or gathering of foods, materials, and medicines – that have been perpetuated for generations. Promoting collaboration, providing for local and visitor education, enforcing rules protecting access, and providing signage and wayfinding where appropriate, perpetuate the protection of natural resources and the Hawaiian value system of mālama ‘āina.

C. Section 2.0 – Future Land Use states:

- **Future Land Use Objectives**

To increase resiliency by limiting development in areas impacted by future sea level rise.

D. Section 3.0 Actions by Sector

- **Kahakai – Coastal Areas and Shorelines**

Climate change is altering and aggravating natural forces such as sea level rise, rainfall patterns, high wave events, hurricanes, extreme tidal events, and beach erosion. Based on the best available science, we should plan for three feet of sea level rise by the latter half of the century. It is important to note that this estimate may be conservative, as some studies project upwards of six feet of sea level rise by 2100. Infrastructure and private development built today can be expected to still be in place in the second half of this

century when several feet of sea level rise becomes possible. Therefore, it is important to utilize planning approaches that are adaptive in nature.

○ **Permitting and Code Changes**

1. Minimize coastal hazard risks through planning and development standards that:

a. Ensure the safety of individuals, families, and communities within coastal hazard areas and communicate the dangers to residents and tourists.

b. Discourage development or redevelopment (including tourist uses) within hazardous areas, while preserving adequate space for expected future growth in areas located outside of these areas.

c. If hazard risks are unavoidable, minimize hazard risks to new development over the life of authorized structures.

d. Ensure property owners assume the risks associated with new development in hazardous areas.

2. Avoid or minimize coastal resource impacts through development standards that preserve and protect Kauai's sandy beaches and shorelines from erosion and degradation while ensuring continued public access to them.

4. Seek to preserve natural beach processes and avoid the construction of shoreline protection structures.

5. Do not allow permanent armoring of the shoreline.

8. Continually incorporate new information on climate change into shoreline policies and regulations.

The amendment would be consistent with Sections 1.3, 1.4, 2.0 and 3.0 of the Kaua'i General Plan in fulfilling the one of the visions set forth in the policy document as well as the applicable policies identified above.

4. Zoning Amendment

The proposed amendment is to be evaluated pursuant to Section 8-3.4(d) of the KCC, as amended, relating to the consideration of a proposed amendment and it reads:

“(d) Consideration. In considering an amendment, the Planning Commission shall consider the purposes of the existing and proposed changes to the Zoning Ordinance. A change in the Zoning Map or text shall not be made unless the change will further the public necessity and convenience and the general welfare.”

The department finds the amendment consistent with the Kaua'i General Plan and is necessary to accomplish the County's objectives in addressing the current climate crisis.

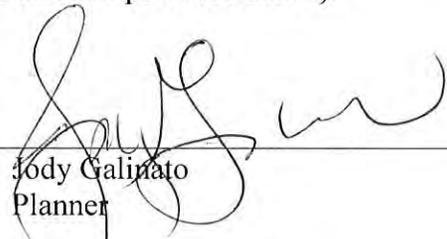
**IX. PRELIMINARY CONCLUSION**

Based on the foregoing findings and evaluation, it is concluded that the proposal is reasonable and appropriate. It is consistent with the Kaua'i General Plan in providing more coastal protection based on the best available science.

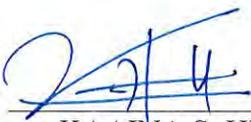
**X. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2020-14 to amend the Comprehensive Zoning Ordinance relating to Shoreline Setback and Coastal Protection Ordinance be **Approved** with the following changes:

Note: Ordinance material to be repealed is bracketed, and new ordinance material is shown underscored (refer to Exhibit 'A' for reference and complete ordinance).

By  \_\_\_\_\_  
Jody Galinato  
Planner

Approved & Recommended to Commission:

By  \_\_\_\_\_  
KAAINA S. HULL  
Director of Planning

Date: 3/6/2020

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8 OF THE  
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO COMPREHENSIVE  
ZONING ORDINANCE (CZO)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Chapter 8, Section 1.5 of the Kauai County Code 1987, as amended, shall be amended as follows:

**“Applicant”** means an owner [~~any person having a controlling interest (seventy-five percent (75%) or more of the equitable and legal title)~~] of a lot; ~~any person leasing the land of another under a recorded lease having a stated term of not less than five (5) years~~]; or any person who has full written authorization of the owner [~~another having the controlling interest or recorded lease for a stated term of not less than five (5) years~~].

SECTION 2. Chapter 8, Section 1.5 of the Kauai County Code 1987, as amended, shall be amended as follows:

**“Owner”** means the holders of [~~at least seventy-five percent (75%) of the~~] equitable and legal title of [~~a lot~~] land in fee simple.

SECTION 3. Chapter 8, Section 3.1(b) of the Kauai County Code 1987, as amended, shall be amended as follows:

(b) Applications. [~~The owner or lessee (holding under recorded lease the unexpired term of which is more than five (5) years from the date of filing the application), or any person duly authorized by the owner or lessee of the property affected, or any utility company possessing the power of eminent domain.~~] Applicants may file a written application with the Planning Department for a zoning permit of the required type on a form prescribed by the Planning Department. The application shall contain or be accompanied by:

- (1) A non-refundable filing and processing fee in the amount indicated in Subsections (c)(1), (d)(1), (e)(1) or (f)(1), as applicable.
- (2) A description of the property in sufficient detail to determine its precise location.
- (3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:
  - (A) To show conformity with the standards established in this Chapter; and
  - (B) To a proper determination relative to the specific request.

F.4.a.

JUN 09 2020

(4) Any other plans and information required by the Planning Department.

SECTION 4. Chapter 8, Section 3.1(c) of the Kauai County Code 1987, as amended, shall be amended as follows:

(c) Class I Zoning Permits.

- (1) The filing and processing fee is thirty dollars (\$30.00).
- (2) The Planning Director or designee shall check the application to determine whether the construction, development, activity, or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.
- (3) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.
- (4) If the Planning Director or designee fails to take action on a completed application within thirty (30) [~~twenty-one (21)~~] days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.
- (5) An applicant who is denied a Class I Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Subsection (g).

SECTION 5. Chapter 8, Section 3.1(g) of the Kauai County Code 1987, as amended, shall be amended as follows:

(g) Appeal. An applicant who seeks to appeal from an adverse decision of the Planning Director or designee shall file a notice of appeal with the Planning Director and the Planning Commission within thirty (30) [~~twenty-one (21)~~] days after the adverse decision. If the appeal is from the denial of a Class III Zoning Permit, the Planning Director shall make the notice public and shall notify any persons who have duly requested notice of appeals. The Planning Commission shall consider the appeal within sixty (60) days of the filing of the notice at a public session and shall render its decision within that period.

SECTION 6. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 7. This ordinance shall be effective upon approval.

Ka'āina S. Hull  
Director of Planning



Jodi A. Higuchi Sayegusa  
Deputy Director of Planning

**SUBJECT TO CHANGE**

COUNTY OF KAUA'I  
PLANNING DEPARTMENT

**DIRECTOR'S REPORT**

I. SUMMARY

Action Required by Planning Commission: Consideration of a Bill for an Ordinance to Amend Chapter 8, Kaua'i County Code 1987, As Amended, Relating to Comprehensive Zoning Ordinance (CZO)

Permit Application Nos. Zoning Amendment ZA-2020-16

Name of Applicant(s) COUNTY OF KAUA'I PLANNING DEPARTMENT

II. PERMIT INFORMATION

AMENDMENTS	
<input checked="" type="checkbox"/> Zoning Amendment	Pursuant to KCC Section 8-3.4(a), as amended, a Zoning Amendment is necessary when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> Community Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

III. LEGAL REQUIREMENTS

<u>KCC Section 8-3.4</u>	
Public Hearing Date:	JUNE 9, 2020
Date of Publication:	May 22, 2020
Date of Director's Report:	June 2, 2020

IV. BACKGROUND

For reference, the proposed amendments are attached as Exhibit A.

**F.4.a.1.**

JUN 09 2020

## V. DESCRIPTION OF THE AMENDMENT AND JUSTIFICATION

On January 28, 2020 and February 11, 2020, the Planning Department presented and discussed ZA-2016-3 before the Planning Commission. On February 11, 2020, the Planning Commission voted to approve ZA-2016-3 and the Zoning Amendment was transmitted to the County Council. Subsequently, the Planning Department discovered the need to amend language in KCC Section 8-3.1(b), in addition to the amendments proposed to KCC Section 8-1.5 regarding the definitions of “Applicant” and “Owner.” However, this additional amendment was beyond the scope of ZA-2016-3 and Bill 2777’s title. Thus, the Department respectfully requested the opportunity to redraft the zoning amendment to encompass both amendments to KCC Section 8-1.5 and KCC Section 8-3.1, and properly vet this new proposal before the Planning Commission prior to transmitting it to the County Council.

Also, this renewed proposal under ZA-2020-16 proposes to amend KCC Section 8-3.1(c) and (g) to simplify the timelines and align the timeline for appeals with Chapter 9 of the Rules and Regulations of the County of Kaua’i Planning Commission (Planning Commission Rules).

### **Mechanics of the Proposal**

ZA-2020-16 amends Kaua’i County Code (KCC) Section 8-1.5 relating to the definition of “Applicant” and “Owner.”

#### **1. Eliminating “Seventy Five (75%) or More Equitable and Legal Title”**

The Planning Department seeks to clarify who qualify as “owners” and who may submit an application for a zoning permit under KCC Chapter 8, the Comprehensive Zoning Ordinance. Under the proposed ZA-2020-16, only owners or those with full written authorization of the owner may submit zoning applications. This proposal is consistent with ZA-2016-3 as it was approved by the Commission and transmitted to Council.

Applying the current definitions resulted in confusion because the current threshold under KCC §8-1.5 allows “any person having a controlling interest (seventy five (75%) or more equitable and legal title)” to submit an application. Likewise, confusion resulted in applying the definition of “Owner” because it includes “holders of at least seventy five percent (75%) of the equitable and legal title of a lot.” Confusion was had by both members of the public as well as the Department when faced with calculating whether the seventy five (75%) of legal and equitable title was met amongst many co-owners, CPR owners, or even fractional owners.

The Planning Department was recently ordered by the Intermediate Court of Appeals to process an application it refused to accept because the applicant did not meet the seventy five (75%) threshold. In Robert D. Ferris Trust v. Planning Commission of the County of Kaua’i, 138 Hawai’i 307, 313 (2016), the Intermediate Court of Appeals iterated that there may be “serious constitutional questions” due to ambiguity on “who is eligible to apply” for a permit, partly based on the definition requiring a “person

having a controlling interest (seventy-five percent (75%) or more . . .) of a lot.” The current thresholds, therefore, requires clarification and amendment.

In addition, under the current definition, disputes often arise between co-owners or CPR unit owners, and those civil disputes unfortunately spill over to involve the Planning Department. For instance, unit owners may avoid receiving authorization from certain other unit owners when they anticipate those individuals will not provide assent. The disagreeing owners then sue the Department for accepting the application; or in the case of permit applications before the Planning Commission, the disagreeing owners seek intervention and a prolonged contested case hearing to weigh in on the zoning application.

## **2. Eliminating Lessees or Anyone Other than the Owner**

In addition to eliminating references to “seventy five (75%) or more equitable and legal title,” the Planning Department proposes to eliminate “lessees” as applicants. This proposal furthers the Department’s intent to ensure that it is accepting, processing, and approving applications for the right people who have the proper authority to do so notwithstanding any quantity of ownership calculation. Eliminating lease holders or anyone other than the owner from being “Applicants,” whether for a stated term of five (5) years or more, or even if they may be a utility company, ensures that the owners authorize any proposed zoning applications. This will also eliminate the concern that lease holders may execute land use changes on property that they do not own even when their lease is about to expire. The amendment aligns with the nature of land use zoning entitlements, which run with the land; thus, it is the owner who must apply or provide assent to any zoning application. Eliminating lessees as applicants is consistent with ZA-2016-3 as it was approved by the Commission and transmitted to Council.

Specifically, the proposal will eliminate language referencing lessees in the definition for “Applicant” in KCC Section 8-1.5. In addition, the amended proposal includes amendments to KCC Section 8-3.1(b). The amendment to KCC Section 8-3.1(b) would be as follows:

(b) Applications. [~~The owner or lessee (holding under recorded lease the unexpired term of which is more than five (5) years from the date of filing the application), or any person duly authorized by the owner or lessee of the property affected, or any utility company possessing the power of eminent domain,]~~

Applicants may file a written application with the Planning Department for a zoning permit of the required type on a form prescribed by the Planning Department. The application shall contain or be accompanied by:

- (1) A non-refundable filing and processing fee in the amount indicated in Subsections (c)(1), (d)(1), (e)(1) or (f)(1), as applicable.
- (2) A description of the property in sufficient detail to determine its precise location.
- (3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:

- (A) To show conformity with the standards established in this Chapter; and
  - (B) To a proper determination relative to the specific request.
- (4) Any other plans and information required by the Planning Department.

In effect, the following individuals may submit zoning applications:

1. Owners having full “equitable and legal title of land in fee simple;” or
2. Any person who has full written authorization of the owner.

**3. Automatic Approval Time Period and Aligning Appeal Timelines**

The Planning Department seeks to clarify the applicable time periods for automatic approval of zoning applications when the Department fails to take action on completed applications. In addition, the Department seeks to clarify the time period afforded to applicants who seek to appeal from an adverse Planning Director decision. Both of these timelines will amended to thirty (30) days to make it easier for both the public as well as the Department to remember and administer.

With regard to appeals, the amendment to KCC Section 8-3.1(g) allows applicants thirty (30) days instead of twenty one (21) days to file appeals and aligns with the timelines specified in the Planning Commission Rules. Planning Commission Rules Section 1-9-2 currently specifies the following:

- a) Time for Filing. Petitions to appeal an action of the Director shall be submitted and filed with the Clerk of the Commission.
  - 1) For appeals of **the Director's actions pursuant to the Comprehensive Zoning Ordinance, petitions shall be filed no later than thirty (30) days** after the date of the Director's decision or service of the Order.
  - 2) For appeals of the Director's actions pursuant to the Subdivision Ordinance, petitions shall be submitted no later than fifteen ( 15) days after date of the Director's decision or service Order.
  - 3) For appeals of any **Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director pursuant to Chapter 8, Article 27 of the Kaua'i County Code, petitions shall be filed no later than thirty (30) days** after the date of the Commission meeting that the Director notifies the Commission of the Director's decision.

The amendments to KCC Section 8-3.1(g) would be as follows:

- (g) Appeal. An applicant who seeks to appeal from an adverse decision of the Planning Director or designee shall file a notice of appeal with the

Planning Director and the Planning Commission within thirty (30) [~~twenty one (21)~~] days after the adverse decision. If the appeal is from the denial of a Class III Zoning Permit, the Planning Director shall make the notice public and shall notify any persons who have duly requested notice of appeals. The Planning Commission shall consider the appeal within sixty (60) days of the filing of the notice at a public session and shall render its decision within that period.

In effect, any ambiguity will between whether the allowable time for appeals is thirty (30) days or twenty one (21) days will be eliminated and the resolution affords aggrieved applicants more time to file appeals.

#### VI. AGENCY COMMENTS

None at this time.

#### VII. PUBLIC TESTIMONY

None at this time.

#### VIII. PRELIMINARY RECOMMENDATION

Pursuant to the evaluation and explanations above, it is recommended that Zoning Amendment ZA-2020-16 be **approved**.

Approved & Recommended to Commission:

By *Jodi Higuchi Sayegusa*  
JODI HIGUCHI SAYEGUSA  
Deputy Director of Planning

Date: 6/2/2020

# EXHIBIT “A”

(Draft Bill)

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8 OF THE  
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO COMPREHENSIVE  
ZONING ORDINANCE (CZO)

---

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Chapter 8, Section 1.5 of the Kauai County Code 1987, as amended, shall be amended as follows:

“**Applicant**” means an owner [~~any person having a controlling interest (seventy-five percent (75%) or more of the equitable and legal title) of a lot; any person leasing the land of another under a recorded lease having a stated term of not less than five (5) years];~~ or any person who has full written authorization of the owner [~~another having the controlling interest or recorded lease for a stated term of not less than five (5) years].~~

SECTION 2. Chapter 8, Section 1.5 of the Kauai County Code 1987, as amended, shall be amended as follows:

“**Owner**” means the holders of [~~at least seventy-five percent (75%) of the]~~ equitable and legal title of [~~a lot]~~ land in fee simple.

SECTION 3. Chapter 8, Section 3.1(b) of the Kauai County Code 1987, as amended, shall be amended as follows:

(b) Applications. [~~The owner or lessee (holding under recorded lease the unexpired term of which is more than five (5) years from the date of filing the application), or any person duly authorized by the owner or lessee of the property affected, or any utility company possessing the power of eminent domain,]~~  
Applicants may file a written application with the Planning Department for a zoning permit of the required type on a form prescribed by the Planning Department. The application shall contain or be accompanied by:

- (1) A non-refundable filing and processing fee in the amount indicated in Subsections (c)(1), (d)(1), (e)(1) or (f)(1), as applicable.
- (2) A description of the property in sufficient detail to determine its precise location.
- (3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:
  - (A) To show conformity with the standards established in this Chapter; and
  - (B) To a proper determination relative to the specific request.

(4) Any other plans and information required by the Planning Department.

SECTION 4. Chapter 8, Section 3.1(c) of the Kauai County Code 1987, as amended, shall be amended as follows:

(c) Class I Zoning Permits.

- (1) The filing and processing fee is thirty dollars (\$30.00).
- (2) The Planning Director or designee shall check the application to determine whether the construction, development, activity, or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.
- (3) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.
- (4) If the Planning Director or designee fails to take action on a completed application within thirty (30) [~~twenty one (21)~~] days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.
- (5) An applicant who is denied a Class I Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Subsection (g).

SECTION 5. Chapter 8, Section 3.1(g) of the Kauai County Code 1987, as amended, shall be amended as follows:

(g) Appeal. An applicant who seeks to appeal from an adverse decision of the Planning Director or designee shall file a notice of appeal with the Planning Director and the Planning Commission within thirty (30) [~~twenty one (21)~~] days after the adverse decision. If the appeal is from the denial of a Class III Zoning Permit, the Planning Director shall make the notice public and shall notify any persons who have duly requested notice of appeals. The Planning Commission shall consider the appeal within sixty (60) days of the filing of the notice at a public session and shall render its decision within that period.

SECTION 6. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 7. This ordinance shall be effective upon approval.

# BELLES GRAHAM LLP

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DONALD H. WILSON

Federal I.D. No. 99-0317663

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REC

April 30, 2020

Glenda Nogami-Streufert, Chair  
and Members of the Planning Commission  
c/o Planning Department  
County of Kauai  
4444 Rice Street, Suite 473  
Lihue, Kauai, Hawaii 96766

RE: Project Development Use Permit PD U-2008-11  
Use Permit U-2008-10  
Class IV Zoning Permit Z-IV-2008-12  
Tax Key No.: 2-8-08:01 (Lot 185)  
Koloa Village, LLC , as successor to Koloa Town, LLC (original  
Permittee)

---

Dear Chair Nogami-Streufert and Members of the Planning Commission:

This office represents Koloa Village, LLC, on whose behalf the following 2020 Status Report is submitted. Condition No. 20 of Project Development Use Permit PD U-2008-11, Use Permit U-2008-10, and Class IV Zoning Permit Z-IV-2008-12 ("Project Permits") requires that the Applicant provide annual status reports no later than 30 days prior to the annual anniversary date of approval.

The original permits for the development of this mixed-use (i.e., commercial and residential) project was issued by action of the Planning Commission at its meeting of June 10, 2008.

By action taken on September 11, 2018, the Commission approved an amendment to Condition No. 21 of the approval of the project, to read in pertinent part as follows:

"The Applicant shall substantially commence construction of the project development within one (1) year from the date of building permit issuance, and shall complete construction of the project development by June 10, 2020. . . "

Honorable Glenda Nogami-Streufert, Chair,  
and Members of the Planning Commission  
Page 2  
April 30, 2020

Furthermore, by action taken on June 25, 2019, the Commission modified the Project Permits to allow fourteen (14) of the total thirty-four (34) dwelling units associated with the Project Permits to be converted from commercial space to studio space in the commercial Phase I of the Project.

The on-site infrastructure improvements are completed, and the off-site (road and utilities) improvements are also completed.

The vertical construction for the commercial buildings has commenced on the fourth quarter of 2019 and was under construction until the Covid-19 lock-down orders halted construction. The halt of construction has delayed the residential vertical construction which was expected to commence in mid-2020. The residential vertical construction will be contingent on the status of the Covid-19 lock-down status. As the Project continues to progress, the Applicant is cognizant that it will likely have to request an extension from this Commission to allow it to continue to move forward. The last extension sought and approved requires completion by June 10, 2020, and although the Applicant has made measurable progress, it recognizes its obligation to continue to further its progress as provided under the Project Permits.

Attached are photos showing the on-site and off-site infrastructure as well as the status of the vertical construction associated with the Phase I Commercial component of the Project.

Thank you for affording the Applicant an opportunity to present its 2020 status report.

Very truly yours,

**BELLES GRAHAM LLP**



Ian K. Jung

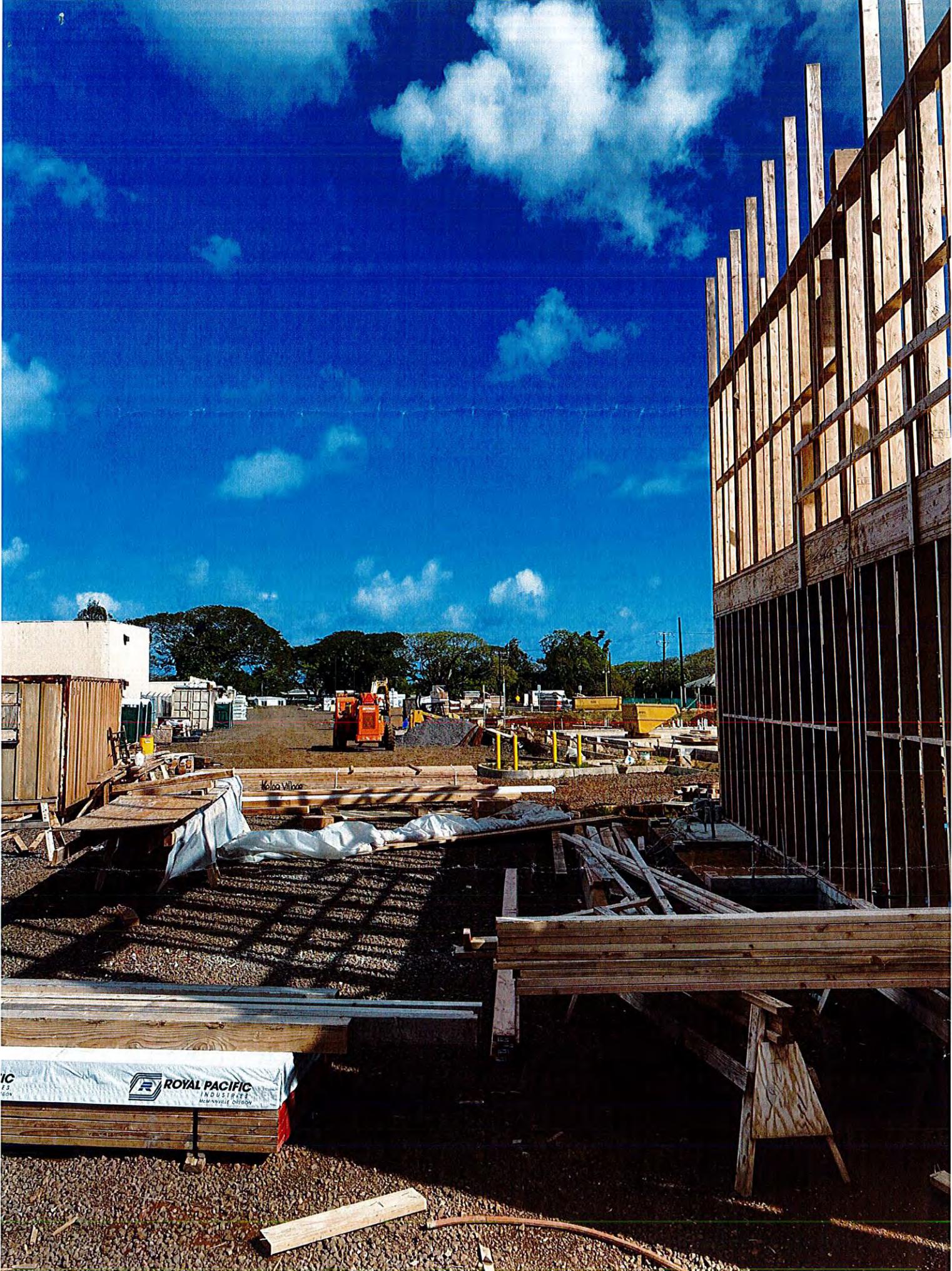
Enclosures

cc: Koloa Village, LLC (w/encl., via email only)



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**Ka'āina S. Hull**  
Director of Planning



**Jodi A. Higuchi Sayegusa**  
Deputy Director of Planning

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

**SUBJECT TO CHANGE**

**PLANNING DIRECTOR'S REPORT**

**RE:** 2020 ANNUAL STATUS REPORT  
Project Development Use Permit PD U-2008-11  
Class IV Zoning Permit Z-IV-2008-12  
Use Permit U-2008-10

**APPLICANT:** Kōloa Village, LLC. (formerly Village at Kōloa Town, LLC.)  
Ian K. Jung, Authorized Agent

**BACKGROUND**

The subject permits involve the development of a two-story, 34-unit multi-family residential condominium project, off-street parking structure, and a commercial complex containing approximately 45,000 square feet of commercial retail and office space within the Commercial & Residential Districts. The permits were approved by the Planning Commission June 10, 2008.

As originally approved, the project involves:

- Commercial – The commercial portion of the proposed development would occupy approximately 2.661 acres of the property, fronting Kōloa Road approximately 175 feet, and approximately 580 feet makai along Weliweli Road. The commercial project would consist of eight (8) two-story buildings, joined by an upper-level connecting walkway. An existing single-story plantation-era residence would be renovated for commercial use at this original location along Weliweli Road.
- Residential – The residential portion of the parcel encompasses approximately 2.72 acres. A total of seventeen (17) two-story buildings shall be constructed and developed as duplexes. Thirteen (13) buildings would feature a 3-bedroom unit with an attached garage (Type 1) whereas the remaining buildings contain 2-bedroom units with a shared parking area (Type 2). Two parking spaces are provided with every residential unit and no residential building would be constructed higher than 30 feet, as measured from the finish grade to the highest point of the roof ridge line. A solid waste trash enclosure and a detention pond area would be provided.

A condition of the permits requires the Applicant to provide the Planning Commission an annual status report regarding the project. Condition No. 20 of the approval letter reads as follows:

“20. *The Applicant shall provide annual status reports to the Planning*

**G.I.A.I.**

**JUN 09 2020**

*Commission beginning from one (1) year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.”*

It is noted that the Applicant obtained Planning Commission approval in 2018 to amend Condition No. 21 of the foregoing permits allowing additional time to complete the proposed development. As a result, the completion date of the project was moved from June 10, 2018 to **June 10, 2020**.

REQUEST

Submitted for the Planning Commission’s review and consideration is the Applicant’s 2020 status report regarding the project.

By *Dale Cua*  
Dale Cua (Jun 1, 2020 15:31 HST)  
Dale A. Cua  
Planner

Approved and recommended to Commission:

By *Ka'aina Hull*  
Ka'aina Hull (Jun 1, 2020 15:40 HST)  
Ka'aina S. Hull  
Director of Planning  
Date: 06/01/2020

# BELLES GRAHAM LLP

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COUNTY OF KAUAI  
OFFICE OF COUNSEL  
DAVID W. PROUDFOOT  
DONALD H. WILSON  
Federal I.D. No. 99-0317663  
20 MAY 22

May 15, 2020

Glenda Nogami-Streufert, Chair  
and Members of the Planning Commission  
c/o Planning Department  
County of Kauai  
4444 Rice Street, Suite 473  
Lihue, Kauai, Hawaii 96766

RE: Project Development Use Permit PD U-2008-11  
Use Permit U-2008-10  
Class IV Zoning Permit Z-IV-2008-12  
Tax Key No.: 2-8-08:01 (Lot 185)  
Koloa Village, LLC , as successor to Koloa Town, LLC (original  
Permittee)

Dear Chair Nogami-Streufert and Members of the Planning Commission:

This office represents Koloa Village, LLC, on whose behalf the following time extension request is submitted. The Project is located in Koloa, Kauai, Hawaii and the Planning Commission previously issued Project Development Use Permit PD U-2008-11, Use Permit U-2008-10, and Class IV Zoning Permit Z-IV-2008-12 ("Project Permits").

The original permits for the development of this mixed-use (i.e., commercial and residential) project were issued by action of the Planning Commission at its meeting of June 10, 2008. Attached, as Exhibit "A", are the conceptual plans depicting the Project. The Applicant is requesting a modification of Condition No. 21, which originally stated the following:

"The Applicant shall substantially commence construction of the project development within one (1) year from the date of building permit issuance, and shall complete construction of the project development within five (5) years from the date of approval of the subject permits."

By action taken on September 11, 2018, the Commission approved an amendment to Condition No. 21 of the approval of the project, to read in pertinent part as follows:

"The Applicant shall substantially commence construction of the project development within one (1) year from the date of building permit issuance, and shall complete construction of the project development by June 10, 2020. . . "

Furthermore, by action taken on June 25, 2019, the Commission modified the Project Permits to allow fourteen (14) of the total thirty-four (34) dwelling units associated with the Project

I.2.

JUN 09 2020

Honorable Glenda Nogami-Streufert, Chair,  
and Members of the Planning Commission  
Page 2  
May 15, 2020

Permits to be converted from commercial space to studio space in the commercial Phase I of the Project.

The Applicant is now requesting an additional time extension. As provided in the Applicant's 2020 Status Report, the on-site infrastructure improvements are completed, and the off-site (road and utilities) improvements are also completed.

The vertical construction for the Phase I commercial buildings had commenced on the fourth quarter of 2019 and was under construction until the Covid-19 lock-down orders halted construction. The halt of construction has delayed the commercial construction, which then in part delayed the Phase II residential vertical construction. The Phase II residential vertical construction will be contingent on the status of completion of the Phase I commercial construction for financing purposes. As the Project continues to progress, the Applicant requests an extension from the Commission to allow it to continue to move forward. The last extension sought and approved requires completion by June 10, 2020, and although the Applicant has made measurable progress, it recognizes its obligation to continue to further its progress as provided under the Project Permits.

Attached, as Exhibit "B" are photos showing the on-site and off-site infrastructure as well as the status of the vertical construction associated with the Phase I commercial component of the Project, which also now includes the recently approved modification for studio residential units as a part of the Phase I commercial component.

Therefore, the Applicant request is made that this Commission grant a further extension that would read as follows:

"21. The Applicant shall substantially commence construction of the project development within one (1) year from the date of building permit issuance, and shall complete construction of the project development by June 10, 2022. If the project is not completed by this date, the Planning Commission reserves the right to revoke the permits through proper procedures."

Thank you for affording the Applicant an opportunity to present its time extension request.

Very truly yours,

**BELLES GRAHAM LLP**



Ian K. Jung

Enclosures

cc: Koloa Village, LLC (w/encl., via email only)

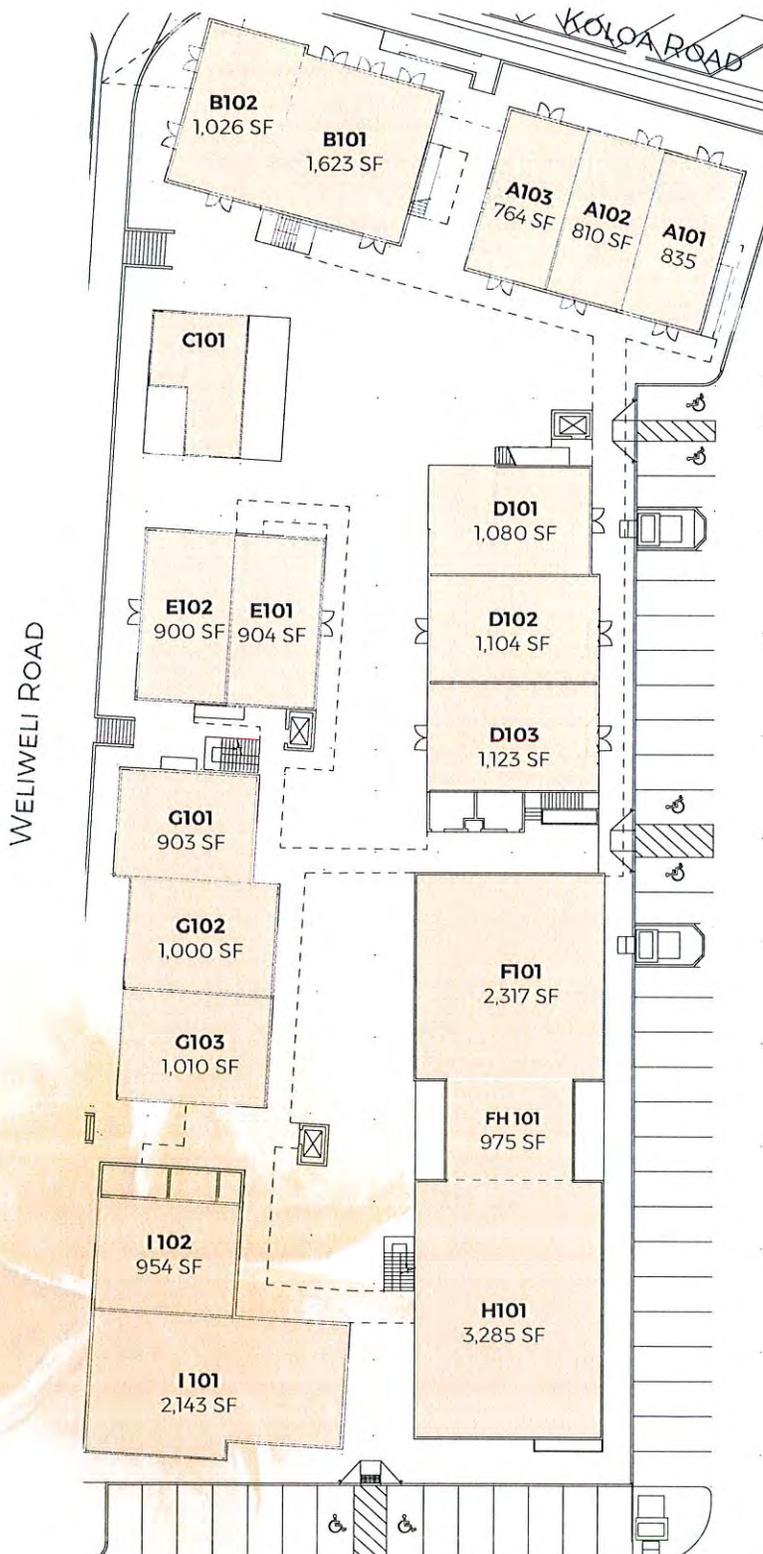
**EXHIBIT "A"**

# KOLOA VILLAGE



EXHIBIT "A"

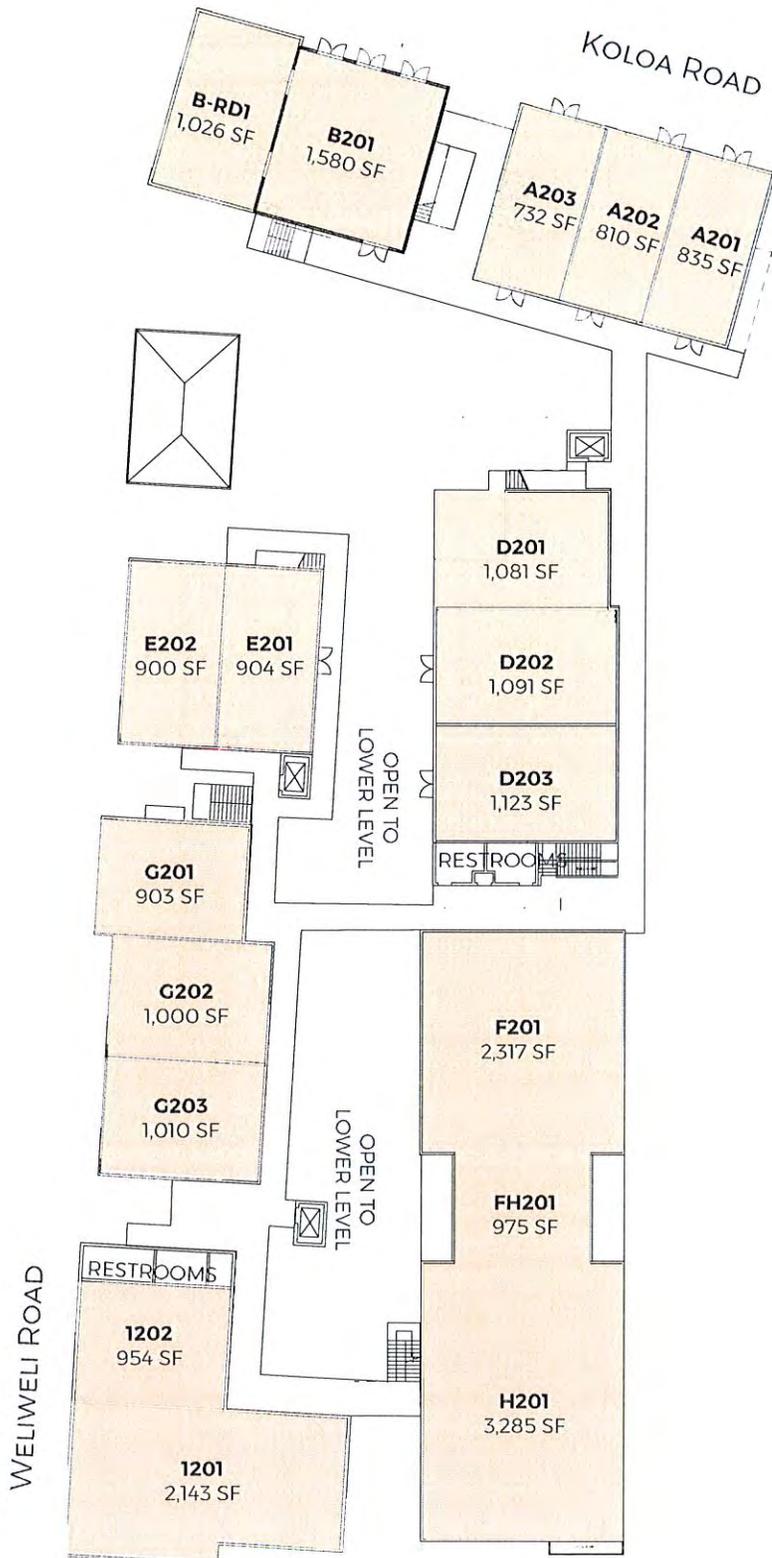
# KOLOA VILLAGE



## GROUND FLOOR

Suite	SF
A101	835
A102	810
A103	764
B101	1,623
B102	1,026
C101	818
D101	1,080
D102	1,104
D103	1,123
E101	904
E102	900
F101	2,317
H101	3,285
FH 101	975
G101	903
G102	1,000
G103	1,010
I101	2,143
I102	954

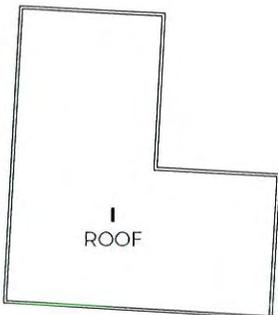
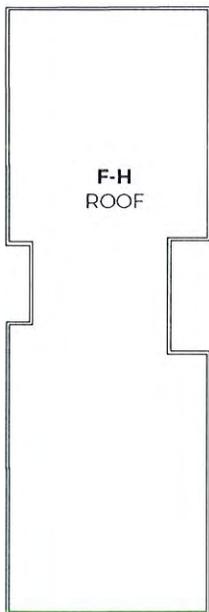
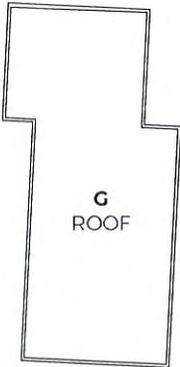
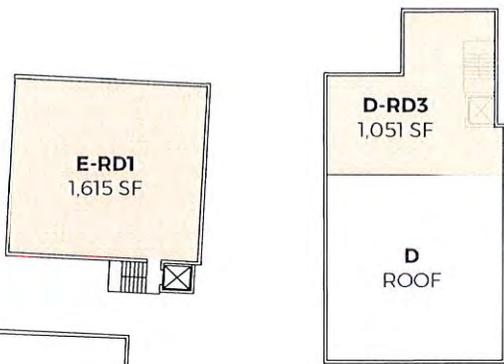
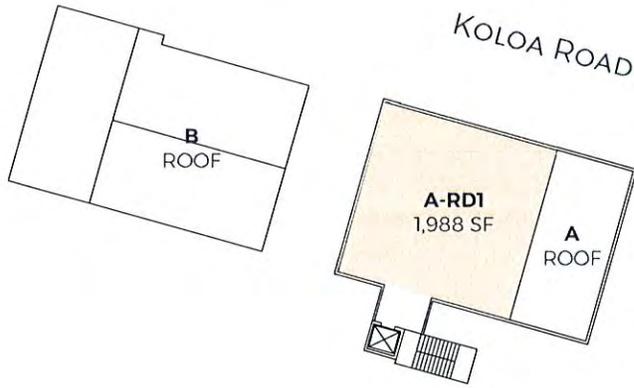
# KOLOA VILLAGE



## SECOND FLOOR

Suite	SF
A201	835
A202	810
A203	732
B-RD1	1,026
B201	1,580
D201	1,080
D202	1,091
D203	1,123
E201	904
E202	900
F201	2,317
FH201	975
H201	3,285
G201	903
G202	1,000
G203	1,010
I201	2,143
I202	954

# KOLOA VILLAGE



## ROOF LEVEL

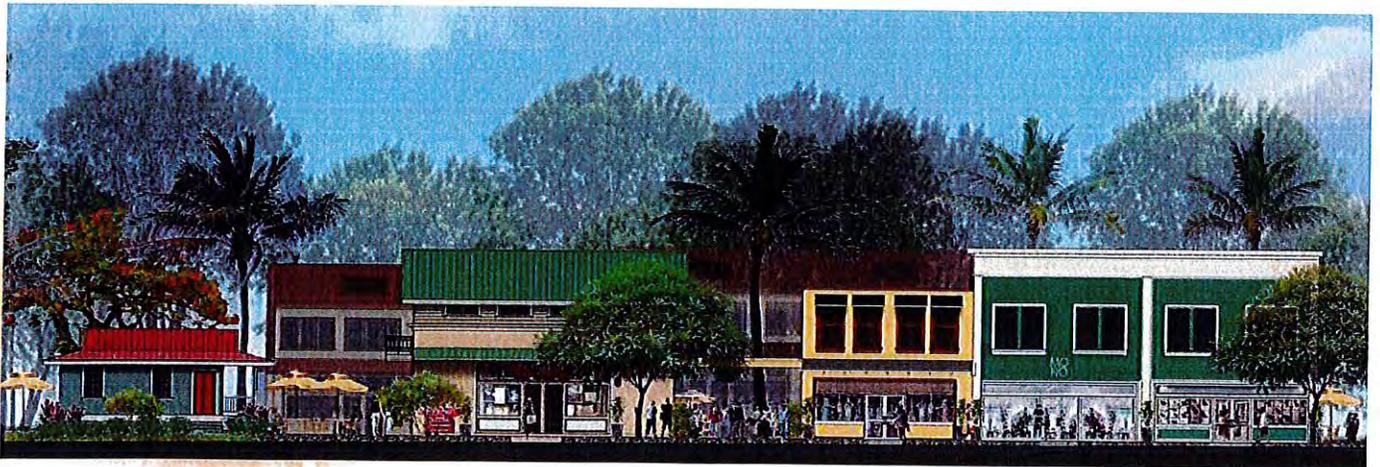
Rare opportunity for lanai areas and roof top restaurants to be a part of the synergy and exciting courtyard events happening at The Shops at Koloa Town.

Suite	SF
A-RD1	1,988
D-RD3	1,051
E-RD1	1,615



# The Shops at Koloa Town

5460 KOLOA ROAD | KOLOA, KAUAI, HAWAII



# *Kōloa Village Residential*

The cottages at Kōloa Village offer approximately 725 square feet one bedroom, one bath bungalows, up to 950 square feet two bedroom, one and two baths, on one living level. The Shops are expected to be open following the commercial development.

## **PROPERTY HIGHLIGHTS**

Walkable Streets

---

Adjacent to vibrant historic center

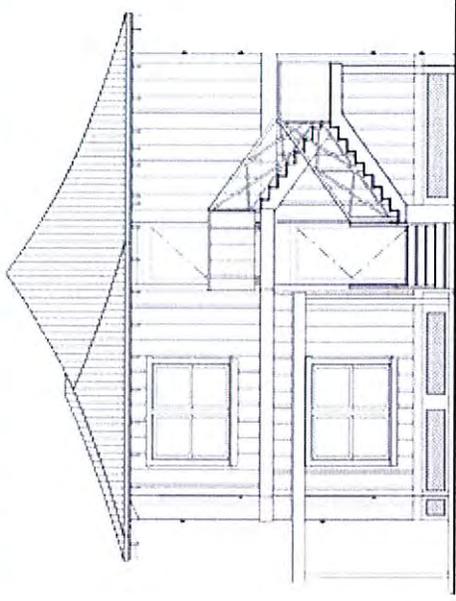
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Oldest plantation village in the Hawaiian Islands

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Located steps from historic Hapa Trail

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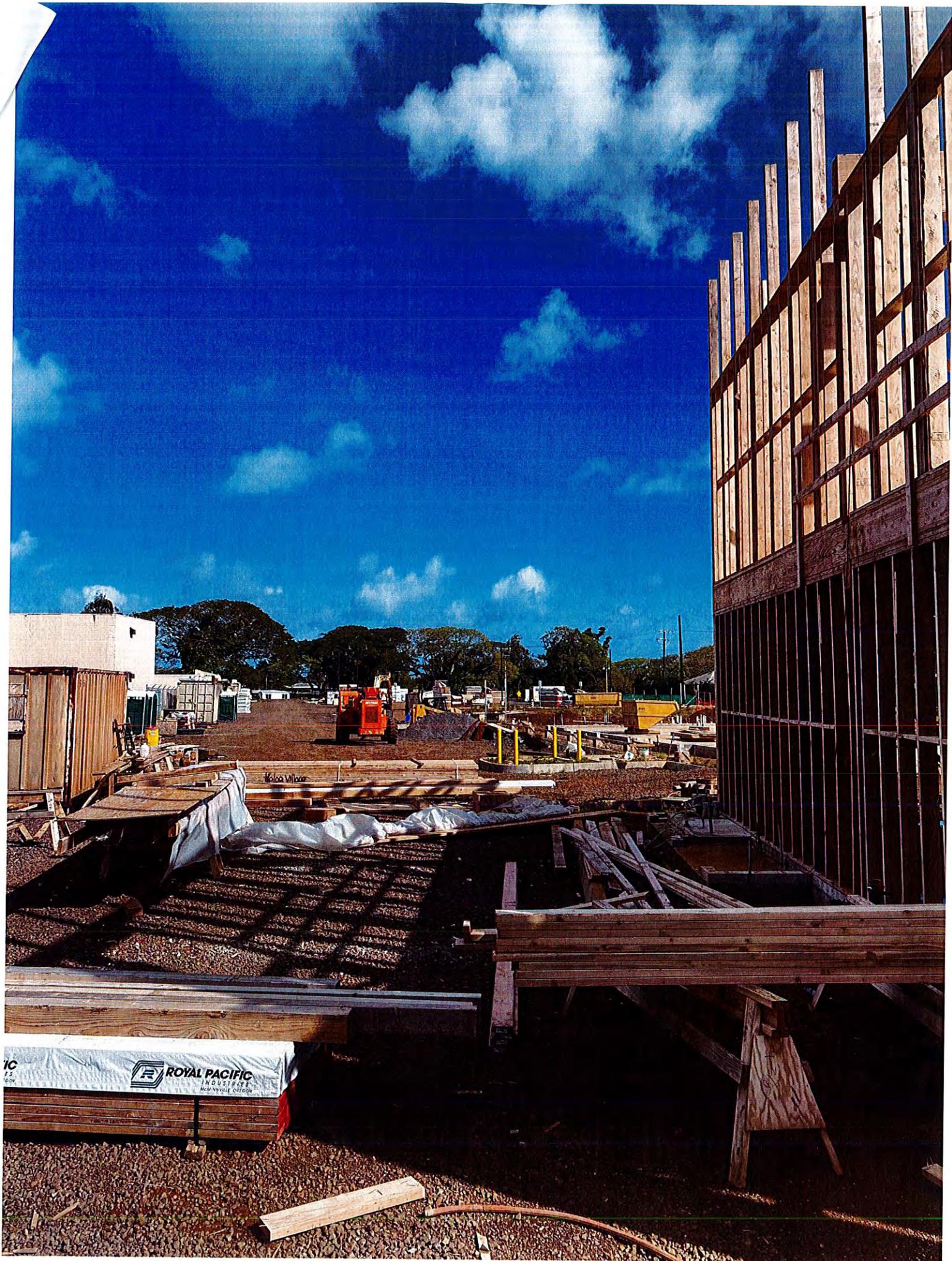




# **EXHIBIT "B"**



**EXHIBIT "B"**





**DANGER**  
CONSTRUCTION  
KEEP OUT



**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

**DIRECTOR'S REPORT**

**I. SUMMARY**

**Action Required by Planning Commission:** Consideration of Applicant's request to AMEND Condition No. 21 of Project Development Use Permit, Class IV Zoning Permit, and Use Permit to allow additional time to complete the proposed development.

**Permit Application Nos.** Project Development Use Permit PDU-2008-11  
Class IV Zoning Permit Z-IV-2008-12  
Use Permit U-2008-10

**Name of Applicant(s)** Kōloa Village, LLC. (formerly Village at Kōloa Town, LLC.)  
Ian K. Jung, Authorized Agent

**II. PERMIT INFORMATION**

<b>PERMITS REQUIRED</b>	
<input checked="" type="checkbox"/> <b>Use Permit</b>	A Use Permit was required to allow residences within the General Commercial (C-G) zoning district.
<input checked="" type="checkbox"/> <b>Project Development Use Permit</b>	A Project Development Use Permit was required since it combines commercial & residential aspects of the project in order to allow residential uses within the commercial zoning district and deviances from certain development standards.
<input type="checkbox"/> <b>Variance Permit</b>	
<input type="checkbox"/> <b>Special Permit</b>	
<input checked="" type="checkbox"/> <b>Zoning Permit Class</b> <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-8.4 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit within the commercial zoning district, and for development of commercial zoned property that's greater than one (1) acre in size.
<input type="checkbox"/> <b>Special Management Area Permit</b> <input type="checkbox"/> Use <input type="checkbox"/> Minor	
<b>AMENDMENTS</b>	
<input type="checkbox"/> <b>Zoning Amendment</b>	

**I.2.a.**

**JUN 09 2020**

<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

**Date of Receipt of Completed Application:** N/A  
**Date of Director's Report:** N/A  
**Date of Public Hearing:** N/A  
**Deadline Date for PC to Take Action (60<sup>TH</sup> Day):** N/A

### III. PROJECT DATA

<b>PROJECT INFORMATION</b>	
<b>Parcel Location:</b>	Kōloa Town. The parcel situated to the east of the Kōloa Neighborhood Center facility that is bounded by Kōloa Road to the north, Weliweli Road to the west and Waikomo Road to the east.
<b>Tax Map Key(s):</b>	2-8-008:001 <b>Area:</b> 5.381 acres
<b>ZONING &amp; DEVELOPMENT STANDARDS</b>	
<b>Zoning:</b>	General Commercial (C-G)/ Residential (R-4)
<b>State Land Use District:</b>	Urban
<b>General Plan Designation:</b>	Residential
<b>Height Limit:</b>	50 feet
<b>Max. Land Coverage:</b>	90%
<b>Parking Requirement:</b>	As previously approved, requires 206 off-street parking stalls. Applicant representing total of 230 parking stalls
<b>Front Setback:</b>	10 feet
<b>Rear Setback:</b>	10 feet
<b>Side Setback:</b>	5 feet
<b>Community Plan Area:</b>	South Kaua'i Community Plan
<b>Community Plan Land Use Designation:</b>	T4VC; T4N; T3VN-1
<b>Deviations or Variances Requested:</b>	NA.

### IV. LEGAL REQUIREMENTS

<b>Section 8-3.1(f), KCC:</b>	NA.
<b>Commission Meeting Date:</b>	June 9, 2020

## V. PROJECT DESCRIPTION AND USE

### BACKGROUND

The subject permits involve the development of a two-story, 34-unit multi-family residential condominium project, off-street parking structure, and a commercial complex containing approximately 45,000 square feet of commercial retail and office space within the Commercial & Residential Districts. The permits were approved by the Planning Commission June 10, 2008.

As originally approved, the project involves:

- Commercial – The commercial portion of the proposed development would occupy approximately 2.661 acres of the property, fronting Kōloa Road approximately 175 feet, and approximately 580 feet makai along Weliweli Road. The commercial project would consist of eight (8) two-story buildings, joined by an upper-level connecting walkway. An existing single-story plantation-era residence would be renovated for commercial use at this original location along Weliweli Road.
- Residential – The residential portion of the parcel encompasses approximately 2.72 acres. A total of seventeen (17) two-story buildings shall be constructed and developed as duplexes. Thirteen (13) buildings would feature a 3-bedroom unit with an attached garage (Type 1) whereas the remaining buildings contain 2-bedroom units with a shared parking area (Type 2). Two parking spaces are provided with every residential unit and no residential building would be constructed higher than 30 feet, as measured from the finish grade to the highest point of the roof ridge line. A solid waste trash enclosure and a detention pond area would be provided.

It is noted that the Applicant obtained Planning Commission approval on April 30, 2013 and April 12, 2016 to amend Condition No. 21 of the foregoing permits allowing additional time to complete the proposed development. As a result, the completion date of the project was moved from June 10, 2013, then to June 10, 2016, and finally to **June 10, 2018**. Currently, Condition No. 21 of the permit approval reads as follows:

“21. *The Applicant shall substantially commence construction of the project development within one (1) year from the date of building permit issuance, and shall complete construction of the project development by June 10, 2018. If the project is not completed by this date, the Planning commission reserves the right to revoke the permits through proper procedures.*”

## VI. APPLICANT’S REASONS/JUSTIFICATION

### REQUEST

In accordance with Condition No. 21, the Applicant is requesting to amend this condition once more to allow additional time to complete the project since construction has already

commenced (refer to their correspondence dated May 15, 2020). As represented, the Applicant has been working very diligently since the last extension request (July 2018) to comply with the requirements of the permits as demonstrated in the Applicant's correspondence. Consequently, they are requesting an additional two (2) years to complete the project.

Based on this request, the deadline date to complete the project would be amended and moved from June 10, 2018 to **June 10, 2022**.

## VII. PRELIMINARY EVALUATION

In considering the Applicant's request, it should be noted that there has been progress with the development since the last time the extension was granted in 2018. Some of the delays attributed with the project has been due to ownership changes and financial reasons.

As approved, the development involves construction of a mixed-use commercial and residential project on an L-shaped parcel within the Kōloa Town core that is approximately 5.381 acres in size. The project area abutting Kōloa and Weliweli Road would contain a 45,000 square feet commercial shopping center and office complex, while the remainder of the lot abutting Weliweli & Waikomo Roads would be developed separately into a 34-unit multi-family dwelling condominium project.

Since the initial approval of the project, the department considers the time given to complete the project has been sufficient. With this proposal, the Applicant's amendment would allow two (2) additional years to complete the project. As represented by the Applicant, the commercial phase is currently under construction.

There has been substantial improvements involving the project within the past four years and the Applicant's 2020 Status Report indicates vertical construction has resumed. Unfortunately, the Applicant has not indicated when the residential aspect of the project will begin. The department would encourage the Applicant to continue its progress, but also realizes the infrastructure challenges associated with the second phase of the project (i.e. wastewater treatment & domestic potable water). It is encouraging to see the recent developments considering the amount of time that has lapsed since its initial approval in 2008. Nonetheless, the department supports the proposed 2-year extension period. Additionally, the Applicant shall continue to provide annual status report to the Planning Commission until the project is completed and all conditions of approval have been met, as required by Condition No. 20 of the permit approval letter.

If the Applicant is unable to comply with the amended development time line and therefore requests for further time extension, the Applicant is advised that any new laws, ordinances, or regulations that have been implemented within this time frame may become applicable to the project.

Finally, it is important to recognize that allowing this project to lapse will NOT prevent the Applicant or land owner from re-applying for the same type of permits. At such time the Applicant or land owner is ready to pursue this project, a new zoning permit application may be submitted and processed.

### VIII. PRELIMINARY RECOMMENDATION

It is recommended that the Commission approves the extension of time to allow the Applicant additional time to complete the construction of the project and Condition No. 21 be amended to read as follows:

21. The Applicant shall substantially commence construction of the project development within one (1) year from the date of building permit issuance, and shall complete construction of the project development by June 10, ~~[2020]~~ 2022. If the project is not completed by this date, the Planning commission reserves the right to revoke the permits through proper procedures.

Furthermore, the Applicant is advised that all applicable conditions of approval, including the provision of annual status reports as required by Condition No. 20, shall remain in effect.

**\*NOTE: Material to be deleted in brackets and new material is underlined.**

By *Dale Cua*  
Dale Cua (Jun 1, 2020 15:31 HST)  
\_\_\_\_\_  
DALE A. CUA  
Planner

Approved & Recommended to Commission:

By *Ka'aina Hull*  
Ka'aina Hull (Jun 1, 2020 15:40 HST)  
\_\_\_\_\_  
KA'ĀINA S. HULL  
Director of Planning

Date: 06/01/2020

BELLES GRAHAM LLP

JONATHAN J. CHUN (2928-0)  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766-1388  
Telephone: (808) 245-4705

Attorney for Appellant  
DAVID HOUSTON 1997 TRUST

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In the Matter of the Application )  
 )  
 Of )  
 )  
 DAVID HOUSTON 1997 TRUST )  
 appealing Notice of Violation & Order To )  
 Pay Fines executed on April 27, 2020 for )  
 property located in Moloa'a Hui Lots, )  
 Kawaihau, Kauai, Hawaii Tax Map Key )  
 No. (4) 4-9-014:020 0001 )  
 \_\_\_\_\_ )

PETITION TO APPEAL DECISION  
OF THE PLANNING DIRECTOR,  
EXHIBITS "A" - "I"; CERTIFICATE OF  
SERVICE

RECEIVED  
20 MAY 18 2020

PETITION TO APPEAL  
DECISION OF THE PLANNING DIRECTOR

Notice is hereby given that the Appellant, DAVID HOUSTON 1997 TRUST, by and through its undersigned counsel, pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission ("Planning Commission Rules"), hereby appeals the decision of the Planning Director as set forth in his letter executed on April 27, 2020, a copy of which is attached hereto and incorporated herein as Exhibit "A".

I.M.  
JUN 09 2020

Appellant DAVID HOUSTON 1997 TRUST states as follows:

1. DAVID HOUSTON 1997 TRUST (herein referred to as "Houston") is the Appellant herein and has the following address and telephone number:

c/o Jonathan J. Chun, Esq.  
Belles Graham LLP  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766  
Phone: (808) 245-4705

2. Subject Property. The property which is the subject matter of this Application ("Subject Property") is Unit A of the 3574 Moloa'a Road Condominium Project. Unit A sits on a portion of Lot 18 of Moloa'a Hui Land Partition, located in Moloa'a, Kauai, Hawaii and is identified by Kauai Tax Map Key No. (4) 4-9-014:020 0001. A legal description of the Subject Property is contained in Exhibit "B" attached hereto. The Subject Property contains approximately 1.641 acres.

3. The Subject Property is improved with a single family dwelling (hereinafter "house") as shown the site plan attached hereto as Exhibit "C" and by reference incorporated herein.

4. The Subject Property is within the State of Hawaii State Land Use Commission ("SLUC") Agricultural district and is designated Agricultural by the County of Kauai General Plan. The Subject Property is within the Kauai Comprehensive Zoning Ordinance ("CZO") Open District and within the Special Management Area ("SMA"). The Subject Property is also located in the Tsunami (S-TS) Special Treatment District.

5. On March 17, 2020 and again in March 28, 2020, flooding of Moloa'a Stream caused severe erosion on the Subject Property (hereinafter collectively referred to as the "March Floods").

6. The March Floods eroded the stream bank to within four feet (4') of the foundation of the house as shown on the picture attached hereto as Exhibit "D" and by reference incorporated herein.

7. Moloa'a Stream is subject to regulation by the United States Army Corp of Engineers and the United States Department of Interior, Fish and Wildlife Service, the State of Hawaii Water Resource Commission, the State of Hawaii Department of Health, Clean Water Division, the County of Kauai Department of Public Works, Engineering Division and the County of Kauai Planning Department.

8. On March 20, 2020, the Appellant, through its representative Lucas Breckenridge, Dan Fregeau of Kauai Eco Design, and its contractor, David Estrella, did a site visit and discovered the Moloa'a Stream bank had eroded to within eight feet (8') of the house.

9. On March 30, 2020, after the second flood on March 28, 2020, Appellant's contractor again did a site visit and discovered the Moloa'a Stream had further eroded to within four feet (4') of the house.

10. On March 30, 2020, Appellant's representative reached out to the United States Army Corp of Engineers in regards to the emergency situation relating to the erosion of the Moloa'a Stream bank to within 4' of the foundation of the house on the Subject Property.

11. Appellant's contractor and representative also reached out and communicated with the State of Hawaii Water Resources Commission, the Department of

Health, Clean Water Division and the County of Kauai Department of Public Works regarding this emergency condition and the need to do immediate remedial work.

12. On April 3, 2020, the County of Kauai Department of Public Works, Engineering Division conducted a site inspection with Appellant's contractor. At the site inspection, the County of Kauai Department of Public Works verbally confirmed to the Appellant's contractor that emergency maintenance and repair work needed to be done to protect the house.

13. At the April 3, 2020 inspection by the County of Kauai Department of Public Works, the Appellant's contractor was verbally instructed to also contact and obtain the approval from the Department of Land and Natural Resources, Water Resources Commission and the Army Corp. of Engineers. An email confirming this direction is attached hereto as Exhibit "E" and by reference incorporated herein.

14. During the site inspection by the Kauai Department of Public Works, Appellant's contractor was not informed of the need to contact the Kauai Planning Department for its approval.

15. After the County of Kauai Department of Public Works' site visit with the Appellant's contractor, the County of Kauai Planning Department conducted its own site visit and ordered the Appellant to stop the emergency work to stabilize the stream bank.

16. Appellant's workers complied with the Kauai Planning Department's order.

17. On April 6, 2020, the County of Kauai Department of Public Works provided Appellant with a letter confirming its verbal recognition that the Moloa'a Stream bank had eroded to within 4' of the house's foundation and the work needed to secure the compromised stream bank within the immediate area of the house is considered "to be essential maintenance and repair work as defined under Item 10 'Critical Trades' and therefore exempt from the Mayor's Emergency Rule #5." See Exhibit "F" attached hereto and by reference incorporated herein.

18. On April 13, 2020, the State of Hawaii Department of Land and Natural Resources, Commission on Water Resource Management provided Appellant with a written authorization to the Appellant to place a temporary rock boulder rip-rap backed with 6-in. minus to reinforce the stream bank for approximately 100-120 foot linear of river frontage immediately adjacent to the existing dwelling ...." See Exhibit "G" attached hereto and by reference incorporated herein.

19. On April 14, 2020, a proposal for the temporary stabilization of the Moloa'a Stream bank under an emergency permit was sent to the Kauai Planning Department. Under the proposed temporary stream bank stabilization, the exposed stream bank would be covered with a geotextile fabric which would be anchored by "supersac" sandbags within the stream.

20. On April 15, 2020, the Kauai Planning Department, through an email, gave its written approval for this temporary emergency stream stabilization utilizing the geotextile fabric and supersac sandbags. See Exhibit "H" attached hereto and by reference incorporated herein.

21. On April 15, 2020, the State of Hawaii, Department of Health, Clean Water Branch, Enforcement Section Supervisor, sent the Appellant's engineer an email stating that "[w]hile the DOH cannot issue you a formal authorization, the DOH acknowledges the need for immediate remedy and concurs with your proposed actions. Please proceed accordingly and take all steps to mitigate any potential discharge to State waters." See Exhibit "I" attached hereto and by reference incorporated herein.

22. Hawaii Revised Statutes ("HRS") Section 205A-30 recognizes the need to allow certain emergency actions and directs lead agencies to adopt specific provisions allowing for such work.

23. Rule 11.0 of the SMA Rules and Regulations of the County of Kauai allows for an emergency permit "to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form ...."

24. Rule 1.4 (F) of the SMA Rules and Regulations of the County of Kauai specifically provides that development does not include "[r]outine maintenance dredging of existing streams, channels and drainage ways."

25. On April 17, 2020, a formal request for an SMA Emergency Permit and SMA Assessment for the immediate stream bank stabilization work was sent to the Kauai Planning Department via email and regular mail by Appellant.

26. On April 22, 2020, a draft SMA Minor Permit and SMA Assessment for longer term stream bank remediation work was sent by Appellant to the Kauai Planning Department for its review and comment.

27. On April 27, 2020, the Appellant received a Notice of Violation and Order To Pay Fines from the Kauai Planning Department.

28. Section 8-3.5 of the Kauai Comprehensive Zoning Ordinance states:

(1) If the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation, the Director may have the party responsible for the violation served, by mail or delivery, or by posting of the property which address is the most current address reflected in the Real Property tax records, or by publishing such notice in a newspaper of general circulation in the County of Kaua'i should previous notification efforts not be accepted, with an order pursuant to this Section. The order may require the party responsible for the violation to do any or all of the following: (A) correct the violation within the time specified in the order; (B) pay a civil fine not to exceed ten thousand dollars (\$10,000.00) in the manner, at the place, and before the date specified in the order; (C) pay a civil fine up to ten thousand dollars (\$10,000.00) per day for each day in which the violation persists, in the manner and at the time and place specified in the order. All civil fines shall be deposited to the Planning Enforcement Account within Fund 25

29. Section 8-3.5 (1) of the Comprehensive Zoning Ordinance sets up a two-part process in order for the Director to assess a civil fine.

30. The first step requires the issuance of a notice of violation

31. The second step is the issuance of an order to pay a fine if "the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation."

32. Section 8-3.5 of the Comprehensive Zoning Ordinance also limits the fine to no more than \$10,000.00.

33. The April 27, 2020 Notice of Violation and Order To Pay Fines does not comply with and is in violation of Section 8-3.5(1) of the Comprehensive Zoning Ordinance.

34. Appellant has never been given a notice of violation regarding the Subject Property and, in fact, immediately complied with the Planning Department's verbal April 3, 2020 order to stop work.

35. The purported \$20,000.00 fine set forth in the April 27, 2020 Notice of Violation and Order To Pay Fines is also in violation of the limitation set forth in Section 8-3.5(1) of the Comprehensive Zoning Ordinance.

36. In addition, as of the date of the April 27, 2020 Notice of Violation and Order To Pay Fines, the Appellant had already submitted a request for an SMA Emergency Permit as well as submitted a draft application for an SMA Minor Permit for review by the Planning Department.

37. At no time has Appellant knowingly or intentionally avoided contacting or informing any governmental agencies responsible for work within Moloa'a Stream, nor had Appellant failed or refused to comply with any notice of violation concerning the Subject Property.

38. The evidence in this case supports the finding that the emergency work required to stabilize the Moloa'a Stream bank in order to protect the house is not a development pursuant to Rule 1.4 of the SMA Rules and Regulations of the County of Kauai.

39. The evidence in this case supports the finding that the emergency work required to stabilize the Moloa'a Stream bank is permitted as an emergency pursuant to HRS Section 205A-30 and Rule 11 of the SMA Rules and Regulations of the County of Kauai.

40. The evidence in this case supports the finding that Appellant has never been given a notice of violation for the emergency work on the Subject Property.

41. The evidence in this case supports the finding that the Appellant immediately stopped work on the emergency work authorized by the Kauai Department of Public Works when ordered by the Kauai Planning Department.

42. The evidence in this case supports the finding that the fine purportedly assessed in the April 27, 2020 Notice of Violation and Order To Pay Fines is in excess of that allowed by Section 8-2.5(1) of the Comprehensive Zoning Ordinance.

43. The Planning Department's April 27, 2020 Notice of Violation and Order To Pay Fines fining the Appellant \$20,000.00 is: contrary to the County's statutory or constitutional authority in violation of HRS Section 91-14(g)(1); in excess of the statutory authority or jurisdiction of the County in violation of HRS Section 91-14(g)(2); made upon unlawful procedure in violation of HRS Section 91-14(g)(3); affected by error of law in violation of HRS Section 91-14(g)(4); clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record in violation of HRS Section 91-14(g)(5); or arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion in violation of HRS Section 91-14(g)(6).

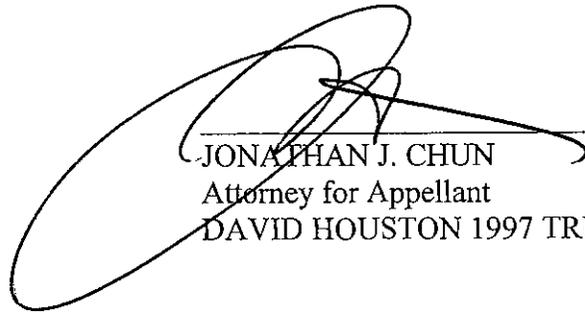
WHEREFORE, Houston prays that the Planning Commission:

A. Reverse and set aside the Planning Director's April 27, 2020 letter fining Appellant;

B. Determine that Appellant is not in violation of either the CZO or the SMA Rules and Regulations; and

C. Grant such further relief as may be just.

DATED: Lihue, Kauai, Hawaii, MAY 6 2020.



JONATHAN J. CHUN  
Attorney for Appellant  
DAVID HOUSTON 1997 TRUST

EXHIBIT "A"



DEPARTMENT OF PLANNING  
THE COUNTY OF KAUAI

DEREK S. K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

KA'AINA S. HULL  
DIRECTOR

JODI A. HIGUCHI SAYEGUSA  
DEPUTY DIRECTOR

**NOTICE OF VIOLATION & ORDER TO PAY FINES**

VIA CERTIFIED MAIL

DAVID HOUSTON, TRUST  
HOUSTON, DAVID 1997 TRUST  
432 COURT STREET  
RENO, NV 89501

SUBJECT: **ILLEGAL DEVELOPMENT WITHIN THE SMA DISTRICT & FAILURE TO SECURE REQUIRED SMA & ZONING PERMITS ON:**  
TMK: (4) 4-9-014:020 0001 Kawaihau District  
Moloaa Hui Lots  
Kawaihau, Kauai, Hawaii

On April 3, 2020, the Planning Department inspected the subject property regarding violations on the subject property. To date, the Planning Department has verified violations of the Hawai'i Revised Statutes §205A and the Special Management Area Rules and Regulations, as follows:

***HAWAII REVISIED STATUTES (HRS) §205A-28***

*Permit required for development. No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part.*

***SPECIAL MANAGEMENT AREA (SMA) RULES AND REGULATIONS***

***Section 1.4 (F):***

*"Development" means any of the uses, activities or operations on land or in or under water within a Special Management Area that are included below:*

- (1) Placement or erection of any solid material ...*
- (2) Grading, removing, dredging, mining, or the extraction of any materials;*

***Section 5.0 DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW***

*Any use, activity, or operation proposed within the Special Management Area defined as "development" pursuant to Section 1.4 [F] above shall be subject to the review of the Director, Planning Department, and Planning Commission under these Rules and Regulations ...*

www.kauai.gov  
4444 Rice Street Suite A473 • Lihue, Hawai'i 96766 • (808) 241-4050 (b) • (808) 241-6699 (f)  
An Equal Opportunity Employer



**VIOLATIONS:**

**The activity of placements of rocks and boulders within and along the Moloaa Stream and its bank is considered "Development" pursuant to SMA Section 1.4(F)(2). This activity without an SMA permit is a violation of HRS §205A-28 and SMA Section 5.0, "DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW."**

**ORDER:**

Pursuant to HRS §205A-32 and SMA Rules and Regulations Section 13.0, you are hereby ordered to comply with the following requirements:

- a. **Cease and desist the unpermitted activity immediately.**
  - b. **Provide Best Management Practices (BMP's) in all areas of the noted development prone to erosion as may be prudent to mitigate further erosion and sediment runoff onto near shore coastal areas.**
  - c. **Within fifteen (15) days from date of Notice, provide the Department with a SMA Emergency Permit Application to address immediate emergency mitigative measures proposed to suppress further erosion, as may be acceptable and approved by all pertinent Regulatory Agencies (I.e. ACoE; DPW, Flood Compliance; State of Hi, Dept. of Health, Clean Water Branch and DLNR, CWRM)**
  - d. **Within thirty (30) days from date of Notice, provide the Department with a certified survey of all development conducted on subject property noting all eroded scarps and placements of rocks and boulder. Such survey shall identify location of all proposed mitigative emergency development activity.**
  - e. **Within sixty (60) days from date of Notice, provide the Department with required SMA Permit Assessment Application to address the activity of placements of rocks and boulders within and along the Moloaa Stream. The application shall reflect proposed stream bank stabilization construction activity and reference a holistic review of all downstream areas prone to further erosion which may be caused by such development.**
  - f. **Pay a civil fine of Twenty Thousand dollars (\$20,000.00) for the above noted violations.**
-

- g. In addition, you will be required to **pay a civil fine up to ten thousand dollars (\$10,000.00) per day for each day in which the violation persists** from the date of this Notice should any timeline requirement be violated.

Payment of the \$20,000.00 civil fine is due to the Planning Department twenty-one (21) days from the receipt of this Order. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order may result in a lien placed on the subject property. In addition, you may be subject to criminal prosecution.

This Order shall become final twenty-one (21) days after the date of this Order. Pursuant to SMA Rules and Regulations Section 13.0, and Chapter 9 and 6 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The SMA Rules and Regulations and the RPPPC are available online at the Planning Department's website: <https://www.kauai.gov/Planning>.

Please contact Leslie P. Milnes, CZM Enforcement Officer, of my staff at 241-4064 or email at [lmilnes@kauai.gov](mailto:lmilnes@kauai.gov) upon receipt of this letter to discuss the required remedial action plan.



Ka'aina Hull (Apr 27, 2020)

---

KA'AINA S. HULL  
Director of Planning

cc: Department of Public Works, Flood Compliance Officer, Attn: Stanford Iwamoto  
Department of Public Works, Engineering, Attn: Paul Togioka, Eng.  
Jonathan J. Chun, Esq. Owners Representative VIA CERTIFIED MAIL & Email

# 4-9-14-20 SMA REPORT-1 Houston '20 4-24-20 LPM NOV-LOF fnl

Final Audit Report

2020-04-27

Created:	2020-04-27
By:	Shelea Blackstad (sblackstad@kauai.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA8qr0AOb7055Xn6CQyZ2C_aJHXIf981_T

## "4-9-14-20 SMA REPORT-1 Houston '20 4-24-20 LPM NOV-LOF fnl" History

-  Document created by Shelea Blackstad (sblackstad@kauai.gov)  
2020-04-27 - 6:19:14 PM GMT- IP address: 72.130.150.171
-  Document emailed to Ka`aina Hull (khull@kauai.gov) for signature  
2020-04-27 - 6:20:02 PM GMT
-  Email viewed by Ka`aina Hull (khull@kauai.gov)  
2020-04-27 - 6:38:38 PM GMT- IP address: 72.235.186.194
-  Document e-signed by Ka`aina Hull (khull@kauai.gov)  
Signature Date: 2020-04-27 - 6:39:13 PM GMT - Time Source: server- IP address: 72.235.186.194
-  Signed document emailed to Imilnes@kauai.gov, Shelea Blackstad (sblackstad@kauai.gov) and Ka`aina Hull (khull@kauai.gov)  
2020-04-27 - 6:39:13 PM GMT

EXHIBIT "B"

/s/ LESLIE T. KOBATA, Registrar  
KEO 13

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN ORIGINAL BY: MAIL ( X ) PICK-UP ( )

David Houston, Trustee  
432 Court Street  
Reno, NV 89501  
Esc. #6828008971-RK



RS This instrument has been presented for recordation by OLD REPUBLIC TITLE AND ESCROW OF HAWAII as an accommodation only. It has not been examined as to its execution or as to its exact on the title to the property described therein.

Tax Map Key No.: (4) 4-9-014-020-0001

Total Pages: 13

**APARTMENT DEED**

**PARTIES TO DOCUMENT**

GRANTOR: DAVID R. HOUSTON

GRANTEE: DAVID HOUSTON, Trustee of the DAVID HOUSTON 1997 TRUST dated October 6, 1997, as amended and restated

THIS DEED, is made as of the 14<sup>th</sup> day of January, ~~2019~~ <sup>2020</sup>, by and between DAVID R. HOUSTON, an unmarried man, of Reno, Nevada, hereinafter called the "Grantor," in favor of DAVID HOUSTON, Trustee of the DAVID HOUSTON 1997 TRUST dated October 6, 1997, as amended and restated, with full power and authority to sell, lease, borrow, encumber, hypothecate, mortgage, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the terms of said trust instrument, whose address is 432 Court Street, Reno, Nevada 89501, hereinafter called the "Grantee;"

WITNESSETH:

That for TEN AND NO/100 DOLLARS (\$10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor hereby grants, bargains, sets over, delivers, and conveys unto Grantee, **IN TRUST**, for the uses and purposes and with all the powers contained in the aforesaid trust instrument, including without prejudice to the generality of the foregoing, full power and authority to sell, lease, borrow, encumber, hypothecate, mortgage, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the terms of said trust instrument, in fee simple:

All of that certain real property and personal property (if any) described in Exhibit "A" attached hereto and made a part hereof.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, **its successors and assigns**.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, as to said real property, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee absolutely and according to the tenancy herein set forth, and as to said personal property (if any), absolutely and forever.

SUBJECT, HOWEVER, to the rights of other apartment owners in (1) the common elements and limited common elements described in the Declaration described in said Exhibit "A", to non-exclusive easements through, over and across said common elements and limited common elements for ingress, egress, support and repair as set forth in said Declaration; (2) the other common elements for use according to their respective purposes as set forth in said Declaration; and (3) the apartment described in said Exhibit "A" for support as set forth in said Declaration.

The undivided percent interest in and to the common elements herein conveyed and shall be deemed conveyed or encumbered with said apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument; this provision shall be a covenant running with the land.

Grantor hereby covenants that he is the owner in fee simple of the property described in Exhibit "A" and is the absolute owner of all said fixtures and/or tangible personal property; that he has good right to sell and convey the same; that said property is free and clear of all liens and encumbrances, except as described in said Exhibit "A"; that Grantee shall quietly enjoy said property without lawful disturbance, and Grantor shall **WARRANT and DEFEND** the same unto Grantee against the lawful claims and demands of all persons, whomsoever, forever, except as aforesaid.

Grantee does hereby, covenant and agree, for the benefit of the owners from time to time of all other condominium units in the condominium project described in said Exhibit "A", to at all times observe, perform, comply with and abide by all provisions set forth in said Exhibit "A", and such rules and regulations adopted by authority thereof, and does hereby accept and approve said By-Laws.

The covenants made by Grantor and or Grantee, and all rights and benefits conferred hereunder upon Grantor and/or Grantee, shall be binding upon and inure to the benefit of Grantor and/or Grantee, and his heirs, devisees, personal representatives, and assigns.

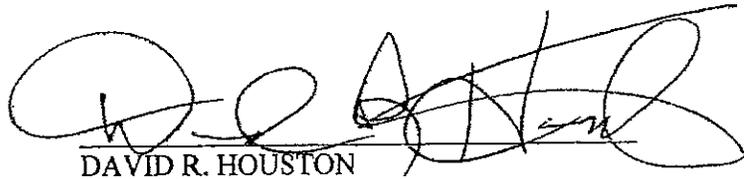
In interpreting this instrument, the use of any gender shall be construed to include all genders, and the use of any number shall be construed as either singular or plural, as the circumstances may require. The terms Grantor and Grantee, together with any pronouns used in lieu thereof, refer to the singular or plural as the case may be.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

All covenants and obligations undertaken by two or more persons or entities shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

[END OF TEXT, CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Grantor has executed this instrument.

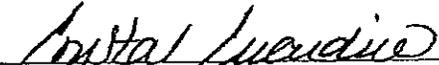
  
DAVID R. HOUSTON

"Grantor"

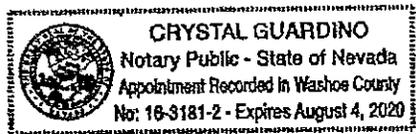
STATE OF NEVADA )  
 ) SS:  
COUNTY OF WASHOE )

On JANUARY 14, 2020, before me personally appeared DAVID R. HOUSTON, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: 1/14/2020 Number of Pages: 13  
Description of Document: Apartment Deed

Signature:   
Name: CRYSTAL GUARDINO  
Notary Public, Above-Mentioned State

My commission expires: AUG. 4, 2020



**EXHIBIT "A"**

-FIRST:- Apartment No. A of that certain Condominium Project known as "3574 MOLOAA ROAD", as shown on Condominium Map No. 4237, and described in the Declaration of Horizontal Property Regime recorded May 23, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-096566, as the same may be amended.

TOGETHER WITH exclusive appurtenant easements as follows:

- (a) Non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility purposes for and support, maintenance and repair of said apartment; in the other common elements for use according to their respective purposes.
- (b) Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the Declaration.

-SECOND:- An undivided 73% interest in all common elements of the project and in the land upon which said project is located as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration as tenant in common with the other owners and tenants thereof.

Being the premises acquired by:

**APARTMENT DEED**

Recorded : December 12, 2018 in the Bureau of Conveyances, State of Hawaii, as Document No. A-69200520  
Grantor : HOLLY HARRIS, who acquired title as HOLLY WEATHERFORD, wife of Mark Cooper Harris  
Grantee : DAVID R. HOUSTON, an unmarried man, as Tenant in Severalty

THE LAND UPON WHICH SAID CONDOMINIUM IS LOCATED IS DESCRIBED AS FOLLOWS:

**FIRST:**

All of that certain parcel of land (being a portion of the Ahupuaa of Moloaa, conveyed by Richard Armstrong, President of the Board of Education, to the Trustees of Oahu College, by Deed dated January 30, 1860, recorded in the Bureau of Conveyances, State of Hawaii, in Book 12, Page 400), being ALLOTMENT NO. 18 of the MOLOAA HUI PARTITION, situated at Moloaa, Island and County of Kauai, State of Hawaii, and thus bounded and described as follows:

Beginning at a pipe at the Southeast corner of this Allotment, being also on the North boundary of L. C. Aw. 238-M, Apana 1 to Keaukahi, and on the West side of Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 1732.50 feet North and 4426.90 feet West, and running by true azimuths from the above described initial point:

- 1. 93° 55' 52.07 feet along L. C. Aw. 238-M, Apana 1 to Keaukahi, to the East side of Moloaa Stream, passing over a pipe at 59.07 feet;

- |     |      |     |        |   |
|-----|------|-----|--------|---|
| 2.  | 86°  | 55' | 111.96 | feet along Allotment 19-A to a pipe and passing over a pipe at 26.96 feet;  |
| 3.  | 89°  | 50' | 63.37  | feet along Grant 2014, Apana 1 to Kalamanu to a pipe;   |
| 4.  | 190° | 00' | 161.70 | feet along L. C. Aw. 3607, Apana 2 to Kahuna, to a pipe;  |
| 5.  | 103° | 00' | 112.20 | feet along L. C. Aw. 3607, Apana 2 to Kahuna, to a pipe;  |
| 6.  | 20°  | 00' | 72.60  | feet along L. C. Aw. 3607, Apana 2 to Kahuna, to a pipe;  |
| 7.  | 93°  | 25' | 143.30 | feet along L. C. Aw. 3607, Apana 2 to Kahuna, to a pipe;  |
| 8.  | 99°  | 05' | 133.64 | feet along L. C. Aw. 240-H, Apana 2 to Pihe, to a pipe;   |
| 9.  | 197° | 33' | 83.50  | feet along the East side of Hui Road "A" twenty (20) feet wide, to a pipe;  |
| 10. | 284° | 00' | 66.00  | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 11. | 185° | 00' | 38.28  | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 12. | 278° | 17' | 150.48 | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 13. | 194° | 00' | 44.88  | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 14. | 293° | 00' | 66.00  | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 15. | 216° | 00' | 72.60  | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 16. | 169° | 00' | 66.00  | feet along L. C. Aw. 238-0, Apana 2 to Kaneiki, to a pipe;  |
| 17. | 235° | 49' | 30"    | 98.94 feet along Allotment 1-A, crossing the Moloaa Stream to the Easterly side, and passing over a pipe at 45.00 feet; |

Thence following up along the Easterly side of the Moloaa Stream along Allotment 16, L. C. Aw. 239-B, Apana 1, to Hoolili, L. C. Aw. 3607, Apana 1 to Kahuna, and the Lovell

Exchange, for the next nine (9) courses, the direct azimuths and distances being:

- |     |      |     |        |  |
|-----|------|-----|--------|--|
| 18. | 317° | 20' | 40.00  | feet;  |
| 19. | 293° | 00' | 30.00  | feet;  |
| 20. | 359° | 45' | 25.31  | feet;  |
| 21. | 34°  | 00' | 33.00  | feet;  |
| 22. | 335° | 00' | 80.00  | feet;  |
| 23. | 9°   | 45' | 52.56  | feet;  |
| 24. | 326° | 20' | 53.00  | feet;  |
| 25. | 18°  | 30' | 22.00  | feet;  |
| 26. | 19°  | 00' | 15.68  | feet;  |
| 27. | 279° | 57' | 99.68  | feet along the Lovell Exchange to a pipe;  |
| 28. | 356° | 30' | 105.02 | feet along the West side of Government Road thirty (30) feet wide, to a pipe;  |
| 29. | 358° | 30' | .24    | feet along the West side of Government Road thirty (30) feet wide to the point of beginning and containing an area of 2.191 acres, more or less. |

SECOND:

All of that certain parcel of land being portion of Lot 18 Moloaa Hui Lots situated at Moloaa, Kawaihau, Island and County of Kauai, State of Hawaii, as shown on the map filed in the Bureau of Conveyances of the State of Hawaii as Registered Map Number 2982, and more particularly described as follows:

Beginning at a pipe at the Southeast corner of this parcel of land, and at the Northeast corner of Lot 16, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 2089.06 feet North and 4533.90 feet West, and running by azimuths measured clockwise from true South:

- |    |     |     |       |   |
|----|-----|-----|-------|---|
| 1. | 73° | 01' | 25.68 | feet along Lot 16 to the East bank of Moloaa Stream, and passing over a pipe at 15.00 feet; |
|----|-----|-----|-------|---|

Thence running along the East bank of Moloaa Stream for the next four courses, the direct azimuths and distances between points being:

- |    |      |     |      |       |
|----|------|-----|------|-------|
| 2. | 214° | 00' | 5.67 | feet; |
|----|------|-----|------|-------|

3. 179° 45' 25.31 feet;
4. 113° 00' 30.00 feet;
5. 137° 20' 40.00 feet;
6. 244° 46' 30" 54.88 feet along Lot 15 to the Moloaa Road, and passing over a pipe at 14.88 feet to a pipe;
7. 343° 01' 91.00 feet along Moloaa Road to the point of beginning and containing an area of 2862 square feet, more or less.

TOGETHER WITH a perpetual, exclusive easement, appurtenant to the Benefited Parcel, over and across the Easement MBR 3 subject to the terms hereof, for the planting and installation of landscaping and related improvements (such as but not limited to lighting, edging, pavers, and irrigation systems) and for open space purposes, as granted by Grant of Easement dated June 17, 2005, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2005-120272, more fully described as follows:

EASEMENT MBR 3  
 (For Landscaping and Openspace Purposes)  
 Affecting a Portion of Moloa'a Stream  
 Portion of Parcel 1  
 Portion of Allotment 1-A  
 As shown on the Map of Partition, Moloaa Hui Land  
 Approved by the Presiding Judge, 24th September 1932  
 MOLOAA, KAUAL, HAWAII

Beginning at the Easterly corner of this Designated Easement MBR 3, being also the Northeast corner of Allotment 18, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA", being 2,152.71 feet North and 4,610.09 feet West and running by azimuths measured clockwise from true South:

1. 55° 49' 30" 98.94 feet along Allotment 18;
2. 76° 19' 00" 190.46 feet along Exception 2;
3. 183° 25' 00" 54.23 feet over and across Moloa'a Stream;
4. 288° 00' 00" 20.00 feet along Allotment 17;
5. 241° 45' 00" 74.00 feet along Allotment 17;
6. 243° 37' 00" 65.60 feet along L.C Aw 238-X:1;
7. 258° 04' 00" 60.24 feet along Allotment 13-B;
8. 264° 00' 00" 15.00 feet along Allotment 15;
9. 288° 00' 00" 35.00 feet along Allotment 15;

10. 317° 20' 00" 20.00 feet along Allotment 15 to the point of beginning containing an area of 15,257 square feet, more or less.

**SUBJECT, HOWEVER, TO:**

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The rights of the United States of America, State of Hawaii, the municipality and the public, in and to that part of the premises in question falling in the bed of Moloaa Stream; also the rights of the riparian owners in and to the free and unobstructed flow of the water of said stream, if any.
3. Rights of Native Tenants in the Ahupuaa of Moloaa by Deed dated January 30, 1860, recorded April 3, 1860 in the Bureau of Conveyances, State of Hawaii, in Book 12, Page 400.
4. -AS TO PARCEL FIRST ONLY:-
  - A. Agreement for : WAIVER AND INDEMNITY  
Executed By : JAN WEBER, husband of Lyn Weber  
and Between : the COUNTY OF KAUAI, a political subdivision of the State of Hawaii

On the terms, covenants and conditions contained therein,

Dated : May 1, 1981  
Recorded : May 6, 1981 in the Bureau of Conveyances, State of Hawaii, in Book 15528, Page 432

B. Agreement for : FARM DWELLING  
Executed By : JAN WEBER and LYN WEBER  
and Between : the COUNTY OF KAUAI PLANNING DEPARTMENT

On the terms, covenants and conditions contained therein,

Dated : June 25, 1981  
Recorded : July 6, 1981 in the Bureau of Conveyances, State of Hawaii, in Book 15673, Page 736

5. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following
  - Instrument : GRANT OF EASEMENT
  - Granted To : HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation and CITIZENS UTILITIES COMPANY, a Delaware corporation
  - For : A perpetual right and easement (5 feet wide and approximately 10 feet in length) for electrical purposes, being Easement E-23 and Easement E-24 within Allotment 18, Moloaa Hui Partition, Parcel 20, to Tax Map Key 4-9-14

Dated : August 25, 1983  
Recorded : September 29, 1983 in the Bureau of Conveyances, State of Hawaii, in Book 17352, Page 6377.

6. Agreement for : ROAD WIDENING RESERVE  
Executed By : DOUGLAS I. DANIELS and DOROTHY J. DANIELS

On the terms, covenants and conditions contained therein,

Dated : October 22, 1993  
Recorded : November 3, 1993 in the Bureau of Conveyances, State of Hawaii, as Document No. 93-182201

7. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : GRANT OF EASEMENT  
Granted To : GARY S. MOTIL  
For : The right of a ten foot (10') strip of land, running East-West on the Southern border of Lot 18, T.M.K. 4-9-14-20, for the sole purpose of installing and maintaining underground utilities  
Dated : May 30, 1990  
Recorded : May 13, 1998 in the Bureau of Conveyances, State of Hawaii, as Document No. 98-068280

8. Terms, provisions and conditions, contained in that certain Waiver and Release Agreement by MOLOA'A BAY RANCH LLC dated April 6, 2004, recorded April 13, 2004 in the Bureau of Conveyances, State of Hawaii as Document No. 2004-073707 herein referred to and the effect of any failure to comply with such terms, provisions and conditions.

9. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : GRANT OF EASEMENT  
Granted To : MOLOAA BAY RANCH II, LLC, a Colorado limited liability company  
For : Landscaping and Open Space Purposes - Easement A, being more particularly described as follows:

EXCLUSIVE EASEMENT  
Affecting Allotment No. 18  
As shown on The Map of Partition  
Moloaa Hui Land  
Approved by the Presiding Judge September 24, 1932  
Moloaa, Kauai, Hawaii

Beginning at the North West corner of Land Commission Award 239-B:1 as shown on The Map of Partition, Moloaa Hui Land as being the Southwest corner of Allotment No. 16, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 1,986.40 feet North and 4,539.90 feet West, and thence running by azimuths measured clockwise from true South:

1. 9° 45' 52.56 feet along Land Commission Award Lot 239B Apana 1 to Hoolili being a portion of Allotment 11 as shown on The Map of Partition, Moloaa Hui Land;
2. 87° 01' 34" 40.76 feet affecting Allotment 18 as shown on the Map of Partition, Moloaa Hui Land;
3. 185° 44' 52" 38.94 feet affecting Allotment 18 as shown on the Map of Partition, Moloaa Hui Land;
4. 251° 38' 48.16 feet affecting Allotment 18 as shown on the Map of Partition, Moloaa Hui Land to the Point of Beginning and containing an area of 1,901 square feet.

Dated : June 17, 2005  
 Recorded : June 17, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No. 2005-120270

10. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : GRANT OF EASEMENT  
 Granted To : MOLOAA BAY RANCH, LLC, a Colorado limited liability company  
 For : Landscaping and Open Space Purposes - Easement MBR-1  
 Recorded : June 17, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No. 2005-120271

EASEMENT MBR-1  
 (For Landscaping and Openspace purposes)  
 Affecting a Portion Parcel 20 (First)  
 Portion of Allotment 18  
 as shown on the Map of Partition, Moloaa Hui Land  
 approved by the Presiding Judge, 24th September 1932  
 MOLOAA, KAUAI, HAWAII

Beginning at the Southwest corner of this Easement MBR 1, also being the Southwest corner of Parcel 20 (First) Allotment 18, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA", being 1,875.75 feet North and 5,035.10 feet West and running by azimuths measured clockwise from true South:

1. 197° 33' 00" 83.50 feet along Eastern ROW of Hui Road 'A';
2. 284° 00' 00" 66.00 feet along Morton Portion 2;
3. 185° 00' 00" 38.28 feet along Morton Portion 2;
4. 278° 17' 00" 61.21 feet along Morton Portion 2;

- 5. 1° 00' 00" 115.22 feet along Portion 5;
- 6. 93° 25' 00" 19.19 feet along Exception 3;
- 7. 99° 05' 00" 133.64 feet along Exception 3 to the point of beginning containing an area of 13,500 square feet

11. Condominium Map No. 4237, filed in the Bureau of Conveyances, State of Hawaii.

AMENDMENT thereof by instrument:

Recorded : June 30, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-121916

12. Terms and provisions as contained in an instrument,

Entitled : DECLARATION OF CONDOMINIUM PROPERTY REGIME  
 Recorded : May 23, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-096566

AMENDMENT thereof by instrument:

Recorded : June 30, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-121916

13. By-Laws of the Association of Apartment Owners of 3574 MOLOAA ROAD, recorded May 23, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-096567.

14. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : GRANT OF EASEMENT  
 Granted To : RICHARD RUSSELL  
 For : Vehicular and Pedestrian Access and Utility Purposes  
 Dated : March 14, 2007  
 Recorded : March 21, 2007 in the Bureau of Conveyances, State of Hawaii, as Document No. 2007-051684

15. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : GRANT OF EASEMENT AND AGREEMENT  
 Granted To : DAVID R. HOUSTON, husband of Shereane Houston  
 Dated : May 6, 2010  
 Recorded : May 7, 2010 in the Bureau of Conveyances, State of Hawaii, as Document No. 2010-062710  
 RE: EASEMENT A-1

16. Terms and provisions as contained in an instrument,

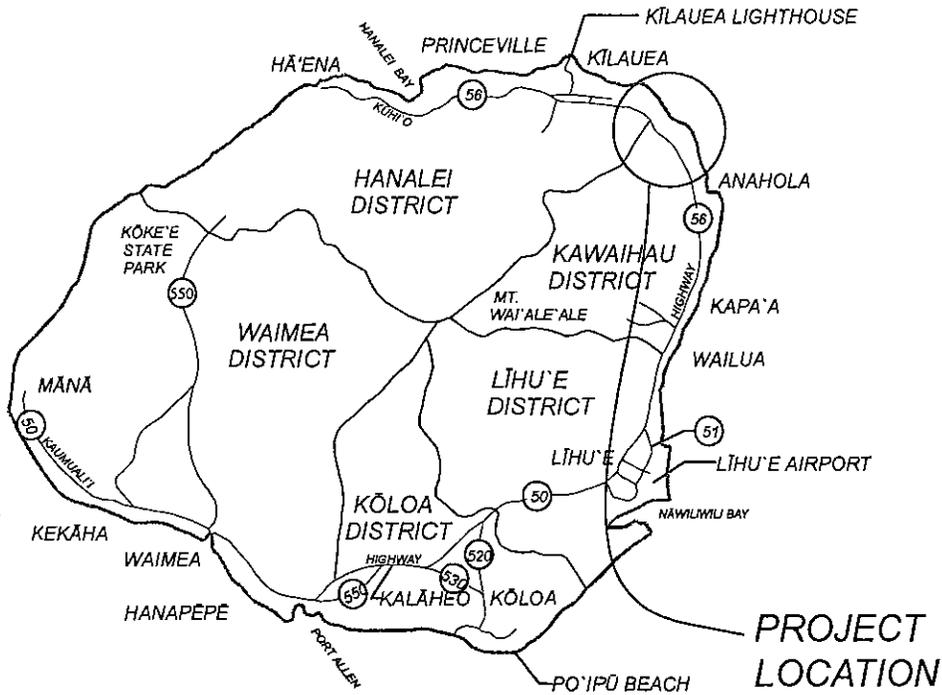
Entitled : QUITCLAIM DEED  
Dated : October 31, 2006  
Recorded : November 27, 2006 in the Bureau of Conveyances, State of  
Hawaii, as Document No. 2006-216609

**END OF EXHIBIT "A"**

EXHIBIT "C"

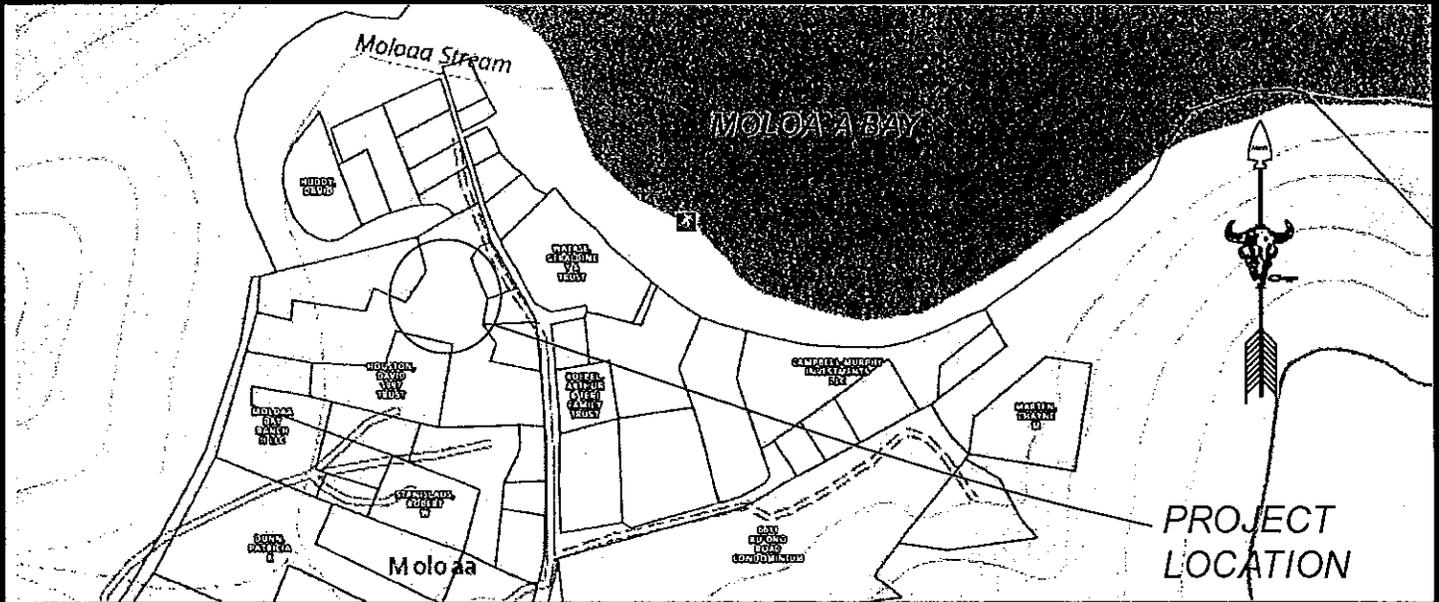
Lucas Breckenridge & Associates, Inc

P.O. Box 870 Kilauea, Kaua'i, Hawai'i 96754  
 Phone: 808.245.9154 - Web: www.kauaisurveying.com



ISLAND OF KAUA'I:

NOT TO SCALE



VICINITY MAP:

NOT TO SCALE

**MOLOA'A STREAM BANK REINFORCEMENT**

OWNER: DAVID HOUSTON 1997 TRUST

PROJECT NO. 20-025-001

SHEET TITLE:

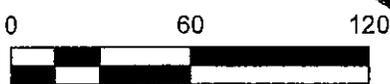
**KAUAI LOCATION AND VICINITY MAPS**

PURPOSE: REDUCE EROSION	APPLICANT REFERENCE:	PROPOSED: STREAM BANK STABILIZATION
DATUM: LMSL	ADDRESS: 3576 B MOLOA'A ROAD MOLOA'A, KAWAIHAU, KAUA'I, HAWAII	IN: MOLOAA RIVER
ADJACENT PROPERTY OWNERS: SEE PROJECT SITE PLAN	TMK: TMK (4) 4-9-014:020-0001	NEAR / AT: MOLOAA COUNTY: KAUA'I STATE: HAWAII SHEET: 1 OF 4 DATE: APRIL 2020

**EXHIBIT "C"**



Lucas Breckenridge & Associates, Inc  
 P.O. Box 870 Kilauea, Kaua'i, Hawai'i 96754  
 Phone: 808.245.9154 - Web: www.kauaisurveying.com



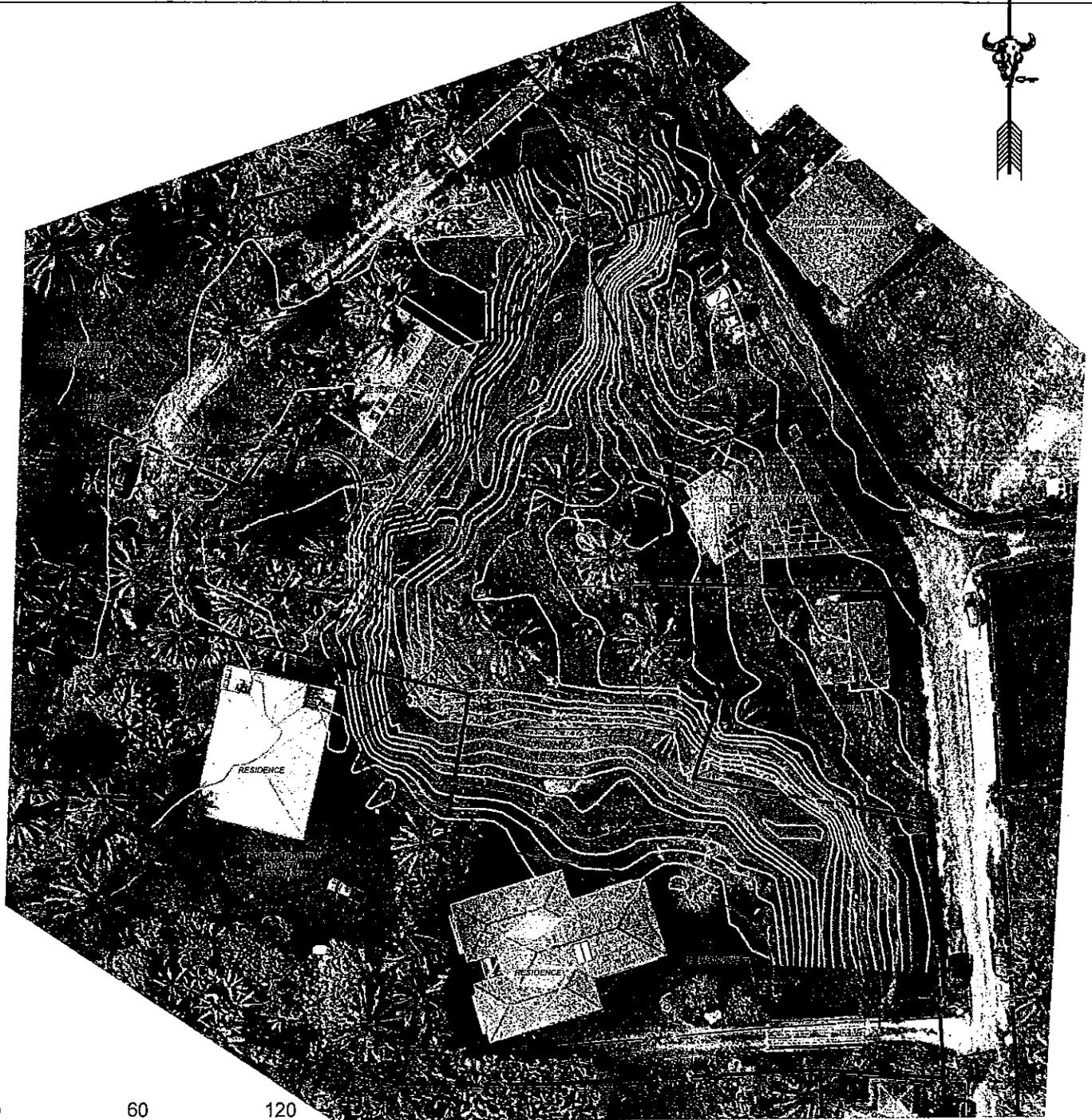
SCALE: 1" = 60'

## MOLOA'A STREAM BANK REINFORCEMENT

OWNER: DAVID HOUSTON 1997 TRUST PROJECT NO. 20-025-001

SHEET TITLE: PROJECT SITE PLAN-AERIAL IMAGERY

PURPOSE: REDUCE EROSION	APPLICANT REFERENCE:	PROPOSED: STREAM BANK STABILIZATION
DATUM: LMSL	ADDRESS: 3576 B MOLOA'A ROAD MOLOA'A, KAWAIHAU, KAUA'I, HAWAII	IN: MOLOAA RIVER
ADJACENT PROPERTY OWNERS:  SEE PROJECT SITE PLAN	TMK: TMK (4) 4-9-014:020-0001	NEAR / AT: MOLOAA COUNTY: KAUA'I STATE: HAWAII SHEET: 2 OF 4 DATE: APRIL 2020



## MOLOA'A STREAM BANK REINFORCEMENT

OWNER: DAVID HOUSTON 1997 TRUST

PROJECT NO. 20-025-001

SHEET TITLE:

### EMERGENCY PROJECT SITE PLAN / BMP'S

PURPOSE: <b>REDUCE EROSION</b>	APPLICANT REFERENCE:	PROPOSED: STREAM BANK STABILIZATION
DATUM: LMSL	ADDRESS: 3576 B MOLOA'A ROAD MOLOA'A, KAWAIHAU, KAUA'I, HAWAII	IN: MOLOAA RIVER
ADJACENT PROPERTY OWNERS:	TMK: TMK (4) 4-9-014:020-0001	NEAR / AT: MOLOAA COUNTY: KAUA'I STATE: HAWAII SHEET: 3 OF 4 DATE: APRIL 2020
SEE PROJECT SITE PLAN		

EXHIBIT "D"



EXHIBIT "E"

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**Moloaa Stream Work**

15 messages

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**Stanford Iwamoto** <siwamoto@kauai.gov>

Mon, Apr 6, 2020 at 11:06 AM

To: "Alakai, Rebecca R" <Rebecca.R.Alakai@hawaii.gov>

Cc: Leslie Milnes <lmilnes@kauai.gov>, Michael Moule <mmoule@kauai.gov>, "dirtworkskauai@gmail.com" <dirtworkskauai@gmail.com>

Hi Rebecca – We were approached by a contractor working for a homeowner on Moloa'a Stream about doing emergency repairs to the stream bank next to their home. The Department of Public Works reviewed the situation and determined that the work would qualify for an exemption to our Mayor's Emergency Declaration (Essential work only) due to the Covid -19 emergency. We told the contractor that the work would still need to be reviewed and allowed by DLNR and the Army Corp.

The contractor is David Estrella and his phone number is 808-639-1031 and he is also copied on this email. Attached is a report with some pictures of the damage.

**Stanford Iwamoto, CE VI**

Regulatory and Permitting Section

Department of Public Works

County of Kauai

Phone (808) 241-4896

E-Mail siwamoto@kauai.gov

---

 **Brief report of the site visit at 3540 Moloaa Rd.pdf**  
6001K

---

**Stanford Iwamoto** <siwamoto@kauai.gov>

Mon, Apr 6, 2020 at 11:11 AM

To: "dirtworkskauai@gmail.com" <dirtworkskauai@gmail.com>

David – this is the contact information for Rebeca Alakai who would be your contact person in DLNR. However, she may not be in the office.

**Rebecca Alakai**

Regulatory Section

Commission on Water Resource Management

EXHIBIT "F"



ENGINEERING DIVISION  
DEPARTMENT OF PUBLIC WORKS  
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR  
MICHAEL A. DAHILIG, MANAGING DIRECTOR

TROY K. TANIGAWA  
ACTING COUNTY ENGINEER

MICHAEL H. TRESLER  
ACTING DEPUTY COUNTY ENGINEER

April 6, 2020

Houston, David 1997 Trust  
432 Court Street  
Reno, NV 89501

SUBJECT: EXEMPTION FROM MAYOR'S EMERGENCY RULE NO.5.  
3540 MOLOA 'A ROAD, TMK: (4) 4-9-014:020

Dear Mr. Houston:

This is in response to your requests to secure an eroded stream bank at 3540 Moloa'a Road, TMK: (4) 4-9-014:020, which was damaged during the March 28, 2020 heavy rains. Due to the COVID-19 pandemic, the Mayor's Emergency Rule #5 established guidance and definitions for the County of Kaua'i, particularly with regard to exemption classifications set forth by the Governor.

- Item 10 "Critical Trades" of the Governors Rule PART-A states: Building and Construction Tradesmen and Tradeswomen, and other trades including but limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide service that are necessary to maintaining the safety, sanitation, and essential operation of residences, essential activities, and essential businesses and operations.
- Item 10 "Critical Trades" of the Local Rule states: Does not include new market home, or commercial construction. Essential maintenance and repairs only, and construction related to response and recovery effort as directed by a governmental agency. Utility and refuse workers are critical trade employees if actively engaging in work for that business.

On April 3, 2020 the Engineering Division conducted a site inspection at the 3540 Moloa'a residence and confirmed the flooding conditions created by the heavy rains cause the stream bank to erode to a distance less than 4 feet from the buildings footing. The Department of Public Works considers the proposed work to secure the compromised stream bank within the immediate area of the residence to be essential maintenance and repair work as defined under Item 10 "Critical Trades" and therefore exempt from the Mayor's Emergency Rule #5.

[www.kauai.gov](http://www.kauai.gov)

4444 Rice Street Suite 175 • Lihue, Hawaii 96766 • (808) 241-4883 (b) • (808) 241-6609 (f)

An Equal Opportunity Employer

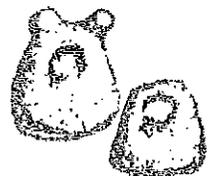


EXHIBIT "F"



Photo prior to March 28, 2020 storm.



Photo taken on April 3, 2020.

Although we are exempting the subject construction activities from the Mayor's Emergency Rule #5, you are still required to notify and obtain the required permits from our Planning Department, United States Army Corps of Engineers, State of Hawaii, and any other governmental agencies responsible for overseeing and regulating your improvements. Best Management Practices (BMP's) to the maximum extent practicable shall be implemented to prevent damage by sedimentation to streams, water courses, natural areas and the property of others.

If you have any questions, please contact our Engineering Division at (808) 241-4883.

Very truly yours,

Troy K. Tanigawa  
Acting County Engineer

Copy: Design and Permitting  
Construction Inspection  
David Estrella

EXHIBIT "G"

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
P.O. BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. GASE  
CHAIRPERSON

BRUCE S. ANDERSON, PH.D.  
KAMANA BEAMER, PH.D.  
MICHAEL G. BUCK  
NEIL J. HANNAHS  
WAYNE K. KATAYAMA  
PAUL J. MEYER

M. KALEO MANUEL  
DEPUTY DIRECTOR

April 13, 2020

Ref: EA.536I.2

Lucas Breckenridge, President  
Lucas Breckenridge & Associates, Inc.  
P.O. Box 870  
Kilauea, HI 96754

Aloha Mr. Breckenridge:

Emergency Authorization  
Stream Channel Erosion Repair, 3540 Moloa'a Road  
Moloa'a Stream, Anahola, Kaua'i, TMK: (4) 4-9-014:020-0001

We are responding to your April 7, 2020 email to the Commission on Water Resource Management (Commission) regarding your request for an emergency authorization for stream channel erosion repair to prevent further property damage and erosion. Per your email, this damage occurred as a result of heavy rains on March 17 and 28, 2020. Based on your communications and photos submitted, the Commission hereby issues an emergency authorization to you at the subject location to do the following:

*Placement of temporary rock boulder rip-rap backed with 6-in. minus to reinforce the stream bank for approximately 100-120 foot linear of river frontage immediately adjacent to the existing dwelling that is in danger. Geo-tech fabric and 6-in. minus to be placed behind boulders to stabilize the existing bank. Minimum 18-in. boulders to be carefully stacked from the bottom up placing the largest possible sized boulders along the base. All material to be placed with equipment from the side of the stream bank.*

Hawai'i Administrative Rules, Section 13-169-55, provides for emergency work and states:

*§13-169-55 Emergency work.*

- (a) *When emergency channel alteration is necessary to prevent or minimize loss of life or damage to property, including the repair or restoration of structures damaged by a sudden and unforeseen event, a person may proceed to effect the channel alteration without a permit.*
- (b) *In general, protective, health, and sanitation measures shall be limited to the minimum amount necessary to remove immediate threats to health and safety or to*

EXHIBIT "G"

Lucas Breckenridge, President

April 13, 2020

Page 2

*prevent immediate or further damage to property, and emergency repairs or restoration of structures shall be based on their replacement by a minimum facility of the same general type.*

- (c) No later than the first working day after initiation of any emergency work, the person effecting the work shall notify the department and describe the nature and circumstances of the remedial work so that the department may issue an emergency authorization.*
- (d) Within thirty days of his notification to the department, the person effecting the emergency work shall submit to the commission a report describing the nature and extent of the emergency work performed, including relevant maps and diagrams showing the location and details of the channel alteration completed.*
- (e) No fee will be required for the filing of a report for emergency channel alteration work. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-71)*

Please be advised that should the project extend beyond the minimum amount necessary to remove immediate threats to health and safety or prevent immediate or further damage to property, you may be required to apply for a stream channel alteration permit. Also, the project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, and floodways. This emergency authorization should not be used for other regulatory jurisdictions or used to imply compliance with other federal, state, or county rules. Work performed without appropriate permits or authorizations may be subject to fines and/or remedial actions.

If you have any questions, contact Rebecca Alakai at (808) 587-0266, or via email at [rebecca.r.alakai@hawaii.gov](mailto:rebecca.r.alakai@hawaii.gov).

Ola i ka wai,



M. KALEO MANUEL  
Deputy Director

c.: U.S. Army Corps of Engineers  
Department of Health, Clean Water Branch  
County Planning Department  
County Department of Public Works

EXHIBIT "H"

## Jonathan Chun

---

**From:** Leslie Milnes <lmilnes@kauai.gov>  
**Sent:** Wednesday, April 15, 2020 9:29 AM  
**To:** M H Shapouri  
**Cc:** Stanford Iwamoto; Lucas Zack Breckenridge, PLS; Daniel Fregeau; Jonathan Chun; gary.ueunten@doh.hawaii.gov; Leslie Milnes; Mike Laureta  
**Subject:** Re: Geofabric Flooding - Supersac BMP

Good morning Mr. Shapouri, "Mike"

Ref: TMK 4-9-14-20 Huston, SMA Violation

The proposal presented below for additional, temporary remedial measures, are acceptable to the Planning Department, with the provision that Dept. of Public Works, Flood Compliance and Dept. of Health, Clean Water Branch also sign on.

*Aloha, Leslie P Milnes*

CZM Enforcement Officer, Enforcement Division  
County of Kauai, Department of Planning  
4444 Rice Street, Suite A473  
Lihue, Hawaii 96766  
(808)-241-4064

**CONFIDENTIALITY NOTICE:** This message is covered by the Electronic Communications Privacy Act, Title 18, United States Code, Sec. 2510-2521. This e-mail and any attached files are deemed privileged and confidential, and are intended solely for the use of the individual(s) or entity to whom this e-mail is addressed. If you are not one of the named recipient(s) or believe that you have received this message in error, please delete this e-mail and any attached files from all locations in your computer, server, network, etc., and notify the sender IMMEDIATELY at [lmilnes@kauai.gov](mailto:lmilnes@kauai.gov). Any other use, re-creation, dissemination, forwarding or copying of this e-mail and attached files is strictly prohibited and may be unlawful. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. Nothing in this message is intended to constitute an Electronic signature for purposes of the Uniform Electronic Transactions act (UETA) or the Electronic Signatures in Global and National Commerce Act ("E-Sign") unless a specific statement to the contrary is included in this message. Thank you for your cooperation.

**EXHIBIT "H"**

EXHIBIT "I"

## Jonathan Chun

---

**From:** Kurano, Matthew <matthew.kurano@doh.hawaii.gov>  
**Sent:** Wednesday, April 15, 2020 4:12 PM  
**To:** Mike Shapouri  
**Cc:** Leslie Milnes; Stanford Iwamoto; Lucas Zack Breckenridge, PLS; Daniel Fregeau; Jonathan Chun; Ueunten, Gary R.; Mike Laureta; Wong, Alec Y; Lum, Darryl C  
**Subject:** Re: Geofabric Flooding - Supersac BMP-TMK 4-9-14-20 Huston, SMA Violation

Mike,

I was forwarded your emails and requests regarding the need to immediately stabilize the stream bank in order to prevent negative impacts to downstream areas. While the DOH cannot issue you a formal authorization, the DOH acknowledges the need for immediate remedy and concurs with your proposed actions. Please proceed accordingly and take all steps necessary to mitigate any potential discharges to State waters.

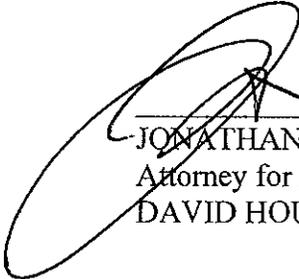
Please let me know if you have any further questions,  
Matt

Matthew Kurano  
Enforcement Section Supervisor  
Department of Health, Clean Water Branch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on   **MAY 6 2020**  , the PETITION TO APPEAL DECISION OF THE PLANNING DIRECTOR; EXHIBITS "A" - "I" was duly served upon the COUNTY OF KAUAI PLANNING COMMISSION, via certified mail, return receipt requested, by depositing same in the United States Post Office at Lihue, Kauai, Hawaii, postage prepaid, addressed to it at the COUNTY OF KAUAI PLANNING DEPARTMENT, County of Kauai, 4444 Rice Street, Suite A-473, Lihue, Kauai, Hawaii 96766.

DATED: Lihue, Kauai, Hawaii,   **MAY 6 2020**  .



\_\_\_\_\_  
JONATHAN J. CHUN  
Attorney for Appellant  
DAVID HOUSTON 1997 TRUST



## PLANNING COMMISSION

THE COUNTY OF KAUA'I

KA'ĀINA S. HULL, CLERK OF THE COMMISSION

Glenda Nogami Streufert

CHAIR

Donna Apisa

VICE-CHAIR

Melvin Chiba

Helen Cox

Francis DeGracia

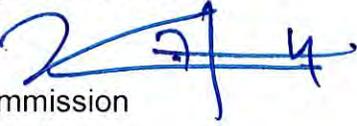
Roy Ho

Lori Otsuka

MEMBERS

### MEMORANDUM

To: Honorable Commissioners  
Kauai Planning Commission

Fr: Kaaina S. Hull   
Clerk of the Commission

Date: June 2, 2020

RE: Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Planning Director's Notice of Violation & Order to Pay Fines for the unpermitted construction of a retaining wall along Moloa'a Stream in the Special Management Area of Moloa'a,, **David Houston 1997 Trust**, Map Key (4) 49014020, Moloa'a Hui Lots, Kauai, received on May 18, 2020, for referral to Board and Commissions as Contested Case File No. CC-2020-6.

---

Please refer this appeal filed as CC-2020-6 to Boards & Commissions to conduct the required analysis and contested case hearing, as necessary.

Services should include but not be limited to: procure the services of a hearings officer, conduct the hearing, consolidate appeals where necessary, dispose of all pre-hearing motions, receive and record all evidence including subpoenaing any witness, and render a recommended filings of fact, conclusions of law, decision and order for the Planning Commission's Action.

[www.kauai.gov](http://www.kauai.gov)

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