

## 3. Caring for Land, Water and Culture

---

### 3.1 OVERVIEW

This chapter sets policies relating to land, waters and culture – resources which are the heritage of the people of Kaua‘i. Heritage resources are connected to physical features or structures, but they also entail less tangible qualities like cultural meaning, historic significance, and the visual experience of the environment.

The chapter also sets policies for managing human activities to maintain the quality of the environment – particularly the quality of Kaua‘i’s waters and watersheds. As stated in the Vision, the concepts of ahupua‘a and watershed link the mountains, lowlands and ocean as one basic ecological unit. The rainwater running off the land affects the quality of the streams and coastal waters; this in turn affects their ability to support native biota and their usefulness for fishing, swimming, or other activities. Finally, the Chapter addresses the special rights of Native Hawaiians in water and land.

#### 3.1.1 Heritage Resources Maps

The General Plan contains a set of Heritage Resources Maps – an island map and five district maps at a larger scale. These maps are intended to document important natural, scenic and historic features, particularly in relation to the urban and agricultural lands which are developed or may be developed in the future. The maps document the following heritage resources:

- Important landforms, including mountains, stream valleys and gulches, bluffs and other small coastal features (Based on elevation contours and other data, U.S. Geological Survey).
- Perennial streams and ponds (Source: U.S. Geological Survey).
- Coral reefs (Source: U.S. Geological Survey).
- Marshes (Source: U.S. Geological Survey).
- “Special streams,” defined as natural, undiverted streams and stream segments that have outstanding habitat for native aquatic species or recovery habitat for threatened and endangered waterbirds. (Source: Office of Planning, based on the *Hawai‘i Stream Assessment*)
- Registered archaeological sites and complexes; archaeological sites on the National Register of Historic Places and/or the Hawai‘i Register of Historic Places, including heiau. (Source: State Historic Preservation Division, DLNR)
- Recorded sites of heiau, not listed in the National or State Register (Source: State Historic Preservation Division, DLNR)

- Registered historic buildings and structures on the National and/or Hawai‘i Register of Historic Places. (Source: State Historic Preservation Division, DLNR)
- Potentially historic buildings and structures identified in the *Kaua‘i Historic Resources Inventory*. (Source: Planning Department, Kaua‘i Historic Preservation Review Commission)
- Existing major taro-growing areas. (Source: GP public meetings.) Note: These are only the most prominent of the currently cultivated areas. There are many other historic taro lo‘i, some of which have good potential for cultivation today.)
- Other natural, historic, cultural, scenic features. (Source: various documents, GP Update public meetings)
- Scenic roadway corridors. (Sources: 1971 General Plan maps, Development Plans, GP public meetings, literature)
- Major resource parks and sites, such as Wailua River State Park, Kōke‘e State Park, Grove Farm Homestead, and the National Tropical Botanical Garden.
- Federal and State natural preserves, including National Wildlife Refuges.

#### **3.1.1.1 Policy**

- (a) The Heritage Resources Map depicts natural, cultural and scenic resources that are important to the County of Kaua‘i and that are intended to be conserved. The mapping of important landforms, streams and other physical elements represents the general location of the resource. The mapping of historic and archaeological sites, other features and Scenic Roadway Corridors is intended to be representational, not precise.
- (b) Important landforms shall be designated as “Open” on the GP Land Use Map and shall be zoned accordingly, in order to protect steep slopes and streams from erosion and to protect landforms from development that might affect scenic views.
- (c) The Heritage Resources Map shall be used as a guide in preparing Development Plans and in preparing or revising land use ordinances and rules, including but not limited to the following: revisions to the Comprehensive Zoning Ordinance or the Zoning Maps; zone change ordinances; revisions to the Special Management Area (SMA) rules or boundaries; revisions to the Subdivision Ordinance; and the preparation of new ordinances or rules, such as a Scenic Roadway Corridor ordinance.
- (d) Projects undertaken with State or County lands or funds shall be designed to conserve heritage resources.
- (e) The Heritage Resources Map shall serve as a guide in the review of subdivision and land use permit applications, but may not be used to prohibit a land use that is allowed by the Comprehensive Zoning Ordinance or by permit.

### 3.1.2 State Responsibility

The State of Hawai‘i plays the preeminent role in managing natural resources. The Department of Land and Natural Resources (DLNR) controls and manages the forest reserves, natural area reserves, and state parks. In addition to their value as forested watershed, these lands also harbor rare and endangered plant and animal species and areas where the native ecosystem remains relatively intact.

The DLNR also exercises regulatory authority over land use in the State Conservation District, which covers 55 percent of the island’s land area. As shown on the islandwide Heritage Resources Map, the Conservation District encompasses the Nā Pali Coast and the mountainous interior of the island, as well as coastal mountains such as Mt. Hā‘upu and major river courses such as those of Waimea and Wailua. The State has also applied the Conservation District to strips of coastal lands, including almost all of the Polihale-Nohili-Barking Sands dunelands and the lands seaward of most of the coastal bluffs that fringe the North Shore. Anyone wishing to build a single-family residence or a radio tower or to undertake any other land use in the Conservation District must apply to the DLNR for permission.

Finally, DLNR plays other roles which are important in caring for natural resources and regulating uses.

- Through the Division of Boating and Ocean Recreation, the DLNR manages small boat harbors and regulates river and ocean commercial recreation activities.
- The DLNR’s Aquatic Resources Division regulates fisheries and advocates for aquatic and marine resources, especially native species and coral reef ecosystems.
- The Division of Forestry and Wildlife, in addition to managing Forest Reserves and Natural Area Reserves, also administers the State endangered species statute. DOFAW also manages the Na Ala Hele Trail System, Game Management Areas, and other uses of forest reserve lands.
- The State Historic Preservation Division administers the Hawai‘i Historic Preservation Act and staffs the island burial councils.
- The Commission on Water Resource Management, staffed by a division within DLNR, regulates the development of groundwater wells and diversion of streams.

In addition, the State controls the Public Land Trust, which includes ceded lands and submerged lands. These constitute most of the forest reserves and all marine lands. DLNR has the primary responsibility in administering these lands.

In summary, the DLNR holds many responsibilities in caring for Hawai‘i’s special lands, waters, and cultural resources. In regulating land use on urban and agricultural lands, the County seeks expert advice from DLNR on aquatic and marine resources, streams, rare and endangered species, and historic and archaeological resources.

## 3.2 SCENIC VIEWS

The Heritage Resources Maps show in light green important landforms that have ecological, recreational, cultural and scenic value. Landforms include mountains, hills, stream valleys and gulches, high cliffs and bluffs. As described above, most of these features lie within the State Conservation District, where land use is regulated by the State DLNR. Other lands lie within County jurisdiction and are generally designated as Open on the GP Land Use Map.

### 3.2.1 Policy

- (a) In developing public facilities and in administering land use regulations, the County shall seek to preserve scenic resources and public views. Public views are those from a public place, such as a park, highway, or along the shoreline.
- (b) The County shall observe the following general principles in maintaining scenic resources:
  - (1) Preserve public views that exhibit a high degree of intactness or vividness.
    - “Intactness” refers both to the integrity of visual patterns and the extent to which the landscape is free from structures or other visually encroaching features.
    - “Vividness” relates to the memorability of a view, caused by contrasting landforms which create striking and distinctive patterns. (Examples are the silhouette of Mt. Hā‘upu against the horizon, views of Nounou Mountain from the valley and the coast, and the view of Hanalei Valley from the overlook.)
  - (2) Preserve the scenic qualities of mountains, hills and other elevated landforms, qualities such as the silhouette against the horizon and the mass and shape of the landform.
  - (3) Preserve the scenic qualities of lowland/open space features, such as the shoreline, the edge of a coastal bluff, a marsh, a fishpond, or a historic or cultural property. Structures should not impede or intrude upon public views of the feature and should not alter the character of the immediate area around the land feature, historic or cultural property.

### 3.2.2 Rationale

Kaua‘i is known for the beauty and the great variety of its landscape. The native Hawaiian culture is intimately linked to physical places, many of which have a special significance in relation to a particular god, legend, song, or historical occurrence. In addition, these land features, some of which can be seen from many places around the island, attract visitors to Kaua‘i and therefore have substantial economic value. The Hawaii State Plan, the Coastal Zone Management Act, and many other statutes and regulations explicitly call for preserving natural landscapes and views.

Views of important mountains and other features should be safeguarded because of their cultural value, their value in residents’ quality of life, and their economic value to the visitor

industry. As discussed herein, the intent is to preserve public views – i.e., views seen from a park, the beach, a road, or some other public place. The term does not include private views – i.e., views from one’s residence or other private property.

As an example, consider a hill which is an important landmark for residents in the surrounding community and possibly for fishermen as well. If a person purchased the land and built a house high up on that hill, he would have a dominating view. But the owner’s private view would be achieved at the expense of many other residents’ and visitors’ enjoyment and appreciation of the landscape. Of course, the owner should be able to build a house on property he purchased for that purpose. But he should not be allowed to site his house so that it interferes with an important local landmark. Instead, the County should provide clearly-stated land use regulations that require a formal view analysis and placement of structures in locations that do not have a significant impact on public views.

### **3.2.3 Implementing Action**

The Planning Department shall prepare amendments to the CZO, Special Management Area Rules, and the Subdivision Ordinance to provide specific criteria and guidelines for evaluating and protecting scenic views in the siting of new development.

## **3.3 HISTORIC AND ARCHAEOLOGICAL RESOURCES**

### **3.3.1 Overview**

As stated in the Vision, the people of Kaua‘i value their cultural and historic places and traditions. Many individuals and organizations care for these resources on a daily basis. Here are some examples: taking care of a heiau; organizing a Bon dance; cultivating taro in ancient taro lo‘i; interpreting historic sites to visitors; restoring historic buildings; attending an exhibit of Kaua‘i artists at the Kaua‘i Museum. Historic and cultural resources help to give Kaua‘i its unique identity – to establish a “sense of place.”

Historic preservation has become increasingly important to the visitor industry and therefore to the Kaua‘i economy. Today’s sophisticated, higher-spending visitors seek out historic and cultural sites and activities. Examples include Wailua-Nui-A-Ho‘āno, a complex of five major heiau in Wailua River State Park; restored historic buildings such as the County Building and the Wai‘oli Mission Complex; and other historic structures such as the Hanalei Bridge. Preservation of historic plantation town architecture in towns such as Kapa‘a and Kōloa creates a “sense of place” appreciated by both residents and visitors. The West Side “Sugar Corridor” puts together landscape elements, buildings, mill operations and other features to tell the continuing story of sugar cultivation and processing on Kaua‘i.

The Hawai‘i Historic Preservation Act (HRS Chapter 6E) mandates the Department of Land and Natural Resources (DLNR) to administer a comprehensive historic preservation program throughout the state. The lead agency for all aspects of historic preservation, archaeology, and burials is DLNR’s Historic Preservation Division (SHPD). The SHPD is staffed with archaeologists, architects specializing in preservation, and professionals knowledgeable about Native Hawaiian culture.

To provide local guidance on historic preservation issues, the County adopted Ordinance No. 496 creating the Kaua'i Historic Preservation Review Commission (KHPRC). Appointed by the Mayor with staff support by the Planning Department, the KHPRC advises the Planning Department and the Planning Commission on permits and government projects that involve historic sites, structures or districts. The Commission typically coordinates project reviews with the SHPD.

Fulfilling one of the goals of the 1984 General Plan, the KHPRC oversaw preparation of the *County of Kaua'i Historic Resources Inventory and Management Plan*, published in 1990. The Plan provides a large number of recommendations concerning County zoning review practices, Commission operations, and incentives for care and rehabilitation of historic properties.

The Heritage Resources Maps show important historic sites, including those listed on the National Register and the Hawai'i Register of Historic Places. In addition, the Heritage Maps show major existing taro-growing areas, non-Register heiau sites, and historic town districts. Currently, Kaua'i has 30 archaeological sites and complexes and 26 historic buildings listed on the National Register, the Hawai'i Register, or both. There are also listings for historic objects and historic structures, such as the Hanalei Pier. Many more sites in all categories are considered to be eligible or potentially eligible candidates for National or Hawai'i registration.

### **3.3.2 Policy**

#### **3.3.2.1 Historic and Archaeological Sites**

Preserve important archaeological and historic sites and provide: (1) a buffer area between the site and adjacent uses; and (2) public pedestrian access, as appropriate to the site.

#### **3.3.2.2 Historic Properties**

- (a) Maintain and periodically update the County of Kaua'i Historic Resources Inventory.
- (b) Modify County zoning and building regulations to provide incentives for rehabilitating historic structures that are on the National Register or Hawai'i Register or that are classified as "contributing element" of a County Historic/Cultural Special Treatment District (ST-C), the Lihu'e Town Core Special Area, or Kapa'a Special Planning Area A.
- (c) Provide a real property tax exemption for historic properties, including commercial properties.
- (d) Where necessary to preserve historic town architecture, establish an historic district as an overlay to zoning. Reduce the burden on property owners by providing clear design guidelines and streamlined permit procedures.
- (e) Establish a low-interest revolving loan fund for rehabilitation of historic properties.

#### **3.3.2.3 Archaeological Resources**

- (a) In order to prevent destruction of archaeological sites, prepare a set of predictive maps identifying areas that have potential archaeological resources or burials. Inform

government agencies and permit applicants engaged in land development projects about potential resources, as well as about requirements for survey and discovery.

- (b) Educate planners, attorneys, and other individuals involved in land development and sales about laws concerning land titles, kuleana properties, water rights, access rights, and other rights in land and water that are unique to Hawai‘i.
- (c) Educate construction companies and workers about regulations concerning discovery and reporting of archaeological resources or burials.

### **3.3.3 Rationale for Policy**

Only a very small portion of Kaua‘i’s land area has ever been surveyed for archaeological resources. Currently, the Planning Department works in conjunction with the Kaua‘i Historic Preservation Review Commission and the State Historic Preservation Division (SHPD) to require that applicants evaluate sites for archaeological resources and provide a plan for preserving or salvaging any important sites. Public agencies and applicants whose project is subject to State environmental assessment, typically hire a professional archaeologist to investigate and prepare a report.

Nevertheless, both SHPD staff and Kaua‘i Burials Council members report that archaeological resources or burials are often discovered unexpectedly during construction. Resources and burials are damaged or destroyed when the builder does not know or chooses to ignore the proper monitoring and notification procedures.

Predictive maps would show the general areas where archaeological resources might be present. They would provide useful information to government agencies and real estate professionals in screening sites and anticipating environmental assessment and permit requirements. The State’s professional archaeologists have the knowledge to develop such maps.

In addition, the maps could be used as a “check-off” item in reviewing building and grading permits, ministerial (over-the-counter) zoning permits, and road and utility repair orders involving excavation. If a check of the “Archaeological Resource Potential” map showed that a site had a high potential for burials or subsurface archaeological deposits, the County permit-granting agency could stamp a warning on the permit and attach relevant instructions about discoveries. Notice of such permits could be forwarded to the SHPD for information and follow-up. Neither of these steps would require significant additional County staff effort, nor would they add time to the permit process.

### **3.3.4 Implementing Actions**

#### **3.3.4.1 Historic Properties**

- (a) The Planning Department shall prepare and submit an amendment to the CZO to broaden the type of uses that may be allowed under a use permit in an historic structure. For example, the owner of an historic structure in a Residential zoning district could apply for a permit to use the structure as an inn, as offices, or other uses that are not generally permitted.

- (b) The Department of Public Works shall prepare and submit an amendment to the Building Code to provide relief from code compliance in the renovation of historic structures, as recommended in the *County of Kaua‘i Historic Resources Inventory and Management Plan*.
- (c) The Finance Department shall prepare and submit an amendment to the real property tax ordinance that provides a tax exemption for commercial historic properties.
- (d) The Planning Department, in conjunction with the Office of Economic Development, shall study the market, costs, sources of funding, and operational feasibility of developing an islandwide low-cost rehabilitation loan program for historic structures.

#### **3.3.4.2 Archaeological Resources**

- (a) The State Historic Preservation Division should prepare “Archaeological Resource Potential Maps” for Kaua‘i, with assistance and input from the Kaua‘i Historic Preservation Review Commission (KHPRC), the Kaua‘i Planning Department, and the Kaua‘i Burials Council.
- (b) In addition to meeting State environmental assessment requirements, each responsible County agency shall develop procedures to screen capital improvement projects and repairs for potential archaeological resources and take appropriate action to survey the site prior to construction and/or to monitor excavation.
- (c) Once “Archaeological Resource Potential Maps” become available, the Planning Department or the Department of Public Works shall screen land use, grading, and building permit applications for potential resources; notify applicants when there is potential for discovering resources; and provide relevant instructions for assessment, construction monitoring and resource discovery.
  - (1) For zoning or land use permit applications, applicants shall meet environmental assessment and application requirements under State and County regulations. This involves review by the State Historic Preservation Division and, where warranted, a formal investigation and report by a professional archaeologist.
  - (2) For grading, building, and other ministerial permits, the responsible County department shall notify each applicant whose site has potential archaeological resources, provide relevant information, and provide notification of each permit granted to the State Historic Preservation Division. The intent is to provide the applicant early notice and information and notify the SHPD in a way that does not increase application requirements or processing time.
- (d) The State boards and commissions that license occupations relating to transfer of land ownership and land development should require applicants to demonstrate knowledge of (1) Hawaiian land and water laws and rights and (2) archaeological resource and burial regulations. They include the Real Estate Commission, the Board of Registration for Professional Engineers, Architects, Surveyors and Landscape Architects, and the Board of Registration for Contractors.

## 3.4 WATERSHEDS, STREAMS AND WATER QUALITY

As stated in the Vision, the modern concept of watershed management mirrors the Native Hawaiian land use principles and practices under the ahupua‘a land divisions. Like the modern concept of “watershed,” the ahupua‘a recognizes the integral connection among land-based, stream-based, and ocean-based resources and activities.

Watersheds are affected by natural events and human activities that cause changes in land and in the flow of water from the high mountains to the ocean. Current Federal and State clean water programs are targeting “nonpoint source pollution control,” with specific emphasis on protecting coastal waters from polluted runoff. County agencies fulfill particular functions in a network of regulations and agencies that control polluted runoff

### 3.4.1 Overview

Three federal laws relating to nonpoint pollution are currently driving new planning, management, and regulatory activities at the State level:

- Sec. 319 National Nonpoint Source Management Programs (Clean Water Act)
- Sec. 401 Water Quality Certification (Clean Water Act)
- Sec. 6217 Coastal Nonpoint Pollution Control Programs (Coastal Zone Management Act Reauthorization Amendments)

The State has the lead role in carrying out federal water quality mandates, with the current major emphasis being control of polluted runoff. The State CZM Office and the DOH are currently collaborating on planning for polluted runoff and protection of water quality. In the future, the State intends to join its CZM and Polluted Runoff plans into a single unified document. Rather than operate a statewide nonpoint pollution control program, the DOH is seeking to strengthen existing county and agriculture programs and regulations and to bring together current programs and agencies in a coordinated network.

#### 3.4.1.1 Nonpoint Pollution on Kaua‘i

Nonpoint source discharges have a greater impact on streams and nearshore waters than point source discharges (i.e., a discharge from a pipe, ditch or other specific source). Nonpoint pollutants primarily consist of sediments from eroded soils; nutrients, and toxic chemicals. Sediments increase turbidity in coastal waters and can accumulate on coral reefs and other critical habitats. Nutrients, including fertilizers, can lead to eutrophication in coastal waters. Toxic chemicals, including metals, petroleum-based products, and pesticides can pose a risk to water quality and marine plants and animals.

As stated in the Hawai‘i Coastal Nonpoint Pollution Control Management Plan (1996), land-based activities are the source of most pollution problems. Activities generating pollution are categorized as agriculture; forested lands; urban areas; marinas and recreational boating; and “hydromodification” – i.e., channelization of streams, dams, and streambank and shoreline erosion. According to the Plan, “Storms and heavy rains generate runoff which picks up the nonpoint sources of pollution associated with these activities, and carries them downstream to the coastal waters.” Coastal pollution is increased when “land-based activities degrade

wetlands and riparian areas that would otherwise absorb and filter polluted runoff before it reaches coastal waters.”

The DOH report “Hawai‘i’s Water Quality-Limited Waters: The 1997 Assessment,” catalogues polluted water bodies that are targeted for additional water pollution controls and management programs. The report focused on perennial streams and coastal waters. Four bays and five perennial streams were found to be impaired; the study also lists five major streams or rivers that do not have impaired water quality, including Hanalei River and Wailua River. Impaired water bodies are listed in Table 3-1.

<b>Stream or River</b>	<b>Coastal Waters</b>
Kapa‘a Stream	<i>no impairment</i>
Hanamā‘ulu Stream	Hanamā‘ulu Bay
Nāwiliwili Stream	Nāwiliwili Bay
Hanapēpē River	Hanapēpē Bay
Waimea River	Waimea Bay

Responding to EPA directives, DOH’s has launched a program to demonstrate “unified watershed assessment and management.” The 1998 DOH report “The Hawai‘i Unified Watershed Assessment” assessed watersheds (including coastal waters), and ranked them in terms of their priority for restoration. Category I –Watersheds In Need of Restoration” includes (1) Nāwiliwili Bay and coastal waters, including the three tributary watersheds of Nāwiliwili, Pū‘ali and Hulē‘ia; (2) Waimea Bay and coastal waters, including the tributary watersheds of Waimea, Kapilimao, Waipao, A‘akukui and Mahinauli; and (3) Hanapēpē Bay and coastal waters, including the Hanapēpē River and watershed.

DOH selected the Nāwiliwili Bay unified watershed as one of five statewide “Category I/Priority Watersheds” for which federal funding would be made available. DOH has contracted with the East Kaua‘i Soil and Water Conservation District to undertake the detailed assessment of the Nāwiliwili Bay watershed. This will result in the development and future implementation of watershed restoration strategies. Hanamā‘ulu was included among DOH’s Category II watersheds.

A key concern is the long-term organizational structure for watershed management. Each restoration project will develop and draw upon a network of government and community-based organizations. But it is unclear which agency or organization will accept responsibility and be funded to coordinate restoration and management over the long term, or how such an agency would function within the existing management network.

### **3.4.1.2 County Role**

As set forth in the Hawai‘i Coastal Nonpoint Pollution Control Management Plan, County agencies play the lead role in management of nonpoint pollution in urban areas. In other geographic areas and management categories, State and other agencies play the lead role.

The County has primary authority for lands within the State Urban District, which consists of the most intensely developed parts of Kaua‘i – about four percent of the total land area. This is where the County exercises full regulatory authority over zoning and construction.

With advice from the Planning Commission, the County Council adopts the General Plan, the CZO, and zoning maps. Staffed by the Planning Department, the Planning Commission administers zoning and land use permits. A primary purpose of both zoning and land use permits is to regulate the location and intensity of development to avoid environmentally sensitive areas and negative environmental impacts.

The Department of Public Works administers the Flood Control Ordinance, the Drainage Ordinance and the Grading, Grubbing and Stockpiling Ordinance – all of which are related to actual construction activities. The subdivision ordinance controls the design and layout of subdivisions, which is a key element in minimizing drainage and erosion impacts. Subdivision permitting is staffed by the Planning Department, with heavy participation from the DOW and the DPW; decisions are made by the Planning Commission.

In the Agriculture District, the County shares zoning jurisdiction with the State (primary zoning standards are set by State statute). Management of grading activities on agricultural lands is delegated by the County Grading Ordinance to the Soil and Water Conservation Districts (State-sponsored volunteer panels, staffed by the USDA).

The County has no authority within the State Conservation District, which includes the mountainous parts of the island, some coastal lands, and all submerged lands – over 55 percent of Kaua‘i’s land area. Management of these areas as well as of stream and ocean waters is delegated by statute to the State Board of Land and Natural Resources and the State Commission on Water Resource Management. State and federal agencies exercise lead responsibility in the nonpoint pollution control categories of forested lands, hydro-modification, and marinas and recreational boating.

### **3.4.2 Policy**

In developing County roads and drainage facilities and in administering the grading, flood control, and drainage regulations, the County of Kaua‘i shall carry out the following policies.

(a) New Development

- (1) Reduce average annual post-development sediment in runoff (total suspended solids), so that it is no greater than pre-development levels.
- (2) Maintain post-development peak runoff rate and average volume at levels similar to pre-development.
- (3) Work with other government agencies and community organizations to seek ways of reducing all types of nonpoint source water pollutants.

(b) Site Development. Plan, design and develop sites to:

- (1) Protect areas that provide important water quality benefits – i.e., wetlands;

- (2) Protect areas that are particularly susceptible to erosion and sediment loss – i.e., stream banks;
  - (3) Promote the use of permeable surfaces for driveways and parking and limit increases of impervious areas;
  - (4) Limit land disturbance activities such as clearing and grading, and cut and fill to reduce erosion and sediment loss; and
  - (5) Avoid disturbance of natural drainage features and vegetation.
- (c) Construction Site Erosion and Sediment Control
- (1) Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction.
  - (2) Prior to land disturbance, prepare and implement an approved erosion and sediment control plan or similar administrative document that contains erosion and sediment control provisions.
- (d) Watershed Management
- (1) Manage land use and earth-moving activities from the standpoint of the entire watershed, considering important characteristics such as scenic landscape features, historic sites, native species of plants and animals, and other special resources.
  - (2) Specify relevant best management practices as a condition of approving land use permits that affect stream corridors.
  - (3) Collaborate with State agencies (Office of Planning, DLNR, DOH), federal agencies (U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service), and community organizations (e.g., Soil and Water Conservation Districts) in order to plan and manage watersheds.

### **3.4.3 Implementing Actions**

- (a) The Planning Department shall revise the Comprehensive Zoning Ordinance and the Subdivision Ordinance as needed to implement the policy and shall utilize the policy to guide the granting of land use permits. In particular, the Department shall review and revise the Drainageway Constraint District to provide overlay regulation protecting stream and wetland riparian areas and floodplains.
- (b) The Department of Public Works shall implement the policy in revising the County’s Drainage Standards and preparing a Drainage Ordinance. The DPW shall also review and revise the Grading, Grubbing and Stockpiling Ordinance as needed to implement the policy; and shall utilize the policy to guide the granting of site development and construction permits.
- (c) The Department of Public Works shall maintain effective coordination with the Soil and Water Conservation Districts, in order to ensure enforcement of the Grading Ordinance.

### 3.5 COASTAL LANDS

Coastal lands have unique qualities and environmental conditions that warrant special consideration in land use planning and regulation. The special nature of coastal lands has been recognized in the federal coastal zone legislation, the Hawai'i Coastal Zone Management Act, and the County Special Management Area Rules and Shoreline Setback Rules. Following are key factors that need to be considered when planning for coastal lands:

- Coastal lands are susceptible to physical change – especially those fronted by sandy beaches. Patterns of weather and oceanographic conditions cause lands to erode and/or accrete, sometimes seasonally, sometimes in cycles, and sometimes chronically over a period of years. Storm events or unusual swells can exaggerate or change conditions. Coastal erosion is normal and should be planned for.
- Coastal lands are susceptible to damage from typical winter storms, riverine flooding, tsunami, and hurricane storm surge. The Federal Insurance Rate Maps delineate flood hazard zones and elevations for severe events, defined as those having a one percent chance of occurrence in any given year. Coastal properties on Kaua'i suffered extensive damage from storm surge caused by the 1982 and 1992 hurricanes.
- Use of the beach and access to coastal waters are essential for fishing and other traditional food-gathering activities. Hawai'i law guarantees the public use of lands seaward of the shoreline.
- Shoreline lands are highly desirable for recreation activities, such as surfing, snorkeling and canoe-paddling. These activities are coastal-dependent, another reason why public access to and along the shoreline is critical.
- Coastal lands are needed for harbors – large commercial harbors for shipping and small boat harbors for other commercial and recreational uses. Harbors are critical to the economy.
- Coastal lands, especially those with sandy beaches, are preferred locations for hotels, other resort facilities, and residences because of their scenic and recreational qualities. Coastal lands command high real property values.
- Unique natural and cultural resources are often found on coastal lands. Natural resources include wetlands, river deltas, native coastal plants, and endangered waterbird habitat. Because the coastal plains were well used by the ancient Hawaiian culture, many heiau, burial sites, and other cultural sites may be found there.
- The coast is rich in scenic qualities and unique views. Important public viewpoints include public roads, parks and other public lands, and beaches and other public lands makai of the shoreline. Some of the most vivid views are along the coastline and across embayments, looking toward prominent landforms such as cliffs, headlands or coastal bluffs.

As mandated under the State CZM Act, the County has delineated the boundaries of the coastal Special Management Area on Kaua'i and has adopted regulations to manage development within the SMA. The SMA regulations have been effective in mitigating the effects of new development, particularly in preserving natural and cultural resources and providing permanent public access to the beach. The SMA regulations, however, do not supersede zoning; the SMA regulations state that development must be "consistent" with the General Plan and zoning. Since SMA permits must be consistent with zoning, it is important that coastal lands be zoned based on a policy of preserving natural, cultural and scenic resources and preventing hazards to structures and the coastal environment.

### **3.5.1 Policy**

- (a) Actively acquire shoreline lands and access-ways to shoreline areas for public use.
  - (1) Develop a land-banking program for acquiring shoreline lands and access.
  - (2) Adopt tax policies favorable to public shoreline access.
- (b) When developing public facilities or granting zoning, land use permits, or subdivision for development along the coast, the first priority shall be to preserve and protect sandy beaches.
  - (1) Strips of land along the shoreline that have been placed in the State Conservation District or in the County Open zoning district are intended to serve as a buffer from coastal erosion. Structures should be sited inland of these coastal buffers on lands that are appropriately zoned.
  - (2) When development is proposed along a sandy beach, hazards of long-term coastal erosion should be assessed and used to determine appropriate setbacks.
- (c) For coastal areas suffering erosion, promote and provide for beach re-nourishment in conjunction with property owners and the State Department of Land and Natural Resources. Discourage the construction of shoreline protection structures (seawalls, revetments).
- (d) Following are general guidelines for coastal development, including resorts and residential subdivisions, but excepting harbors and other uses which are specifically dependent on locating near the water:
  - (1) For resorts and other multi building complexes, transition from low building heights along the shoreline to taller buildings on the interior of the property (e.g., the Hyatt Regency).
  - (2) Provide an open, vegetated visual buffer between the shoreline and buildings.
  - (3) Provide a permanent pathway laterally along the coast, located in the buffer zone mauka of the shoreline (e.g., Waipouli Resort pathway).
  - (4) Maintain existing stands of trees or plant trees within the buffer zone, to provide sun and wind protection and to moderate the appearance of large buildings (e.g., Hyatt Regency, Kaua'i Coast Resort at the Beachboy).

- (5) Site buildings to preserve view corridors from roads or public places to the ocean and from the ocean mauka.
- (6) Provide public parking and convenient access to the ocean.

### **3.5.2 Rationale for Policy**

The policies are consistent with existing County policy as expressed in the Special Management Area regulations. The principles for coastal development also reflect the recommendations of the *Kaua'i Urban Design Plan*, prepared for the County in 1977.

The policies concerning preservation of sandy beaches and setbacks to allow for coastal erosion are consistent with the State DLNR's *Coastal Erosion Management Plan* (COEMAP, adopted by the Board of Land and Natural Resources in 1997). The intention is to provide adequate area for natural beach retreat during erosion episodes and especially in areas experiencing chronic erosion. If allowed to retreat naturally inland, the beach will be preserved. Structures built too close to the shoreline of a sandy beach may be threatened by erosion, causing the owner to build shore protection (a seawall). A seawall preserves private land at the expense of dry beach area. If the erosion persists, the dry beach – the area used by the public for walking, sunbathing, and other forms of recreation – may be entirely lost.

The County Comprehensive Zoning Ordinance (CZO) provides for “Shore Districts” as one of six categories of Constraint Districts. Article 13 of the CZO provides both general and specific development requirements relating to marinas and shore protection structures. It also calls for preparation of a “Shoreline Treatment Zone Plan” to provide the basis for Planning Commission adoption of Shore Districts. The County has deferred preparation of the shoreline treatment plan and administers the Shore Districts based on the State-mandated 40-foot shoreline setback.

While development patterns have long been established in some coastal areas, others remain undeveloped. Areas that are developed should continue to be managed using the Shoreline Setback law, though the County should consider enlarging those setbacks in areas where there is evidence of chronic erosion and where it would be practicable to do so. In coastal areas that are as yet undeveloped, the County should take a more conservative position in zoning and permitting new development. In such instances, the County should require a buffer or structure setback that is based on coastal erosion potential over a long period, with reference to the recommendations of COEMAP.

### **3.5.3 Implementing Action**

- (a) Working with community organizations, the County shall develop a long-term program for acquisition of shoreline lands and access-ways to shoreline areas for public use. The County shall seek funding from the Federal and State governments and private sources.
- (b) The Planning Department shall review the Shore Districts article of the CZO in relation to the Special Management Area regulations and shall prepare amendments as necessary to implement the policies of the General Plan. In the review, the Planning Department shall take into consideration recommendations of the Federal Emergency Management Agency and the State Department of Land and Natural Resources concerning coastal lands.

## **3.6 NATIVE HAWAIIAN RIGHTS**

There is a statewide movement to restore Native Hawaiian rights and lands; to obtain reparations for past and ongoing use of trust lands; and to attain a sovereign Native Hawaiian government. It is important to set forth Native Hawaiian rights and to define the role of the County government vis-à-vis the State and Federal governments.

### **3.6.1 Policy**

Under the State Constitution and the County Charter, the County of Kaua‘i is empowered to promote the health, safety and welfare of all inhabitants without discrimination as to ethnic origin. As part of carrying out its responsibilities under the Constitution and the Charter, the County recognizes the rights of native Hawaiians and the laws concerning lands and waters that have been established through the State Constitution, State and Federal laws, and State and Federal court decisions. No County ordinance or rule shall modify or diminish these rights:

- Native Hawaiian water rights provided under the State Water Code, HRS Chapter 174C.
- Kuleana lands, water rights and access rights provided under the Kuleana Act of 1850, as recognized in current statutes, rules and court decisions.
- Konohiki and ho‘āina fishing rights provided under the 1839 Law of Kamehameha, as modified by subsequent legislative acts and court decisions.
- Traditional and customary rights of Native Hawaiians, such as for access and gathering, provided under the State Constitution and Hawai‘i Revised Statutes, as interpreted by the courts (i.e., the PASH case).
- Burial rights provided under the Hawai‘i Historic Preservation Act and the federal Native American Graves Repatriation Act.
- Preservation of historic properties and archaeological resources provided under the federal Archaeological Resources Protection Act of 1979; the National Historic Preservation Act of 1966; and the Hawai‘i Historic Preservation Act.

### **3.6.2 Rationale for Policy**

Native Hawaiians have special rights under federal law, the State Constitution, and State statutes. Federal and state court decisions interpret the laws and how they are to be applied. The laws and court decisions apply throughout every county of the State of Hawai‘i, and they are superior to county ordinances. The County of Kaua‘i must respect these laws, and it has no power to change them. In addition, there are special State and federal trusts which have been established to benefit Native Hawaiians.

Other federal and State laws safeguard important rights that apply to all citizens of the State of Hawai‘i. For example, federal and state constitutional provisions ensure freedom of speech and religion. State laws govern fee title to land; and State laws and court rulings define riparian rights, appurtenant rights, and other rights in water. Still other laws preserve the

shoreline area for public access and use. All of these laws are also superior to county ordinances and cannot be changed by the counties.

These rights affect county government. For example, the County must allow construction of a house on a kuleana house site, regardless of County zoning. In developing new water sources, the Kaua'i Water Board must respect and provide for both (a) riparian and appurtenant uses of stream water and (b) Native Hawaiian rights to water. In administering zoning and other land use regulations, the County must recognize traditional and customary access and gathering rights. In compliance with State statutes on historic preservation and coastal zone management, the County requires land use permit applicants to conduct archaeological surveys and to protect archaeological sites and burial sites.

While it appears that some change will occur to reestablish Hawaiian self-government, the form of Hawaiian sovereignty is undecided at this time. While it would be inappropriate to adopt specific policy on sovereignty, the County will maintain a basic philosophy of cooperation and negotiation between the County government and a future Native Hawaiian sovereign government.

### **3.6.3 Implementing Action**

State boards and commissions that license professions relating to transfer of land ownership or land development should require applicants to demonstrate knowledge of Hawaiian land and water laws and rights as a prerequisite for licensing or professional registration. These include, at minimum, the Real Estate Commission and the Board of Registration for Professional Engineers, Architects, Surveyors and Landscape Architects.