



PLANNING COMMISSION

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MEMORANDUM

DATE: December 13, 2021
TO: Planning Commission
FROM: Clerk of the Commission
SUBJECT: 1st Addition to the 10/12/2021 Planning Commission Agenda

M. NEW BUSINESS (For Action)

1. Philip J. & Linda M. Green
 - c. Supplement #7 to Planning Director's Report

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SUPPLEMENT #7 TO **PLANNING DIRECTOR'S REPORT**

RE: Class IV Zoning Permit Class IV-2022-1
Use Permit U-2022-1
Special Management Area Use Permit SMA(U)-2022-1

APPLICANT: PHILIP J. GREEN AND LINDA M. GREEN

Attached for the Planning Commission's reference is supplemental information as follows:

- a. Letter (12/5/2021) from Rohn Boyd.
- b. Letter (12/9/2021) from Mia Melamed.
- c. Letter (12/9/2021) from Michal Stover.
- d. Letter (12/10/2021) from Native Hawaiian Legal Corporation.
- e. Letter (12/11/2021) from Makaala Kaaumoana.
- f. Letter (12/11/2021) from Darcie Wilcox.
- g. Letter (12/12/2021) from Marissa Leimakanalani Ornellas.
- h. Letter (12/12/2021) from Mauiola Cook.
- i. Letter (12/12/2021) from Gregory Scott.
- j. Letter (12/12/2021) from Sarah Barger.
- k. Letter (12/12/2021) from Malia Frye.
- l. Letter (12/12/2021) from Kelvin Ho.
- m. Letter (12/12/2021) from Sarah Wright.
- n. Letter (12/12/2021) from Alexa Belmont.
- o. Letter (12/12/2021) from Gloria Estrella.
- p. Letter (12/12/2021) from Jonathan Kissida.
- q. Letter (12/12/2021) from Devin Forrest.
- r. Letter (12/13/2021) from Letani Peltier.
- s. Letter (12/13/2021) from Beryl Blauch.
- t. Letter (12/13/2021) from Erin Pickett.
- u. Letter (12/13/2021) from Mehana Vaughan.
- v. Letter (12/13/2021) from Kananaikahaku Kuhaulua.
- w. Letter (12/13/2021) from D. Kapua Sproat.
- x. Letter (12/13/2021) from Sharon Gottfried.
- y. Letter (12/13/2021) David Moore.
- z. Letter 912/13/2021) Na Kiai Nihoku.

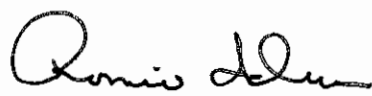
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Class IV Zoning permit Z-IV-2022-1
Use Permit U-2022-1
Special Management Area Use Permit SMA(U)-2022-1
Supplement #7 to Director's Report
PHILIP J. GREEN AND LINDA M. GREEN

M.1.c.

December 14, 2021

aa. Letter (12/13/2021) from Timothy H. Irons.

By 
Romio Idica
Staff Planner

Date: 12/13/2021

From: rohn boyd <rohnboyd@me.com>
Sent: Sunday, December 5, 2021 7:51 AM
To: Planning Department
Subject: LETTER IN SUPPORT OF SMA-2022-1 APPLICATION

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

SMA-2022-1

My name is Rohn Boyd and I am a long time resident of the north shore. I would like to clearly states that the onset that I support the right for all people to worship and conduct cultural practices. Having said that, I find the objections to the proposed residence to be the typical arguments and inflammatory rhetoric about size and scale that we have heard over and over on previous applications.

I formerly lived in Seacliff Plantation at the base of crater hill for many years. During my residency in Seacliff I made weekly trips (sometimes daily) to the top of crater hill. I very much enjoyed the peace and solitude of the refuge. In the 10 years that I lived in Seacliff I never once witnessed a single cultural practitioner. We've all heard this same argument for other high profile SMA applications over the years. In fact a condition was imposed on another nearby parcel 11 years ago to allow practitioners access to a certain portion of that property in perpetuity. Since that approval not one person has exercised their right to practice on that property over the past 11 years. Again i support the rights of people from all walks of life to practice their cultural rituals however using this argument to gain access or control someone's private property is overreaching. There's plenty of open space here on Kauai including Crater hill for folks to worship and practice. In fact practitioners have access to crater hill through a gate on Makana Ano Place to USFW (fish and wildlife) so why do they need access to other folks private property?

Another common tactic in arguments against many of these residential developments is the size of the residence. I saw this used against another application years ago and the tag line the opposition utilized against that applicant was that the house was the "same size as Walmart". These types of fictitious, inflammatory statements are utilized to create a sense of shock among community members which then incite opposition based upon false information. In fact for this very application there is an facebook page which falsely claims that the residence is 12,000 square feet when in fact the true square footage is less than 25% of the stated size. I urge the commission to act on true verified facts and not the coconut wireless fake news.

There's also mention of seabirds. Other than Nene there are no seabirds on the back side of crater hill. The birds reside on the windward side which allows them to leverage the headland winds for flight.

In closing I emphatically support this permit application SMA 2022-1 and all aspects of the design.

Thank you,

Rohn Boyd

From: Melamed, Mia <mia.melamed.researcher@hawaii.gov>
Sent: Thursday, December 9, 2021 10:13 AM
To: Planning Department
Subject: Petition for intervention on behalf of Nā Ki'ai o Nihokū

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Mahalo Honorable Kaua'i Planning Commission Members.

Nihokū is a vital place to the Kīlauea community of ecological and cultural significance. My name is Mia Melamed. I was born and raised by the mountains, valleys, and sea that collectively make up Kaua'i's north shore. I am a Habitat and Fish Monitoring Technician for the Kauai Division of Aquatic Resources. My decision to study natural resources environmental management in college was guided by the love and respect towards the environment I was raised by. Maintaining the ecological and cultural integrity of this land is critical in providing the means for our keiki to connect with and too form an affinity to protect and preserve. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I fully support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital.

Mahalo for your time and consideration.

Sincerely,

Mia Melamed

Mia B. Melamed
Habitat & Fish Monitoring Technician II
Division of Aquatic Resources - Kaua'i
State of Hawai'i Department of Land and Natural Resources
3060 'Eiwa St. Rm#306, Lihu'e HI 96766-1875

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Contacts:

Mobile: +1 (808) 651 2486
Office: +1 (808) 274 3344

From: Michal Stover <mfsleh@yahoo.com>
Sent: Thursday, December 9, 2021 10:14 AM
To: Planning Department
Subject: I support Na Kia'i o Nihoku's application for a contested case

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

This concerns Agenda Item 1. Continued Agency Hearing a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT (Z_IV-2022-1), and USE PERMIT (U-2022-1).

Mahalo Honorable Kaua'i Planning Commission Members.

Nihokū is a vital place to the Kīlauea community of ecological and cultural significance. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital.

This matter is important to me because I volunteered for many years at the Kīlauea Point National Wildlife Refuge to recreate native forest on Nihokū to improve native bird habitat.

Mahalo for your time and consideration.

Sincerely,

Michal Stover
Kīlauea, Kaua'i, Hawai'i



Native Hawaiian

LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
Phone (808) 521-2302 • Fax (808) 537-4268 • www.nativehawaiianlegalcorp.org



December 10, 2021

Ka'āina Hull
Planning Director
C/O Kaua'i Planning Department
4444 Rice Street
Līhu'e, Kaua'i 96766

RE: In the Matter of the Application of Philip J. Green and Linda M. Green, Trustee of the Philip J. Green, Jr. Trust, dated December 4, 2018, and the Linda M. Green Trust, dated December 4, 2018 for a Special Management Area Use Permit, a Use Permit, and a Class IV Zoning Permit for Sea Cliff Plantation Lot 11-A for development of the real property situated at Kilauea, Kaua'i, Hawaii, identified by Kaua'i Tax Map Key No. (4) 5-2-004:084 (CPR NO. 0001).

Aloha e Mr. Hull,

This letter is being submitted on behalf of Nā Kia'i o Nihokū ("the Hui"). As was discussed during an informal meeting on Monday, November 29, 2021, the Hui has considerable concerns regarding the building setback line that applies to the subject property, Lot 11-A, TMK No. (4) 5-2-004:084 (CPR NO. 0001) ("subject property"). Recently discovered public documents call into question the location of the setback line referenced in the Greens' permit application. Since our last meeting, we have conducted further research and continue to caution against a recommendation to approve the Greens' permit application without first confirming what setback line applies to the subject property. Without any evidence or information received to the contrary, the public record suggests that the setback line that applies to properties built on the slopes of Nihokū, including the Greens' property, should be different from the "Existing Building Setback Line" (described as a semi-circle area) referenced in Preliminary Recommendation No. 6 of the Supplement #6 to the Planning Director's Report (Amended) dated December 6, 2021 ("Planning Director's Report").

Numerous documents from a variety of sources support the conclusion that a different setback line should be employed by the Kaua'i Planning Department as the framework for the conditions it recommends in response to the Greens' permit application. First, a lower building setback line was established pursuant to the approval of Special Management Area permit in 1982. On February 10, 1982, the Kaua'i Planning Commission approved Special Management Area permit SMA(U)-82-2 ultimately resulting in a twenty-five (25) lot subdivision then known as "Crater Hill." One condition of the permit was a building setback line ("1982 setback line"). *See Findings of Fact, Conclusions of Law, Decision and Order*, attached hereto as Exhibit "A." The Greens' property is located within this subdivision. *See Site Plan with 1982 and 1994 setback lines*, attached hereto as Exhibit "B." Public records suggest that the conditions for the SMA(U)-82-2 permit, which includes the 1982 setback line, continue to apply today.

Second, an attempt in 2002 to apply a setback line other than the 1982 setback line to the lot immediately adjacent to the Greens' property appears to have been ultimately unsuccessful. In 2002, an application for the construction of a single-family residence on TMK No. (4) 5-2-004:085 was proposed. The application proposed that the structure would be located within a "1994 setback." On November 4, 1994, the Kaua'i Planning Commission had approved a permit for a master planned multi-property project involving a subdivision of three agricultural lots within the Crater Hill subdivision. That permit approval established a different setback line ("1994 setback line"), but included conditions such as the creation of a market lot, an agricultural lot, a community park lot, a school site, and a botanical garden. An August 27, 2002, Kaua'i Planning Department Staff Report, which contained findings in response to the 2002 project application, addressed the 1994 setback line noting as follows: "the conditions of approval of these [1994] permits have not been met, and the two year duration of the SMA permit as indicated in the County of Kauai SMA Rules and Regulations has expired. **Therefore the original 1982 setback line remains in effect**, and the applicant's structure should be located behind that 1982 line." (emphasis added). *See* "Staff Report," attached hereto as Exhibit "C." It is our understanding that this applicant subsequently withdrew their project application.

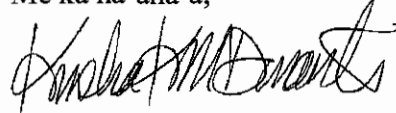
Third, a review of public records regarding the subject parcel – apart from the Greens' deed in 2019 – confirms the applicability of the 1982 setback line. The Quitclaim Deed from James Fields and Denise Gilmartin to Seacliff Kilohana LLC recorded in January 2017, the Seacliff Kilohana Declaration of Condominium Property Regime for Lot 11-A recorded in April 2017, and the First Amendment to Seacliff Kilohana Declaration of Condominium Property Regime recorded in June 2017 all reference the 1982 setback line as controlling. However, in 2019, the Greens' condominium unit deed from Seacliff Kilohana suddenly refers to the 1994 setback line. There is no document recorded with the Bureau of Conveyances ("BOC") that explains the change to the 1994 setback line in the Greens' 2019 deed.

Fourth, the Greens' deed for the subject property itself contains conflicting references to an applicable setback line. The Greens' deed references the 1994 setback line, but it also confirms that the property is subject to the terms and provisions contained in the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community as amended on December 28, 1988 ("1988 Amendment") and then on June 3, 2002 ("2002 Amendment"). *See* the Greens' Seacliff Kilohana Condominium Unit Deed, attached hereto as Exhibit "D." The 2002 Amendment references the 1988 Amendment, which specifically notes that "Lot[] 11 . . . in the Seacliff Plantation Community [is] subject to a building setback line which was approved by the County of Kauai in the said SMA(U)-82-2 on February 10, 1982 and as shown on the subdivision map approved by the County of Kauai." *See* 1988 Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, attached hereto as Exhibit "E." Nothing in the 2002 Amendment affected the 1982 setback line. *See* 2002 Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, attached hereto as Exhibit "F."

Finally, the deeds to all four lots east of the Greens' property – which are also located within the same subdivision – each reference the 1982 setback line. Public records through the BOC confirm that TMK No. (4) 5-2-004:085 owned by David Wilmot Trust, TMK No. (4) 5-2-004:086 owned by Serenity US LLC, TMK No. (4) 5-2-004:087 owned by Bruce Whale, and TMK No. (4) 5-2-004:088 owned by Ellen and Paul Barker Trust all reference the 1982 setback line as controlling. These deeds were recorded in 2014, 2020, 2018, and 2021 respectively. Without further information, it is difficult to reconcile how the 1982 setback line would apply to the properties immediately adjacent to the Greens' property and within the same subdivision, yet somehow not apply to the Greens' property.

For all these reasons, we urge the Planning Department to carefully evaluate and determine which setback line applies to the subject property particularly since Preliminary Recommendation No. 6 of the Planning Director's Report relies upon a setback line for the subject parcel. Absent confirmation of the controlling setback line, the parties' good-faith efforts to engage in any type of settlement negotiations are futile, and we welcome any information you may have that provides clarity to this issue. Mahalo in advance for your prompt attention to this matter.

Me ka ha'aha'a,

A handwritten signature in black ink, appearing to read "Kirsha K.M. Durante". The signature is fluid and cursive, with the first name "Kirsha" being more prominent.

Kirsha K.M. Durante, Esq.
Senior Staff Attorney
Native Hawaiian Legal Corporation

8. The subject property also known as "Crater Hill," is located in Kilauea, approximately 1,000 feet east of Kilauea Town; originally identified as Tax Map Key: 5-2-04:47 (now, Tax Map Keys: 5-2-04:74-101) and contains an overall area of 397 acres.

9. It is classified by the State as Agriculture and Conservation, with the latter being a 300-foot strip along the makai boundary. It is general-planned Agriculture and Open, while County zoning consists of approximately 200 acres of Agriculture and 180 acres of Open.
10. The makai boundary of the parcel is sheer cliffs of heights up to 500 feet. The southeast portion of the parcel drops to Kilauea Stream over "Open"-zoned lands with slopes greater than 20%. The southwest side of the hill descends to a relatively flat plateau and the "Ag"-zoned lands. (See Exhibit G).

PROJECT BACKGROUND

11. Since 1976 proposals have been received for development of the property. In all instances, concern has been expressed regarding the importance of seabird colonies and the unique landform and landmark characteristics of Crater Hill. The following chronology summarizes these applications:
 - a. October 1976 -- A subdivision and SMA permit application was submitted showing the majority of the lots located within the prime Agriculture-zoned portion of the property. The application could not be accepted until the applicant provided an environmental assessment which evaluated any impacts to seabird colonies and social, physical, and aesthetic impacts that could have resulted from the subdivision.
 - b. SMA(U)-79-2 - July 1979 -- An environmental impact assessment was prepared by the former owner (i.e., the 1976 applicant, Panorama Consortium), and an application was resubmitted for an SMA, Variance and Class IV Zoning Permit to create a 15-lot subdivision which included a 97+-acre lot along the ridge proposed for conveyance to the nature conservancy. The majority of the 14 lots were now proposed in the "Open"-zoned portion of the property. These applications were denied because of the following reasons:
 - 1) the impacts of a subdivision on the important seabird colonies and a unique landform and landmark;
 - 2) access, soil erosion and drainage problems were anticipated should the steep slope areas be subdivided;
 - 3) subdivision of the sloped areas should be restricted to prevent excessive cuts and fills and erosion and pollution of Kilauea Stream estuary;
 - 4) the application did not adequately address concerns of wildlife preservation, man-made encroachment on a natural landmark, erosion potentials on steep slopes and agricultural intent.
 - c. SMA(U)-80-1 - September 1979 -- The applicant reapplied for an SMA, Variance, and Class IV Zoning Permit to create a 2-lot subdivision with the boundary roughly following the Conservation District Boundary. Again, the 108+-acre parcel containing the seabird colonies was proposed for conveyance to the Nature Conservancy. Since the variance request was to allow resubdivision of the second lot, at the request of the Commission, the applicant submitted a proposed future 10-lot subdivision for the second lot. Again, serious concerns were expressed regarding wildlife preservation, man-made encroachments on a landmark, erosion potentials and agricultural intent. It was concluded that, as conveyance of the 108+-acre parcel to the Nature Conservancy would benefit the public and maintain the integrity of Crater Hill, the variance to resubdivide could be considered provided several restrictions relating to building setbacks and density controls were imposed.

The applicant requested to have the conditions modified or deleted and eventually withdrew the application because the Commission voted to follow staff's recommendations.

- d. SMA(U)-82-2 - October 1981 -- The applicant applied for a 14-lot subdivision and proposed to dedicate 90+ acres of the remnant parcel for a County Agricultural park. As the same concerns expressed in previous applications were raised, approval was subject to stringent conditions which included the building setback line and construction of a fence for wildlife protection. Prior to action, the applicant requested an amendment to the setback line condition and offered a compromise setback line. In response, the Commission readjusted the setback line to a third location and approved the application. Shortly thereafter, the applicant requested reconsideration of the action stating that location of the setback line was misunderstood and that if the line remained as approved, they would not be able to dedicate the 90 acres for the "Ag" park. Eventually, a fourth setback line "C" was agreed upon (see Exhibit F). However, to accommodate such, the applicant redesigned the subdivision from 14 lots to 25 lots, reduced the area for Ag park dedication from 90+ acres to 75+ acres and the applicable conditions of approval were revised to read as follows:

- "1) The proposed building limit setback line "C" shall be established on the ground and on the map at the time of subdivision review and approval in accordance to the criteria as presented in delineation of the setback line which is presently interpreted to be generally as shown (for SMA Permit purposes) on the map submitted by the applicant with the February 5, 1982, letter to the Planning Commission. More specifically, the criteria to be used are as follows:
- a) On the western portion of Crater Hill, the building limit setback line shall be such that no buildings shall penetrate the ridgeline horizon when viewed from Kilauea Town.
 - b) On the eastern portion of Crater Hill, the building limit setback line shall be such that no buildings appear to be placed any higher than the profile line of the flat land between Kuhio Highway and Crater Hill when viewed from the visible points along Kuhio Highway."
- 2) As represented by the applicant, with the adoption of building limit setback line "C" the Applicant shall: "...b) Fence the shoreline area of Crater Hill;..."

After several field trips by Planning staff, the Planning Commission, the applicant's engineer, and U. S. Fish and Wildlife representatives, both the building setback and fence lines were established (see Exhibit E - Subdivision Map - Red line).

12. On May 12, 1982, tentative approval for subdivision of the property was granted subject to several conditions. Condition #12 read as follows:
- "12. Prior to final subdivision approval and commencement of subdivision construction drawings design, the applicant shall establish on the ground, for verification by the Planning Department, those applicable setback lines and easements as discussed in this report and when SMA(U)-82-2 was approved. The final design of the subdivision including the final subdivision map shall be based using the said building limit lines as one of the controls in the layout of the lots and roadways."

The line was established and verified, and the 27-lot subdivision received final approval on August 15, 1983.

13. North Shore Development Plan Update

The Update recognizes Crater Hill as a "significant, scenic, ecological, and recreational resource" which "must be protected from incompatible land use." It further states that "the view of Crater Hill from the town center and Kuhio Highway should not be obstructed and that Crater Hill should remain without conspicuous man-made improvements." The plan recognizes that "an extremely valuable seabird habitat area exists along the steep sea cliffs in the Kilauea Lighthouse area from Kauapea Beach to Mokolea Point," and recommends that "important natural habitat areas for wildlife should be protected and enhanced."

As such, the Update proposes to place Crater Hill itself within the "Open/Special Treatment Resource" zone. The zoning line would follow the SMA line along the base of the hill.

APPLICANT'S PROPOSAL

14. By letter of August 27, 1984, the Applicant requested to have Condition No. 1 (relating to the building setback line) removed and to modify the location of the fence line. The applicant provided the following justification in part:

a. Relating to the building setback line:

- 1) "The siting of subdivision roads and the setback lines were based largely on topographic maps and field reconnaissance made under dense vegetative conditions. The applicant, engineer, and consultants believed the setback lines to be workable at that time.
- 2) As vegetation was cleared and roads developed, the location of the setback line could be surveyed and its physical location on the ground determined. It then became apparent that the setback line in relation to subdivision roads and natural topography was unreasonable, unworkable, and unrealistic.
- 3) The established setback line prohibits owners from selecting suitable and reasonable building sites based on natural topography. For example, the setback line restricts construction to the top of a large cut which resulted from roadway construction, or to areas of steeper slopes, instead of flat buildable areas.
- 4) The topography of the site will naturally dictate logical and feasible areas of building, and no setback is required. Practical engineering problems and prohibitive costs of access to higher, steeper elevations will dictate that construction on lots makai of the road be on lower, flatter areas.
- 5) Extensive restrictive covenants and conditions will sufficiently mitigate any visual impact caused by structures, alleviating the need for any setback line."

b. Relating to the fence line:

"A U.S. Fish and Wildlife service representative has indicated that the downward jog, which was intended to protect several bird nesting sites, is unnecessary and there would be no objection to continuing the fence line in a straight line."

15. At the September 26, 1984, public hearing, the Applicant withdrew his request to remove the jog in the fenceline and requested to establish a building setback criteria rather than remove the setback line. Specifically, he proposed:
 - a. in the vicinity of Lots 11-16, houses could be sited such that the peak of the roof would be no higher than the elevation of the fenceline; and
 - b. in the vicinity of the lighthouse (Lots 1,2,3 and remainder of Lot 9) houses could be built up the hill so long as the peak of the roof was not visible from the lighthouse (not above the orange line on the Applicant's Exhibit "A" attached).
16. The Applicant contends that the fenceline and 108+ acre remnant parcel prevents construction on the hill and that house sites further up the hill would be biologically acceptable to the bird wildlife provided roof peaks not extend above the fenceline.
17. The Applicant provided one witness, Mr. David Klages of Klages and Associates, an architecture and planning firm hired by the owner. Mr. Klages presented several renderings proposing reforestation to mitigate adverse visual aspects of structures higher up the hill. According to Klages, reforestation would provide an additional buffer for bird nesting areas, visually enhance the site, stop erosion, add privacy to homesites and screen homes from sensitive views. Vegetation can buffer buildings such that none appear to penetrate the ridgeline.
18. The owner claims that he has already contributed to the community in terms of an agricultural park dedication, bird sanctuary lot, predator fence for the birds and water system improvements.

INTERVENORS' CONCERNS

19. Intervenor Sproat and Boynton, along with witness Dr. David Moore, stated the following concerns:
 - a. Removal of the setback line will cause structures to protrude above the ridgeline when viewed from Kilauea Town. Homes could be built up to the fenceline.
 - b. Vegetation does not hinder or prevent accurate survey; and accurate topography map of the property was produced. The setback line was established on the ground first, then transposed to a map. The survey preceded the road construction. The fenceline, setback line and roadway locations were known prior to grading of roads.
 - c. If reforestation is undertaken, it should be coordinated with owners and be in keeping with existing trees and vegetation, however, it is questionable as to who would enforce such requirements. Reforestation could serve to screen roadway cut and house sites constructed in accordance with the building setback line as it exists today.
 - d. The subdivision lines were drawn in relation to the setback line and not the other way around. "The setback line is the given element in the approved plan--everything else was promised to be in correct relation to it."
 - e. The original SMA application repetitively refers to the setback line, preservation of view planes, or building on lower slopes to establish the acceptability and reasonableness of the Applicant's proposal. If the setback line is removed, the SMA permit should be retracted.

- f. The large road cuts which, in the Applicant's opinion, leave several lots with less desirable building sites, were made by the developer. The location was the Applicant's choice and was not mandated by any government agency.
 - g. Site topography and feasibility will not dictate buildable areas. Potential owners of the lots will pick the best site for views, etc. regardless of the added costs to build at higher elevations. Houses will dot the face of a scenic landmark.
 - h. Imposing restrictive covenants to mitigate visual aspects of homes doesn't work. It is highly unlikely that other homeowners will enforce or crackdown on violations.
 - i. If the setback line is further adjusted, they request that a re-evaluation of the Environmental Impact Statement requirements be made, the line adjustment be kept to a minimum, that the public receive something in return (e.g. no houses be visible from the lighthouse) and that a qualified professional group manage the refuge, or deed it over to the public.
- 20. Jerry Leinecke, Pacific Island Administrator for the U. S. Fish and Wildlife Service, testified that although alignment of house roof peaks with the fenceline would be biologically acceptable, he would be opposed to reforestation if it were not natural to the habitat. Also, if houses are lit up at night, shearwaters will fly into them.
 - 21. Letters or speakers in opposition to the proposed request were Kaipo Asing, representing the North Shore 'Ohana; Kelsey Maddox-Bell, representing the Kilauea Neighborhood Association; Clinton Anderson; Libert K. Landgraf, representing the State Department of Land and Natural Resources; Rick Scudder, Chairman of the Conservation Council for Hawaii; Gary L. Blaich, representing the 1000 Friends of Kauai; Beryl B. Blaich, JoAnn Yoshimoto, Barbara Morrison and a petition with 1,106 signatures.
 - 22. Jack Bennington spoke in support of the project.

PLANNING DEPARTMENT CONSIDERATIONS

- 23. In addition to the serious concerns for protecting a natural landmark and preservation of a bird sanctuary, the setback line was also established to prevent excessive cuts and fills during development and potential associated erosion. The previous re-establishment of the setback line further up the hill has permitted construction of the subdivision road at a higher elevation on steeper slopes, resulting in excessive cuts that reduced the size of the buildable area. Such proof indicates that the setback line is still needed for this reason in addition to preserving the scenic landmark and wildlife sanctuary. The line has been compromised and readjusted 4 times throughout the course of this application with the final location being submitted by the applicant and approved by the Planning Commission.
- 24. The setback line was established on the ground on the hill itself by a survey crew and not through aerial surveys whereby the accuracy could be affected by vegetation. Characteristic vegetation of Crater Hill is not of a dense impassable nature and should not have interfered with accurate field surveying of the site. The field survey with setback line, was then transposed to the base map and then the subdivision lines were drawn onto it. The problem could have occurred if the contours on the base maps were inaccurate whereby greater cuts than anticipated occurred on the ground during construction of the roadway.

25. Substitution to allow setback criteria as proposed by the applicant would permit structures on the higher slopes of Crater Hill. This would be contrary to the policies and guidelines of the SMA Rules and Regulations which stress protection and preservation of coastal scenic resources and ecosystems. For Lots 1-3 and remainder of Lot 9, siting of houses in conformance with the applicant's proposed criteria would allow houses closer to the bird nesting areas and could result in structures protruding over the ridgeline or profile of Crater Hill when viewed from Kilauea Town. The existing criteria, which prevent the roofs of structures from protruding above the profile of the Hill, is still valid in order to protect the integrity of the Hill as a landmark. Furthermore, maintenance of the existing setback line on these lots does not deprive the applicant of reasonable use of the lots since the buildable area on these lots is more than adequate. Regarding Lots 11-15, the final subdivision map showing the setback line indicated ample areas available for house sites, varying from 90' to 140' deep by 420' to 730' wide. Field measurements indicate that cutting of the road has reduced this area to almost half (in some cases) leaving a strip of buildable area varying from 46' to 118' deep, as indicated in the following chart:

Lot No.	DEPTH OF BUILDABLE AREA		Average
	Minimum	Maximum	
11	0	118'	73'
12	55'	118'	96'
13	55'	70'	67'
14	57'	80'	61'
15	46'	92'	69'

26. Of the above, we conclude that Lots 13 and 14 will be those mostly affected by the roadway cut being too close to the setback line. Lot 11 will have a triangular shaped buildable area with more than adequate space for a residence. Lot 12 also appears to have an adequate buildable area. Although Lot 15 has the narrowest distance to the setback line (46 ft.), the remainder of the lot has an 80 feet wide buildable area which is also adequate to accommodate a reasonable size residence. It is anticipated that homes constructed in this subdivision will be larger than average. Furthermore, engineering and safety problems may occur with a house being located too close to the roadway cut, and ample space, at least 10 feet, between the house foundation or wall line and the top of the road cut should be allowed for. This would further reduce the buildable area for Lots 13 and 14 to approximately 45 feet and 47 feet deep. For comparison purposes, a house 45 feet square would yield a floor area of 2,025 square feet, which is slightly larger than an average-sized home.
27. On this basis, it can be concluded that adequate buildable area still exists on these lots even with the building setback line located in its present position. It must be stressed that the reduction resulted because of the severe road cuts, which were designed and constructed with the applicant's full knowledge of the location of the setback line and the consequences thereof. The lots are still workable and another modification of the setback line is not justifiable.
28. If the building setback line is further compromised on Lots 11-15, structures would be permitted as proposed by the applicant on the original application of 1982 (SMA(U)-82-2). It was determined then that these sites were unacceptable and the setback line was established to limit structures to the base of the hill. Thus, to further compromise the setback line will defeat its original purpose and intent.

CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction over the application under provisions of Article XIV of the Kauai County Charter, Chapter 205-A of the Hawaii Revised Statutes, and the Special Management Area (SMA) Rules and Regulations of the County of Kauai.
2. The procedural requirements have been met, all interested persons and parties have been given due notice of the proceedings on this matter, and all interested persons and parties have been afforded the opportunity to present testimony, evidence, and argument on proposed amendments herein.
3. That the proposed amendment to the conditions of approval do not fully comply with Chapter 205-A of the Hawaii Revised Statutes and the Special Management Area Rules and Regulations of the County of Kauai in that:
 - a. Crater Hill is a unique, scenic landmark and a significant ecological resource within the coastal zone. Further compromising of the setback line and the criteria for such would negatively impact these resources and be contrary to the policies and guidelines of the SMA Rules and Regulations of the County of Kauai.
 - b. Approval of structures further up Crater Hill would go directly against the recommendation of the North Shore Development Plan Update.
 - c. The subdivision was designed around the setback line affording each lot ample buildable area. Construction of the roadway reduced this area, however, the applicant was fully aware of the location of the setback line on the ground and the impact of the roadway prior to construction of such.
 - d. There is still buildable area on each lot and adherence to the setback line and its criteria will limit the buildable area on few of the lots, but not deprive the applicant of reasonable use of the property.

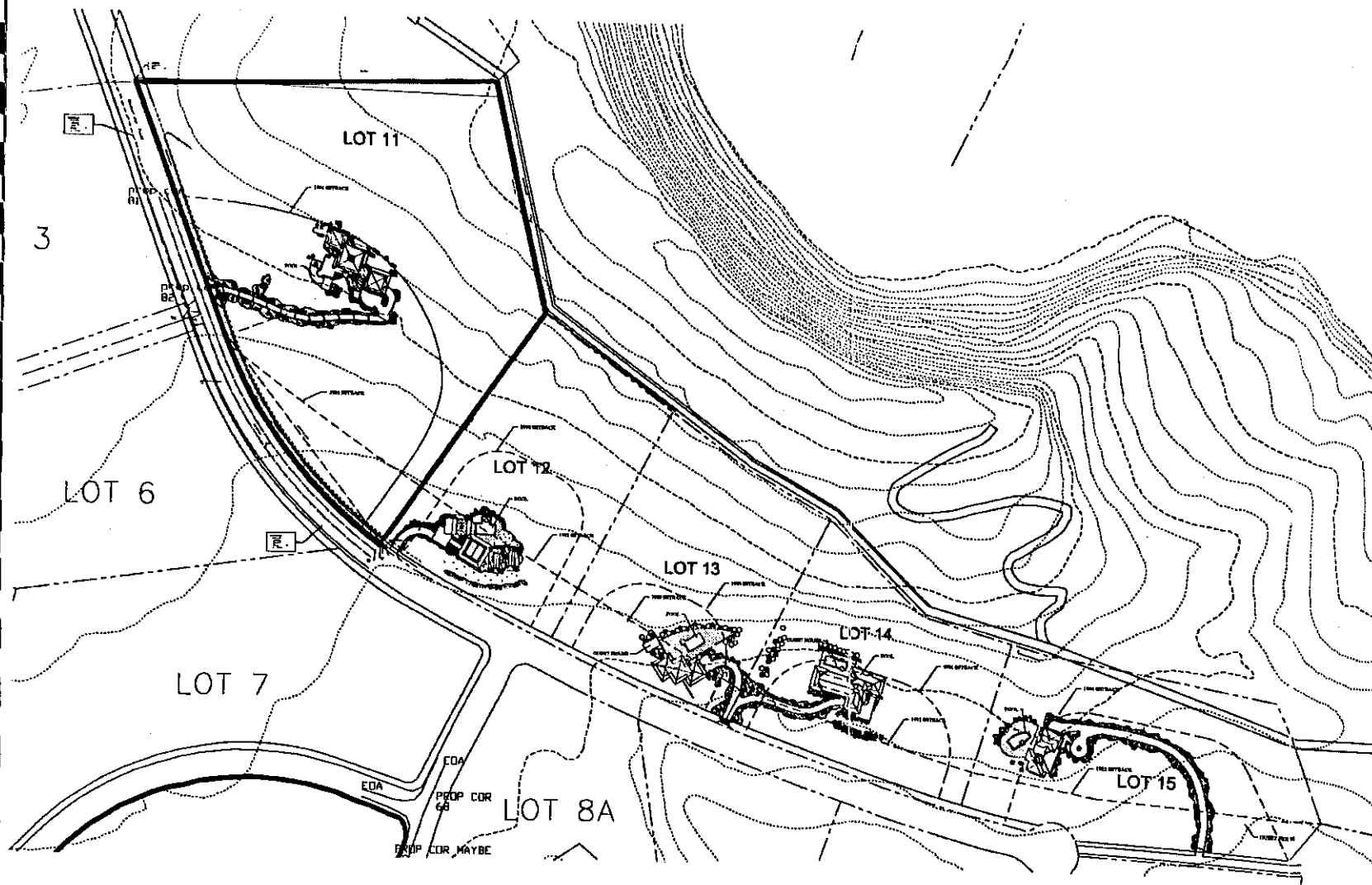
DECISION AND ORDER

On the basis of the Findings of Fact and Conclusion of Law contained herein, it is the Decision and Order of this Planning Commission that the proposed revisions to the conditions of approval for Special Management Area Use Permit SMA(U)-82-2 is not justified.

IT IS HEREBY ORDERED that the application for revisions to the conditions of approval for Special Management Area Use Permit SMA(U)-82-2 be denied pursuant to a motion duly passed by the Planning Commission on December 12, 1984, at Lihue, Kauai, Hawaii.

BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI, STATE OF HAWAII.

By *Robert Preston*
ROBERT PRESTON, Chairman
Planning Commission
Dated: 12/15/84



SITE PLAN
NOTE: SCALE 1"=100'

LOT 11 <small>AREA: 0.11 ACRES</small> <small>AREA: 0.11 ACRES</small>	
HORN PARTNERS ARCHITECTURE	
NEW SEACLIFF ESTATES, L.L.C. <small>P.O. BOX 170, NEW SEACLIFF, TEXAS 75825</small> <small>PROJECT NO. 1000000000</small>	
<small>DATE:</small> <small>BY:</small> <small>CHECKED BY:</small> <small>APPROVED BY:</small>	<small>DATE:</small> <small>BY:</small> <small>CHECKED BY:</small> <small>APPROVED BY:</small>
SCHEMATIC SITE PLAN A1.00	

**COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHU'E, KAUAI**

STAFF REPORT

HEARING DATE: August 27, 2002

PROJECT: Class IV Zoning Permit Z-IV- 2003-2
Use Permit U-2003-2

APPLICANT: New Seacliff Estates, LLC

FINDINGS

LOCATION: On the makai side of Makaano Place at its intersection with Pali Moana Place, in the Seacliff Plantation Subdivision in Kilauea

TAX MAP KEY: TMK:5-2-04:85

AREA: 5.239 acres

ZONING: Open/Special Treatment-
Resource (O/ST-R)

SLUD: Agricultural

GEN. PLAN: Agriculture

EXIST. USE: Vacant

I. ACTIONS REQUIRED:

A Use Permit is required for all uses, structures or development in a Special Treatment District except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures or land. A Class IV Zoning Permit is a procedural requirement when applying for a Use Permit within the Open (O) District.

II. PROJECT DESCRIPTION AND USE:

The applicant is proposing construction of a two story, 4,360 square foot single family residence with an 840 square foot garage, pool, and landscaping. The residence will have a maximum height of 25 feet as measured at all points of the building to the top of the roof. According to the application, proposed lot coverage is 6.8%. Access to the site will be from Makaano Place, via a gravel driveway.

The applicant has indicated that the exterior of the structure will be a light sand or beige/tan color, with brown stained cedar shingles for roof material. Landscaping will emphasize native species, with ornamental landscaping restricted to the areas immediately adjacent to the residence.

D.2.c.

AUG 27 2002

III. LEGAL REQUIREMENTS:

The requirements of Section 8-19.6 of the Kauai County Code pertaining to public hearing notification have been satisfied.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Please refer to application.

V. PROJECT SITE AND SURROUNDINGS:

The project site is located on former sugar cane lands, now covered primarily with grasses and scattered small trees and shrubs. The project site is located on the hillside above Makaano Place, and slopes moderately down to the road. The Kilauea Point National Wildlife Refuge is located immediately north of the subject property with the ocean beyond the refuge. Most other properties in the immediate vicinity to the south and east remain vacant, although several other residential developments are distributed throughout the subdivision.

Kilauea Lighthouse is located approximately 3,700 feet to the north, and Kilauea Stream and Bay are situated below the bluffs approximately 4,000 feet to the east. Kilauea town is approximately one mile to the southwest, with Kuhio Highway running generally east/west beyond the town.

AGENCY COMMENTS: (See Attachments)

The State Department of Health provided comments regarding wastewater disposal, construction activities, and use of best management practices.

The Fire Department had no comments.

The Department of Public Works indicated that a grading permit may be required, and requested grading plans with mitigating erosion control measures.

The County Department of Water will require approval of construction drawings for necessary water system facilities.

The State Historic Preservation Division stated that since intensive cultivation has altered the land, no historic properties will be affected.

ADDITIONAL FINDINGS:

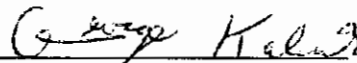
PROJECT SITING

On February 10, 1982, the Planning Commission approved Special Management Area SMA(U)-82-2 for what ultimately became a 25 lot subdivision then known as Crater Hill. The permit was approved subject to several conditions including establishment of a building setback line that resulted in the "1982 SETBACK" identified on the applicant's site plan.

The project application indicates that the proposed structure is to be located within an area identified as the "1994 SETBACK". The 1994 setback line was approved by the Planning Commission on November 4, 1994 as part of a master planned multi property project involving subdivision of three agricultural lots into market lots, ag lots, a community park lot, a school site, and a botanical garden lot, with the development of related infrastructure (see attached approval letter for Special Management Area Use Permit SMA(U)-94-14, Variance Permit V-94-16, Class IV Zoning Permit Z-IV-94-56, Amendment to Conditions of Approval SMA(U)-82-2). However, the conditions of approval of these permits have not been met, and the two year duration of the SMA Permit as indicated in the County of Kauai SMA Rules and Regulations has expired. Therefore the original 1982 setback line remains in effect, and the applicant's structure should be located behind that 1982 line.

If the applicant wishes to utilize the 1994 setback line, potential options include:

1. Reactivate the 1994 permit, which would require resubmitting the application for reevaluation by applicable agencies, and the Planning Commission.
2. Request that establishment of the 1994 setback line be considered as part of this application.
3. Request a modified 2002 setback line that would allow development in locations other than within the 1982 or 1994 lines.



George Kalisik
Planner

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED August 12, 2019 8:01 AM
Doc No A71630168
CONVEYANCE TAX: \$5,250.00

/s/ LESLIE T. KOBATA, Registrar
KEO 12

LAND COURT SYSTEM	REGULAR SYSTEM
After Recordation, Return by: Mail () Pickup ()	
OREXCO AS QI FOR PHILIP J. GREEN	TG: 201936366 -5
AND LINDA GREEN, TRUSTEES	TGE: 24219132006
P O BOX 86	Glenda Matsushima
KILAUEA HI 96754	12 pages
	RS

TYPE OF DOCUMENT:

SEACLIFF KILOHANA CONDOMINIUM
UNIT DEED

PARTIES TO DOCUMENT:

GRANTOR: SEACLIFF KILOHANA, LLC, a Hawaii limited liability company

GRANTEE: PHILIP J. GREEN, JR. and LINDA M. GREEN, Trustees of the Philip J. Green, Jr. Trust dated December 4, 2018; and LINDA M. GREEN and PHILIP J. GREEN, JR., Trustees of the Linda M. Green Trust dated December 4, 2018
P. O. Box 86, Kilauea, Hawaii 96754

TAX MAP KEY FOR PROPERTY:

(4) 5-2-004-084

CPR No. 0001

Unit No. 1

SEACLIFF KILOHANA CONDOMINIUM
UNIT DEED

THIS INDENTURE, made this 7th day of August, 2019 by and between SEACLIFF KILOHANA, LLC, a Hawaii limited liability company, whose mailing address is 3762 Keli'i Place, Princeville, Hawaii 96722 (hereinafter referred to as the "Grantor"), and PHILIP J. GREEN, JR. and LINDA M. GREEN, Trustees of the Philip J. Green, Jr. Trust dated December 4, 2018; and LINDA M. GREEN and PHILIP J. GREEN, JR., Trustees of the Linda M. Green Trust dated December 4, 2018, both of whose mailing address is P. O. Box 86, Kilauea, Hawaii 96754 (hereinafter referred to as the "Grantee");

WITNESSETH:

That the Grantor, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by the Grantee, receipt whereof is hereby acknowledged, and of the promises and covenants hereinafter set forth and on the part of the Grantee to be faithfully observed and performed, does hereby grant, bargain, sell and convey unto the Grantee, as tenants in common, in the following proportionate shares:

An undivided fifty percent (50%) interest to PHILIP J. GREEN, MR. and LINDA M. GREEN, Trustees of the Philip J. Green, Jr. Trust dated December 4, 2018, their successors in trust and assigns, 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, convey, exchange, partition, mortgage, lease, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the their sole judgment and discretion; and

The remaining undivided fifty percent (50%) interest to LINDA M. GREEN and PHILIP J. GREEN, JR., Trustees of the Linda M. Green Trust dated December 4, 2018, their successors in trust and assigns, 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, convey, exchange, partition, mortgage, lease, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the their sole judgment and discretion.

The following described property, 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:

That certain unit and common interest comprising a portion of the Seaciff Kilohana Condominium Property Regime (hereinafter referred to as the "Project"), as established by the Seaciff Kilohana Declaration of Condominium Property Regime dated March 31, 2017, and recorded at the Bureau of Conveyances of the State of Hawaii (hereinafter referred to as the "Bureau") as Document No. A-63160587, as amended by that certain First Amendment to Seaciff Kilohana Declaration of Condominium Property Regime dated June 9, 2017, and recorded in the Bureau as Document No. A-63730575, and as the same may be further amended from time to time (hereinafter referred to as the "Declaration"). The

Project consists of that certain parcel of land situate at Kilauea, Kauai, Hawaii, and more particularly described in Exhibit "A" attached hereto and expressly made a part hereof, and in said Declaration, together with the improvements located thereon, as more particularly described in said Declaration. The unit and common interest constituting the premises hereby conveyed are more particularly described as follows:

FIRST:

Unit 1 of the Project as described in the Declaration and as shown on the plans thereof recorded in the Bureau as Condominium Map No. 5643, as the same may be amended from time to time (hereinafter referred to as the "Condominium Map"), together with the limited common elements and rights and easements appurtenant to said unit as established by and described in the Declaration.

SUBJECT to the restriction that such limited common elements, rights and easements may not be transferred or assigned separate and apart from the unit hereinabove described and shall be deemed conveyed or encumbered with said unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. This restriction shall be binding on the Grantee and shall be a covenant running with the land.

SECOND:

An undivided fifty percent (50%) interest in the common elements of the Project as described in and established by the Declaration, or such other percentage interest as hereafter established for said Unit by any amendment of the Declaration, as tenant in common with the Grantor, its successor and assigns, and the holders from time to time of other undivided interests therein.

SUBJECT, as to said undivided interest in the common elements of the Project, to the restriction that it may not be transferred or assigned separately and apart from said unit.

SUBJECT, FURTHER, as to FIRST and SECOND, to the encumbrances set forth in said Exhibit "A".

SUBJECT, FURTHER, as to FIRST and SECOND, to the rights and easements excepted and reserved in the Declaration and Condominium Map, and any amendments thereto, and to all easements appurtenant to any unit of the Project and to all easements required for drainage, sewers and any utilities serving the Project.

ALL TOGETHER WITH AND SUBJECT TO, as to FIRST and SECOND, the encumbrances, restrictions, covenants, agreements, easements in addition to those described above, obligations, conditions, exceptions, reservations and other matters and provisions of the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community recorded in the Bureau in Liber 17405 at Page 411, as amended by Instruments by Instruments

dated --- (acknowledged March 1, 1988, March 2, 1988, March 3, 1988 and March 7, 1988), recorded in the Bureau in Liber 21704 at Page 1, dated September 9, 1988, recorded in the Bureau in Liber 22367 at Page 21, dated December 28, 1988, recorded in the Bureau in Liber 22766 at Page 559, and dated --- (acknowledged February 11, 2000 through May 8, 2002), recorded in the Bureau as Document No. 2002-105319, and any association rules adopted thereunder, as the same may be further amended from time to time (hereinafter referred to as the "Master CCRs"), the Declaration of Restrictive Covenants and Conditions – Seacliff Kilohana, Kilauea, Kauai, Hawaii recorded in the Bureau as Document No. A-83160588, as the same may be amended from time to time (hereinafter referred to as the "Project CCRs"), the Declaration and exhibits attached thereto and documents referenced therein, the Bylaws of the Association of Unit Owners of Seacliff Kilohana Condominium dated March 31, 2017, recorded in the Bureau as Document No. 63160588, as the same may be amended from time to time (hereinafter referred to as the "Bylaws"), and all amendments thereto, and all plans and rules and regulations which from time to time may be duly promulgated pursuant thereto, and the Condominium Map, all of which are incorporated herein by this reference and which constitute and shall constitute covenants running with the land, equitable servitudes and liens to the extent set forth therein and as provided by law, and which are hereby accepted by the Grantee as binding and to be binding on the Grantee, and the Grantee's successors and assigns.

Being a portion of the premises acquired by the Grantor by Quitclaim Deed dated December 14, 2016, recorded on January 9, 2017, in the Bureau of Conveyances of the State of Hawaii as Document No. A-82180738.

TO HAVE AND TO HOLD the same, together with all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, as Trustees aforesaid, forever.

AND said Grantor, for itself and its successors, does hereby covenant and agree to and with the Grantee as follows: that the real property is free and clear of and from all encumbrances except as herein mentioned, and except for the lien of real property taxes for the current year not yet by law required to be paid; that the Grantor has good right to sell and convey said real property in the manner set forth herein; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee forever against the lawful claims and demands of all persons, except as herein mentioned.

The Grantee does hereby covenant and agree, for the benefit of the owners from time to time of all condominium units in said Project, to at all times observe, perform, comply with and abide by all of the covenants, agreements, obligations, conditions and other provisions set forth in the Master CCRs, the Project CCRs, the Declaration and exhibits attached thereto and documents referenced therein, the Bylaws, and all plans, rules and regulations which may from time to time be duly promulgated pursuant thereto, as any of the same exist or may hereafter be amended in accordance with law, and does hereby accept and approve said Master CCRs, Project CCRs, Declaration and exhibits attached thereto and documents referenced therein, and said Bylaws (and all plans and rules and regulations duly promulgated pursuant thereto), and the Grantee will indemnify and save harmless them and each of them for any failure so to observe

and perform any such term, covenants, conditions and restrictions for so long as said Master CCRs, Project CCRs, Declaration and exhibits attached thereto and documents referenced therein, and Bylaws (and all plans and rules and regulations duly promulgated pursuant thereto) exist and are in effect.

The Grantee hereby agrees to and acknowledges that pursuant to the Declaration, the Grantor has reserved certain rights, including, but not limited to, rights (i) to grant, realign, delete, etc., certain easements and rights of way over the Project's units, common elements and limited common elements as necessary, and amend the Declaration and Condominium Map in accordance therewith, until December 31, 2027; (ii) to amend the Declaration, Bylaws, Condominium Map, and house rules (if any) to comply with laws that apply to the Project, until December 31, 2027; (iii) to divide existing units into two or more units to facilitate the transfer of a portion of a unit to the government; (iv) any time prior to the first conveyance of a unit to a party other than Grantor, to amend the Declaration, Bylaws and/or Condominium Map; (v) upon satisfying certain conditions, to amend the Declaration and Condominium Map, without the consent or joinder of any unit owner, to record the certification required by section 514B-34, Hawaii Revised Statutes; (vi) to act on any matter relating to development, construction or improvements in the common elements; (vii) to implement the Driveway Plan (as defined in the Declaration); and (viii) to relocate, remove, and dispose of plants in the common elements.

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property, except claims which are based on the Grantor's concealment of material facts and defects which Grantor is required by law to disclose.

Grantee is acquiring the property described in Exhibit "A" attached hereto in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, by direct conveyance pursuant to that certain Exchange Agreement dated August 5, 2019, with OLD REPUBLIC EXCHANGE COMPANY, a California corporation.

The rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, devisees, personal representatives, successors, successors in trust and assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein. Without limiting the generality of the foregoing, each and every acknowledgment, acceptance, appointment, agreement and covenant of the Grantee herein shall run with the land and constitute an equitable servitude and lien, and is made by the Grantee for himself or herself and on behalf of his or her estate, heirs, devisees, personal representatives, successors, successors in trust and assigns. Each and every person hereafter acquiring from the Grantee or his or her estate, heirs, devisees, personal representatives, successors, successors in trust or assigns, an interest in the property hereby conveyed, by such acquisition, makes said acknowledgments, acceptances, appointments, agreements and covenants for himself and for his estate, heirs, devisees, personal representatives, successors, successors in trust and assigns.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, his or her heirs, devisees, personal representatives and assigns.

The terms "Grantor" and "Grantee" as and when used herein or any pronouns used in place thereof, shall mean and include masculine, feminine or neuter, the singular or plural number, individuals, associations, trustees or corporations, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context thereof. This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or same counterparts. For all purposes, including, without limitation, recording, filing, and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one instrument.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents the day and year first above written.

(SIGNATURES CONTINUED ON NEXT PAGE)

GRANTOR:

SEACLIFF KILOHANA, LLC,
a Hawaii limited liability company

By 
JAMES FIELDS
Its Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


ACKNOWLEDGMENT

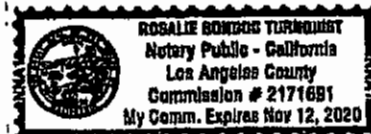
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss

On 8/6/2019, before me, ROSALIE BONDROG TURNQUIST Notary Public, personally appeared JAMES FIELDS, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

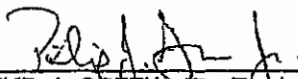
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

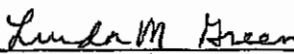
WITNESS my hand and official seal.

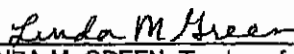

Notary Public

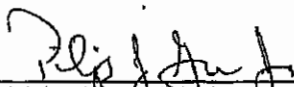


GRANTEE:


PHILIP J. GREEN, JR., Trustee of the Philip J.
Green, Jr. Trust dated December 4, 2018


LINDA M. GREEN, Trustee of the Philip J. Green, Jr.
Trust dated December 4, 2018


LINDA M. GREEN, Trustee of the Linda M. Green
Trust dated December 4, 2018


PHILIP J. GREEN, JR., Trustee of the Linda M.
Green Trust dated December 4, 2018

STATE OF HAWAII
COUNTY OF KAUAI

)
) SS:
)

On this 7th day of August, 2019, before me appeared PHILIP J. GREEN, JR. Trustee of the Philip J. Green, Jr. Trust dated December 4, 2018, and Trustee of the Linda M. Green Trust dated December 4, 2018, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing SEACLIFF KILOHANA CONDOMINIUM UNIT DEED dated August 7, 2019, which document consists of 12 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Glenda Matsushima

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

GLENDAMATSUSHIMA
Expiration Date: November 18, 2019

My commission expires: _____

STATE OF HAWAII
COUNTY OF KAUAI

)
) SS:
)

On this 7th day of August, 2019, before me appeared LINDA M. GREEN, Trustee of the Philip J. Green, Jr. Trust dated December 4, 2018, and Trustee of the Linda M. Green Trust dated December 4, 2018, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing SEACLIFF KILOHANA CONDOMINIUM UNIT DEED dated August 7, 2019, which document consists of 12 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Glenda Matsushima

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

GLENDAMATSUSHIMA

My commission expires: _____ Expiration Date: November 18, 2019

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2896 to Charles Titcomb) situate, lying and being at Kilauea, Island and County of Kauai, State of Hawaii, being LOT 11-A, as shown on Subdivision map approved by the Planning Commission of the County of Kauai on May 26, 1994, being a portion of the consolidation of Lot 9 (Portion "B"), of the "SEACLIFF PLANTATION", and thus bounded and described:

Beginning at a point at the northwestern corner of this parcel of land and on the southwestern corner of Lot 9A, the same being also on the easterly side of Makana'ano Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILAUEA" being 514.01 feet north and 1,408.25 feet west, thence running by azimuths measured clockwise from true South:

1. 271° 31' 38" 774.94 feet along Lot 9A;
2. 346° 22' 00" 482.25 feet along remainder of Lot 9, Portion "A";
3. 34° 31' 00" 610.69 feet along Lot 12, Seaciff Plantation;

Thence along Makana'ano Place on a curve to the right having a radius of 970.00 feet, the chord azimuth and distance being:

4. 142° 40' 27" 550.74 feet;
5. 159° 10' 00" 572.55 feet along same to the point of beginning and containing an area of 12.305 acres, more or less.

Together with a nonexclusive easement appurtenant to said Lot to use Roadway Lots 27, 28 and 29 of the Seaciff Plantation at Kilauea Bay Community for ingress and egress purposes, reserving, however, unto Roberson/Larson Partners, and its successors and assigns, the right from time to time to convey said Roadway Lots 27, 28 and/or 29 to a community organization or such other entity for the care and maintenance of the same, or to convey said Roadway Lots 27, 28 and/or 29 to the County of Kauai as a public road, in which latter event, the said easements shall be automatically extinguished.

Together also with a non-exclusive easement for ingress and egress for beach access and parking of vehicles over and across Easement "Q-1", known as Kahili Quarry Road, as granted by Easement Deed for Access and Parking dated March 1, 1988, recorded in Liber 21703 at Page 797, being more particularly described therein.

Together also with a nonexclusive easement for pedestrian and vehicular purposes as a roadway over and across a thirty feet wide road, known as "KAHILI QUARRY ROAD," as granted by GRANT OF EASEMENT dated December 17, 2002, recorded as Document No. 2003-003808; and subject to the terms and provisions contained therein.

Being the same premises conveyed to SEACLIFF KILOHANA, LLC, a Hawaii limited liability company, by QUITCLAIM DEED dated December 14, 2016, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-62180738.

-Note:- The aforementioned premises has been divided into 2 apartment units more particularly described in the Declaration of Condominium Property Regime dated March 31, 2017, recorded as Document No. A-63160587, as shown on Condominium Map No. 5643, and recorded in the Bureau of Conveyances of the State of Hawaii.

TOGETHER WITH an installed water meter.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. Building setback line as referenced on Subdivision map approved by the Planning Commission of the County of Kauai on May 26, 1994.
3. The terms and provisions contained in the following:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY dated August 31, 1983, recorded in Liber 17405 Page 411.

Said Declaration was amended by instruments dated --- (acknowledged March 1, 1988, March 2, 1988, March 3, 1988 and March 7, 1988), recorded in Liber 21704 at Page 1, dated September 9, 1988, recorded in Liber 22367 at Page 21, dated December 28, 1988, recorded in Liber 22766 at Page 559, and dated --- (acknowledged February 11, 2000 through May 8, 2002), recorded as Document No. 2002-105319.

4. Requirement of signing an elevation agreement with the Department of Water for water service, as set forth in Section 3.01(bb) of Declaration of Covenants, Conditions and Restrictions dated August 31, 1983, recorded in Liber 17405 at Page 411.

5. Requirements for driveways bridging drainage culverts, as set forth in Section 3.03(c) of Declaration of Covenants, Conditions and Restrictions dated August 31, 1983, recorded in Liber 17405 at Page 411.

6. Easement "D-1" (15' wide) for drainage purposes, being more particularly described in instrument dated June 2, 1994, recorded as Document No. 94-108675.

7. The terms and provisions contained in the DEED OF OPEN SPACE EASEMENT dated February 29, 1988, recorded in Liber 21704 at Page 43.

8. The terms and provisions contained in the DECLARATION RE ELECTRICAL USE dated July 25, 1988, recorded in Liber 22226 at Page 340.

9. RIGHT-OF-ENTRY to CITIZENS UTILITIES COMPANY, now known as CITIZENS COMMUNICATIONS COMPANY, whose interest is now held by KAUAI ISLAND UTILITY COOPERATIVE, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as HAWAIIAN TELCOM, INC., dated October 12, 1988, recorded in Liber 22768 at Page 454, granting a right-of-entry for utility purposes.

10. The terms and provisions contained in the AGREEMENT FOR NON-GRANT OF UTILITY EASEMENTS dated April 29, 1993, recorded as Document No. 93-073992, by and between PALI MOANA COMPANY, formerly known as ROBERSON/LARSON PARTNERS, a New Mexico partnership, "Declarant", and UNITED STATES OF AMERICA, acting by and through the Fish and Wildlife Service, "USA".

11. The terms and provisions contained in the DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS - SEACLIFF KILOHANA, KILAUEA, KAUAI, HAWAII, dated March 31, 2017, recorded as Document No. A-63160586.

12. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "SEACLIFF KILOHANA dated March 31, 2017, recorded as Document No. A-63160587.

Condominium Map No. 5643 and any amendments thereto.

Said Declaration was amended by instrument dated June 9, 2017, recorded as Document No. A-63730575.

-NOTE:- Any recorded amendments to the Declaration of Horizontal or Condominium Property Regime amending the assignment of parking stalls to and from apartments other than the specific apartment described herein, are not shown.

13. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS dated March 31, 2017, recorded as Document No. A-63160588.

14. Easement "U-1" for utility purposes, being more particularly described in instrument dated March 31, 2017, recorded as Document No. A-63160587.

15. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

16. Any unrecorded leases and matters arising from or affecting the same.

17. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

18-292794
RECORDATION REQUESTED BY:

89 5213

RECORDED JAN 13 AM 8:04
LIBER 22766 / 559
HAWAII COUNTY REGISTRAR

AFTER RECORDATION RETURN TO:

THE COMPANY ESCROW SERVICES, INC.
4290 Koa St., P.O. Box 1337
Honolulu, Hawaii 96766

RETURN BY: MAIL () PICKUP (X)

THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

WHEREAS, PALI MOANA COMPANY, formerly known as Roberson/Larson Partners, a New Mexico partnership, whose business address and mailing address is 6001 Arisco NW, Albuquerque, New Mexico 87120, herein called the "Declarant", developed certain real property situate at Kilauea, Island and County of Kauai, State of Hawaii, in the subdivision known as the Seaclyff Plantation at Kilauea Bay; and

WHEREAS, the Declarant's predecessor, Roberson/Larson Partners, recorded that certain Declaration of Covenants, Conditions and Restrictions of the Seaclyff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, amended by instrument (acknowledged March 1, 1988, March 2, 1988, March 3, 1988, and March 7, 1988), recorded in Liber 21704 at Page 1; and

WHEREAS, the Declarant recorded that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seaclyff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22367 at Page 31; and

WHEREAS, due to changes in the law or interpretations thereof or in contemplation of such changes, all of which have an effect on the quality and desirability of the development, the Declarant wishes to further amend the said Declaration, as amended.

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" of the said Declaration of Covenants, Conditions and Restrictions of the Seaclyff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, as amended by instrument recorded in Liber 21704 at Page 1, and as further amended by the said Amended Declaration of Covenants, Conditions and Restrictions of the Seaclyff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of

Conveyances of the State of Hawaii in Liber 22367 at Page 21, and any other property as may be hereafter annexed thereto as provided herein, shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY RESTRICTIONS, meaning the limitations, restrictions, covenants and conditions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the surrounding environment. The limitations, restrictions, covenants and conditions contained in this Declaration shall run with said property and shall be binding upon all parties having or acquiring any right, title or interest in and to the described property or any part thereof and shall inure to the benefit of each owner thereof, the Declarant and the Seacliff Plantation at Kilauea Bay Community Association.

ARTICLE I

DEFINITIONS

Unless the context in the Seacliff Plantation at Kilauea Bay Community Restrictions otherwise specifies or requires, the terms defined in this Article I shall for all purposes of this Declaration of Covenants, Conditions and Restrictions have the meanings herein specified:

1. "Architect" shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464, Hawaii Revised Statutes, as amended.
2. "Articles" shall mean the Articles of Incorporation of the Association granted or to be granted pursuant to Chapter 416, Hawaii Revised Statutes, as amended, substantially in the form attached hereto as Exhibit "B" and incorporated herein, as such Articles may from time to time be amended.
3. "Association" shall mean the Seacliff Plantation at Kilauea Bay Community Association, a non-profit corporation described in Article V herein and its successors and assigns.
4. "Board" shall mean the Board of Directors of the Association.
5. "By-Laws" shall mean the By-Laws of the Association which have been or shall be duly adopted substantially in the form attached hereto as Exhibit "C" and incorporated herein, as such By-Laws may from time to time be amended.
6. "Class A Member" shall mean those owners as set forth in the By-Laws of the Seacliff Plantation at Kilauea Bay Community Association.
7. "Class B Member" shall mean the Declarant as

set forth in the By-Laws of the Seacliff Plantation at Kilauea Bay Community Association.

8. "Common Area" shall mean all of the real property which has been conveyed to or leased to the Association for the common use and enjoyment of all Owners of the Seacliff Plantation at Kilauea Bay Community, pursuant to the provisions hereinafter set forth, together with all of the improvements from time to time constructed thereon, for the general use of all Owners in the Seacliff Plantation at Kilauea Bay Community.

9. "Condominiumizing" shall mean any means or manner whereby separate and distinct interests (other than as tenants in common of an undivided interest in the whole) in any lot within the Seacliff Plantation at Kilauea Bay Community are created which permits individual ownership of a specific portion of the lot and/or the individual financing of that specific portion. This includes registration as a condominium under the laws of the State of Hawaii (whether the same be designated as a horizontal property regime, condominium property regime, or any other nomenclature), the conveyance of the property to a land trust under the laws of the State of Hawaii for the purposes of permitting individual ownership of specific portions of the lot, or any other means to achieve such ends.

10. "Declarant" shall mean the Pali Moana Company, and its successors and assigns.

11. "Design Committee" shall mean the Committee created pursuant to Article IV hereinafter set forth.

12. "Design Committee Rules" shall mean those rules adopted by the Design Committee pursuant to Section 4.04 of Article IV.

13. "Excavation" shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock for a depth of more than eighteen (18) inches or an area exceeding one hundred (100) square feet.

14. "File" or "Filed" shall mean with respect to any subdivision map or file plan such map or plan which has been recorded in the Bureau of Conveyances of the State of Hawaii.

15. "Fill" shall mean any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen (18) inches or an area exceeding one hundred (100) square feet.

16. "Fiscal Year" shall mean the year from January 1 to December 31.

17. "Farm Dwelling" shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. In keeping with the intent of the

State Land Use Law (Chapter 205, Hawaii Revised Statutes), agricultural activity must be established before any additional farm dwellings in excess of one (1) per parcel will be permitted by the County of Kauai.

18. "Farm dwelling site" shall mean those areas within a lot in the Seacliff Plantation at Kilauea Bay Community wherein farm dwellings are permitted to be constructed by the County of Kauai, pursuant to Special Management Area Use Permit SMA(U)-82-2.

19. "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind, and shall include any physical appearance of the structure, including by way of example, but not limited to, adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape, or physical appearance of any structure.

20. "Maintenance Assessment" shall mean any assessment levied pursuant to Section 6.02.

21. "Maintenance Reserve Fund" shall mean such fund established pursuant to Section 6.02.

22. "Managing Agent" shall mean the person or corporation appointed as such pursuant to Section 5.05.

23. "Notice" shall mean notice delivered pursuant to Section 7.12.

24. "Ohana Unit" shall mean any additional dwelling unit or farm dwelling in excess of the allowable density under the applicable zoning code which may be permitted under any ohana zoning law of the State of Hawaii or the County of Kauai as presently enacted or as may be enacted in the future. Ohana zoning law shall mean any legislation which, notwithstanding allowable density under a zoning law, permits additional dwelling or dwellings to be built provided certain conditions are met. An example of an ohana zoning law is Section 8-3.3(d) of Article 3 of the County of Kauai's Comprehensive Zoning Ordinance.

25. "Operating Fund" shall mean the fund created pursuant to Section 6.01.

26. "Owner" shall mean one person or persons, corporation or corporations, or other legal entity or entities, as set forth in Section 5.02, provided, however, that:

(a) For the purposes of limitations and restrictions set forth in Article III, "Owner" shall not include the Declarant with respect to any real property not yet conveyed to the individual lot owner.

(b) "Owner" shall include for the purposes of Article III, unless the context otherwise requires, family, invitees, licensees, and lessees of any Owner.

27. "Primary Recreational Facility" shall mean and include any improvement for the general use of all Owners of lots in the Seacliff Plantation at Kilauea Bay Community for or in connection with any recreational purpose of activity, interpreted broadly to include without limitation, park and picnic facilities, riding trails, and/or pedestrian pathway systems, as the same may be designated as such on any map or file plan.

28. "Private Area" shall mean any real property for the exclusive use of the Owner of a certain lot or farm dwelling site in the Seacliff Plantation at Kilauea Bay Community, whether or not conveyed to such Owner, together with all improvements from time to time constructed thereon.

29. "Record" and "Recorded" shall mean with respect to any document, that such document has been recorded in the Bureau of Conveyances of the State of Hawaii.

30. "Road" shall mean any paved vehicular way constructed within or upon any portion of any common area, co-tenancy area, or private area, or upon other lands of the Declarant used to provide access to the Seacliff Plantation at Kilauea Bay Community, except any apron or other paved area constructed for the purpose of providing paved access from such way to any private area.

31. "Seacliff Plantation at Kilauea Bay Community Association Rules" and/or "Seacliff Plantation Community Association Rules" shall mean the rules from time to time in effect pursuant to the provisions of Section 5.03.

32. "Seacliff Plantation at Kilauea Bay Community" and/or "Seacliff Plantation Community" shall mean all of the real property referred to in Section 2.01, together with all improvements from time to time constructed thereon.

33. "Seacliff Plantation at Kilauea Bay Community Restrictions" and/or "Seacliff Plantation Restrictions" shall mean, with respect to all property within the Seacliff Plantation at Kilauea Bay Community, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended.

34. "Special Assessment" shall mean any assessment levied pursuant to Section 6.03.

35. "Subdivision Map" shall mean any map prepared for the subdivision of Parcel 9, Kilauea, Kauai, Hawaii, or a portion thereof, which map may be recorded in the Bureau of Conveyances of the State of Hawaii.

36. "Transient Vacation Rental" shall mean the renting or leasing of any farm dwelling or other improvement

within the Seacliff Plantation at Kilauea Bay Community for money or other consideration by an owner to any third party, where the duration of any occupancy is less than thirty (30) days.

ARTICLE II

SEACLIFF PLANTATION AT KILAUEA BAY PROPERTY SUBJECT TO COMMUNITY RESTRICTIONS

Section 2.01. The Development.

(a) The development shall be all of the property described in Exhibit "A", attached hereto and made a part hereof, or as may hereafter be annexed and made a part of the Seacliff Plantation at Kilauea Bay Community, and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Seacliff Plantation at Kilauea Bay Community Restrictions.

(b) No property, except that described in said Exhibit "A" or as may hereafter be annexed, and hereby made subject to the Seacliff Plantation Community Restrictions shall be deemed subject to the Seacliff Plantation Community Restrictions, whether or not shown on any subdivision map or file plan filed by the Declarant or described or referred to in any document executed and/or recorded by the Declarant. No designation of any parcel, lot or other area on any map or plan filed by the Declarant as a private area, common area, road, street, park or as any other type of parcel, lot or area shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, lots or areas specifically described in Exhibit "A" and so designated on a subdivision map or file plan for such use, nor shall any Owner, or the public, or any public body or agency or any other person, corporation or entity, acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. Nothing herein or in any amendment hereto, or in any recorded or unrecorded subdivision map or file plan, or in any picture, drawing, brochure or other representation of a scheme of development, shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject or be construed as requiring the Declarant to commit or subject to the Seacliff Plantation Community Restrictions any real property situated in Kilauea Bay Community, other than that described in said Exhibit "A" or such amendment.

(c) Declarant reserves the right, at any time prior to December 31, 2002, without the consent of the Association or any Owner of a lot or any other person or corporation or entity holding any interest in a farm dwelling site, from time to time and in its sole discretion, to annex to the Seacliff Plantation Community the roadway lots within the Seacliff Plantation Community by conveying and/or leasing said roadway lots to the Seacliff Plantation Community Association, or to annex additional lands resulting from further subdivision of said Parcel 9 to the Seacliff Plantation Community.

ARTICLE III

RESTRICTIVE COVENANTS

Section 3.01. Use Restrictions: Homesites and Private Areas. Each lot and farm dwelling site in the Seacliff Plantation Community, and any private or co-tenancy area appurtenant thereto, shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in Section 5.05 with respect to each farm dwelling site or lot.

(b) No improvement or other work which in any way significantly alters any lot or farm dwelling site from its natural or improved state existing on the date such lot was first conveyed by the Declarant to an Owner shall be made or done except upon strict compliance with and within the restrictions of the provisions of Section 3.05.

(c) So long as the zoning of the lots in the Seacliff Plantation Community remains unchanged, only farm dwellings, as may be permitted by applicable law, shall be constructed within those areas approved by the County of Kauai, pursuant to Special Management Area Use Permit SMA(U)-82-2. In keeping with the intent of the State Land Use Law (Chapter 205, Hawaii Revised Statute, as may be amended), agricultural activity must be established before any additional dwellings in excess of one (1) per parcel will be permitted by the County of Kauai.

(d) Lots 1, 2, 3, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25 in the Seacliff Plantation Community are subject to a building setback line which was approved by the County of Kauai in the said SMA(U)-82-2 on January 10, 1982 and as shown on the subdivision map approved by the County of Kauai. All structures on the lots must be in conformity with the said building setback line, as approved or as may be amended from time to time with the approval of the County of Kauai.

(e) All building locations and designs shall be subject to the review and approval of the Planning Department of the County of Kauai at the time of building permit application. The building locations shall be constructed on the ground in strict adherence to the approved subdivision map for the Seacliff Plantation Community and the building lot plan submitted to and approved by the Planning Department during the building permit application process. Structures found constructed in violation of the approved plans shall be relocated at the owner's expense.

(f) To protect views and to maximize a blending of structures with the natural environment, no structure erected on any of the said lots shall exceed a building height limit of twenty-five (25) feet, measured from grade at all points along the structure to the roof peak; provided, however, that notwithstanding compliance with the

foregoing height limitation, the Design Committee shall have the power to deny approval of any structure or improvement on a lot which substantially impairs views from the adjoining lot or lots.

(g) All farm dwellings shall contain not less than 2,000 square feet of liveable floor area, exclusive of lanais, patios, servant's quarters, attached guest house or facility, garage storage space, and workshop. Each farm dwelling shall have appurtenant to it a garage designed to accommodate at least two automobiles which is architecturally harmonious with the farm dwelling to which it is appurtenant.

(h) All structures shall be built entirely of new materials, and no old and/or "quonset" or "geodesic dome" type of building shall be erected, placed or maintained on any of said lots.

(i) No structure erected on the lots shall use mirrored glass, reflective sun screens, or other highly reflective materials for any exterior windows.

(j) The roofs of all structures erected on the lots shall be surfaced with wood shakes or shingles, clay tile or other materials of minimum reflectivity. The use of any roofing materials which is highly reflective, such as corrugated iron, tiles with a smooth, shiny finish, and the like, shall be prohibited.

(k) All structures erected on the lots, including the roof, shall have an earthen tone exterior color, or have a finish of earthen tone color.

(l) The area around each structure exceeding 2,000 square feet in floor area shall be landscaped with trees, shrubbery, and/or plantings in such a fashion so as to minimize the visual intrusion of such structures upon that portion of Parcel 9, Kilauea, Kauai, Hawaii, more commonly known as "Crater Hill".

In the event that an owner desires to construct any structure exceeding 2,000 square feet in floor area, he shall submit a complete landscaping plan to, and obtain the approval of the Design Committee as herein provided, prior to obtaining a building permit for such structure. The Design Committee as herein provided shall have the right, in its discretion, to approve, approve with modifications, or deny the landscaping plan so submitted, the criteria being whether the proposed landscaping is reasonably sufficient to minimize the visual intrusion of such structure upon Crater Hill as viewed from Kilauea town and Kuhio Highway.

(m) Any bare areas resulting from excavation or fill by a lot owner shall be revegetated immediately to avoid erosion and visual impacts.

(n) No fences, corrals, and the like shall be painted or contain a finish other than earthen tones.

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants (other than transient vacation renters), family, employees and guests, and for no other purpose.

(p) Each farm dwelling and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to the Seaciff Plantation Community or any part thereof, all at such Owner's sole cost and expense.

(q) No signs whatsoever, including without limitation, commercial, political or similar signs, visible from neighboring property, shall be erected or maintained upon any lot except:

(1) Such signs as may be required by legal proceedings.

(2) Residential identification signs of a combined total face area of one (1) square foot or less for each resident.

(3) During the time of construction of any farm dwelling or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen, and

(4) Not more than one (1) "For Sale" or "For Rent" sign having a maximum face area of two (2) square feet, such sign to refer only to the premises on which it is situated.

(r) No house trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any lot at any time, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted in Section 3.05.

(s) No vehicle of more than one (1) ton capacity shall be kept, placed or maintained upon any lot in such manner that such vehicle is visible from the adjoining streets and neighboring property, unless such vehicle is necessary to and regularly used for agricultural activities conducted on the lot, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted by Section 3.05.

(t) No necessities, structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the farm dwelling, provided, however, that the provisions of this paragraph

shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the farm dwelling, nor apply to facilities reasonably required in the conducting of agricultural activities on the lot. Guest houses (as allowed by law) may be permitted to be constructed by the Design Committee prior to the construction of the main structure of the farm dwelling if, and only if, such guest house is part of the master plan for the construction of farm dwelling(s) on the lot and sufficient assurances are given to the satisfaction of the Design Committee that the farm dwelling(s) shown on such master plan will be built in accordance therewith within a reasonable time.

(u) No trailer, vehicle or boat shall be reconstructed or repaired upon any homesite in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintained upon any lot so as to be visible from any adjoining streets or neighboring properties, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage.

(v) No garbage or trash shall be permitted on any lot except in closed receptacles screened from view from any adjoining street, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property, or as a necessary part of the agricultural activities conducted on such lot.

(w) No open storage of boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted. These items may only be stored in an enclosed structure. No outside clothes lines or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from neighboring property.

(x) The Owner shall not violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, building, fires, signs or other matter relating to the use and development of his lot or farm dwelling site.

(y) No garage shall be for other than the parking of vehicles and boats, and the same be enclosed so as not to be visible from neighboring property by a partition, wall, door or screen, normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage not so enclosed shall be used for laundry or for storage purposes.

(z) Except for dogs, cats and other typical household pets kept in reasonable numbers and under reasonable conditions, no animals shall be kept or maintained on any lot except with the approval of the Design Committee, which shall have the power to control in

accordance with uniformly applied standards as may be adopted from time to time, the kinds of animals which may be kept or maintained on a lot, the numbers of each type of animal which may be kept or maintained on a lot, and the conditions under which such animals may be kept or maintained, including, without limitation, the kind of structures or enclosures in which such animals may be kept. All animals kept or maintained on a lot, whether domestic pets, livestock, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal in an ecologically sound manner of any effluent from the practice of agriculture or other processes; (c) control of flies, insects, worms and other pests; (d) control of weeds and other noxious grasses; (e) adequate fencing and animal housing facilities adequate to restrict such animals to the lot where maintained; and (f) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such manner as to prevent scattering of such materials by the wind and water runoff. Notwithstanding the foregoing, the keeping and maintaining of pigs, chickens (except for personal use and consumption) and fighting chickens are expressly prohibited as being incompatible with the neighboring residential and agricultural use.

(aa) No noxious or offensive activity shall be carried on upon the Common Area or any lot or any farm dwelling site, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions, and amplifiers that may disturb other occupants.

(bb) Access from any lot in the Seacliff Plantation Community to both the Kilaeua Lighthouse Road and the Kahili Quarry Road is restricted. Access to and from the lots in the Seacliff Plantation Community will be limited to the subdivision.

(cc) Building setback lines have been established along the natural watercourse that traverses through the Seacliff Plantation Community property, as shown on the subdivision map approved by the County of Kauai, and in particular affecting Lots 1, 2, 3, 4, 5, 6, 11, 12, 13, 14, and 25, to prevent structures from being constructed in an area subject to flooding and drainage problems. No structures will be permitted within these setback areas. The Owners of lots affected by the watercourse setback lines are required to maintain the function of the watercourse by not constructing, filling or fencing within the setback areas.

(dd) Because of the high elevation of portions of Lots 1, 2, 3, 4, 5, 6, 11, 12, 13, 14 and the remainder of

Lot 9, a dependable supply of water cannot be assured above the 375 feet elevation above sea level. The lot owner of those lots will be required to sign an elevation agreement with the Department of Water of the County of Kauai upon application for water service, agreeing to accept such water service as the Department is able to render.

(ee) Notwithstanding any laws to the contrary, as now existing or as may hereafter be enacted, chana dwelling units are expressly prohibited within the Seacliff Plantation at Kilauea Bay Community.

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for transient vacation rental purposes.

(gg) The condominiumizing of any lot or lots within the Seacliff Plantation at Kilauea Bay Community may be permitted only if approved by the Design Committee in the manner set forth herein and developed in accordance with the conditions of such approval, failing which such condominiumizing shall be deemed in violation of these covenants and restrictions. The condominiumizing of any lot within the Community shall not result in a number of units or interests larger than the maximum number of farm dwellings permitted under the applicable zoning ordinance and this Declaration for that particular lot.

(hh) The Design Committee shall have the authority to prohibit additional types of activities on and uses of the lots by the Owner through the due adoption of the Seacliff Plantation Community Association Rules, where such activities and/or uses are not compatible with the neighboring residential and agricultural uses within the Seacliff Plantation at Kilauea Bay Community.

Section 3.02. Easements Affecting Lots.

(a) As an incident of ownership of lots in the Seacliff Plantation Community, the Owners also have rights to use Easement "ET-1" (being a ten foot wide equestrian trail), Easement "PT-1" (being a 20 foot wide pedestrian trail), and Easement "PA-1" (being a picnic area), which easements are over and across the Remainder of Lot 9 of the Seacliff Plantation subdivision, which easements are shown in that certain subdivision map prepared by Portugal and Associates, Inc., dated July 1, 1988, for the Consolidation of A Portion of the Remainder of Lot 9 with Lot 11 into Lot 11-A and Remainder of Lot 9, which map is incorporated by reference herein.

(b) Lots 3, 4, 5, 6, 7, 8, 9, 10 and 26 shall be subject to a nonexclusive irrigation easement for the purposes of providing agricultural irrigation waters to any of these lots in the Seacliff Plantation Community desiring such irrigation waters. The irrigation easement area shall be a ten foot wide strip fronting the respective lot and abutting the subdivision roadway serving the lot. Any Owner of any of these lots in the Seacliff Plantation Community desiring the use of this irrigation easement for the purpose

of bringing irrigation water to his lot shall have the right to install pipelines, conduits, or other means of carrying irrigation water within the said 10-foot easement area on the lots between the nearest source of such water and his lot, provided that the use of the easement area shall not unreasonably interfere with the use nor infringe upon the rights of access to and from the roadway of any servient lot; and provided, further, that the Owner utilizing such easement area shall restore the easement area as reasonably possible to its original condition upon completion of the installation of the irrigation water system. No open ditches shall be permitted as a means of transporting irrigation water across the easement area.

(c) Each of the lots in the Seaciff Plantation Community shall be subject to sheetflow of surface waters to such lot from the roadways fronting the respective lot.

(d) The following lots are affected by the following drainage easements:

Drainage Easement "D-1": Lots 11, 12, 13, 14 and 15

Drainage Easement "D-2": Lots 2, 3, 4, 5, 6 and 7

Drainage Easement "D-3": Lots 8 and 9

Drainage Easement "D-4": Lots 10, 23, 24, 25 and 26.

(e) The following lots are affected by the following utility easements:

Utility Easement "U-1" : Lot 2

Utility Easement "U-2" : Lot 3

Utility Easement "U-3" : Lot 4

Utility Easement "U-4" : Lot 5

Utility Easement "U-5" : Lot 18

Utility Easement "U-6" : Lot 19

Utility Easement "U-7" : Lot 22

Section 3.03. Restrictions on Drainage Ditches and Culverts. Surface runoff and storm waters for the Seaciff Plantation Community is handled through a system of open ditches, drainage inlets, culverts and outlets. In order for the designed system to function properly, this system must be kept free from obstructions or impeding of the water floor. As such, all lots in the Seaciff Plantation Community are subject to the following restrictions and covenants:

(a) Each Owner is responsible to maintain the drainage ditches, inlets, culverts, and outlets upon his property for the free flowage of storm water.

(b) The Owner will accept full responsibility and liabilities of the drainage ditch and culvert system, such as falling or driving into the ditch, and ditch flowage such as erosion, volume of water, etc.

(c) The Owners of Lots 6, 7, 10, 11, 12, 13, 14, 15, 25, 26 and the remainder of Lot 9 must construct driveways or other accesses that completely bridge the ditch so that there are no obstructions to flow of waters therein.

(d) The Owners shall absolve and hold the County of Kauai harmless from any responsibility and liabilities as a result of the drainage system and any damages or injuries that may result therefrom.

Section 3.04. Use of Lots Zoned "Agriculture", Pursuant to Chapter 205, Hawaii Revised Statutes.

(a) Pursuant to Act 199, Session Laws of Hawaii 1976, the use of the lands classified as "Agriculture" by the State Land Use Commission shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Chapter 205, Hawaii Revised Statutes, as amended, which provides as follows:

(1) Within the agricultural district all lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be restricted to the following permitted uses:

- (a) Cultivation of crops including but not limited to flowers, vegetables, foliage, fruits, forage and timber;
- (b) Game and fish propagation;
- (c) Raising of livestock, including but not limited to poultry, bees, fish and other animal or aquatic life that are propagated for economic or personal use;
- (d) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal industry;
- (e) Public institutions and buildings

Farm dwellings as used herein shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling;

which are necessary for agricultural practices;

- (f) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (g) Public, private, and quasi-public utility lines and roadways, transformer stations, solid waste transfer stations, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures;
- (h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interests;
- (i) Roadside stands for the sale of agricultural products grown on the premises;
- (j) Buildings and uses, including but not limited to storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses; or
- (k) Agricultural parks.

(2) All of the aforementioned restrictive covenants and conditions contained in this Section 3.04 shall run with the land until such time as the land is reclassified to a Land Use District other than Agriculture.

(3) Any violation of the above restrictive covenants and conditions contained in this Section 3.04 shall be subject to a citation and a fine of not more than \$5,000 pursuant to Chapter 205, Hawaii Revised Statutes, as amended.

Section 3.05. Farm Dwelling Sites, Privacy and Private Areas: Landscaping, Construction and Alteration of Improvements, etc.

(a) The Owner of each farm dwelling site shall at its sole cost and expense comply and observe the covenants

contained in Section 3.01 hereinbefore, including but not limited to condominiumizing, landscaping and revegetation requirements where applicable. In the event the Owner fails to comply with such landscaping and/or revegetation requirements within a reasonable time, then the Declarant and/or Association may at its option perform all such landscaping and/or revegetation work upon the farm dwelling site, and Owner shall reimburse Declarant or the Association for the cost thereof promptly upon demand together with interest thereon at the rate of twelve percent (12%) per annum; provided, however, that in no event shall such costs and expenses chargeable to Owner exceed \$20,000.00. In the event of Owner's default in the payment of the same, the amount thereof shall be and become a lien upon the homestead as provided in Section 6.05 hereof.

(b) The right of an Owner to construct, reconstruct, refinish or alter any improvement upon, under or above any lot or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or landscape said farm dwelling site, or to condominiumize a lot is prohibited until and unless the Owner of such lot or farm dwelling site has obtained prior written approval therefor from the Design Committee as herein provided and has otherwise complied with all of the provisions of this Section.

(c) Any Owner proposing to perform any work which under the provisions of paragraph (b) above requires prior approval of the Design Committee shall apply to the Design Committee for approval thereof as follows:

(i) The Owner shall submit to the Design Committee for approval prior to commencing such work preliminary plans for the proposed work, prepared by an architect, unless otherwise permitted by the Design Committee, and showing in detail with dimensions the nature of the improvements. The Design Committee shall review any such preliminary plans within sixty (60) days after the submission of them to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. Failure to make such return within said sixty (60) day period shall be deemed to mean that the plans are approved.

(ii) Hereafter and still prior to commencement of such work, the Owner shall submit six (6) sets of the final plans and specifications of the proposed work to the Design Committee, including where appropriate and without limitation, a plot plan showing easements and setback contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the proposed sanitary disposal facilities, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. Also the Owner shall indicate his proposed construction schedule. The Design Committee shall require that the submission of plans and specifications be accompanied by a reasonable fee for the inspection thereof. The Design Committee shall from time to

time adopt and post with the Association a schedule of its inspection fees; provided, however, that no change in such fees shall be effective until thirty (30) days after the same have been posted.

(3) The Design Committee shall review the final plans and specifications submitted to it pursuant to subparagraph (2) and shall either approve the same or disapprove the same in writing within sixty (60) days. Any disapproval shall set forth in writing the reasons for disapproval. Failure to so approve or disapprove within said sixty (60) day period shall be deemed to mean that the plans are approved. On request of an Owner, at any time, the Chairman or any member of the Design Committee shall give to the Owner a certificate in writing evidencing the approval of any plans which have been so approved.

(4) Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee as to any interior improvements or alterations, or as to any exterior alterations or improvements which are not visible from neighboring property, nor shall an Owner be required to obtain approval from the Design Committee when simply reconstructing or refinishing in accordance with the color and design of previous improvements made by the Declarant or previously approved by the Design Committee.

(5) Approval as hereinbefore provided shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced such work within said one (1) year period and shall not thereafter complete the same within one (1) year after the commencement of such construction, or in the case of condominiumizing if the Owner shall not have completed the process within one (1) year. If the Owner shall not so commence within said one (1) year period, or completed the condominiumizing process within said one (1) year period, the Owner shall be required to resubmit said final plans and specifications for approval, and the Design Committee shall not be bound by any previous decision in reviewing again such plans and specifications, but shall either approve or disapprove the same in writing within sixty (60) days after such resubmission, and the Design Committee may require another inspection fee.

(6) Upon the completion of any work for which approved plans are required pursuant to this Section, the Owner shall give written notice thereof to the Design Committee which shall within sixty (60) days inspect such work to determine whether it was completed in substantial compliance with the approved plans and specifications. If the Design Committee finds that such work was not done in substantial compliance with said approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the Owner has in good faith commenced action to remedy within said sixty (60) days period, the Design Committee shall notify the Association of

such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Design Committee shall fail to notify the Owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the Owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(7) The Design Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in the Seacliff Plantation Community Restrictions, except as may be specifically permitted therein, and in the event of violation of any of such Seacliff Plantation Community Restrictions by an Owner, whether or not the Design Committee shall have approved the plans and specifications, the Association or any other Owner shall have the right to commence and pursue any remedy provided in the Seacliff Plantation Community Restrictions for the violation by an Owner of any such restrictions.

(8) In reviewing plans and specifications, the Design Committee shall consider the requirements and restrictions set forth in this Declaration and also shall consider whether the proposed improvement:

(1) Is compatible and in harmony with the surrounding environment as well as to quality and type of materials and workmanship and as to external design and appearance with reference to existing structures and other improvements in the area and with reference to the location of the proposed improvement with respect to topography and ground elevations.

(2) Conforms to the general plan of the entire development.

(3) Constitutes a suitable and adequate development of the lot and/or farm dwelling site.

(9) In reviewing plans and specifications for the condominiumizing of any lot, and in addition to the foregoing considerations, the Design Committee shall further consider the following:

(1) The size and quality of the individual interests and farm dwellings to be constructed thereon.

(2) The placement of farm dwellings and other improvements relative to the roadways, adjacent lots and the viewplanes affected by the proposed placement. A master plan for the entire lot, showing the exclusive, common and limited common elements of the proposed condominiumizing, and the placement of farm dwellings and other improvements shall be submitted to the Design Committee at the time of application. The Design Committee may require such other details and information as may be deemed appropriate by the Design Committee to permit a

thorough evaluation of the application to address the restrictive covenants and conditions herein contained and to avoid a lessening of the quality of the Community.

(3) The adequacy and quality of landscaping for the lot. A master landscaping plan shall be submitted to the Design Committee at the time of application, indicating in sufficient detail the nature, type and degree of landscaping proposed;

(4) The adequacy of the condominiumizing documents to insure the observance and conformance of the restrictive covenants and conditions herein contained.

(d) The Association shall, in the event of any violation of the provisions of this Section, restore such lot or farm dwelling site to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The Owner of such lot or farm dwelling site shall reimburse the Association for all expenses incurred by it in performing its obligations under this paragraph.

Section 3.06. Common Area: Uses and Restrictions. The Declarant may, but shall be under no obligation to set aside certain areas within the Seacliff Plantation Community as common areas for recreational use by the Owners. In such event, the use of the common areas shall be subject to the following terms and conditions hereinafter set forth or as may be contained herein.

(a) The use of the Common Area shall be reserved to all Owners, except as herein specifically provided, and every Owner shall have an easement for the use of the Common Area, which easement shall be appurtenant to the lot and shall pass with the title to every lot, subject, however, to the following limitations and restrictions:

(1) The use of the Common Area shall be subject to the Seacliff Plantation Community Rules.

(2) The use of the Common Area shall be subject to such easements and rights-of-way reserved therefrom at the time of conveyance or lease of any common area to the Association, to such extent as may be reserved to the Declarant, the County of Miami and its successors, and to any other person or association or governmental authority as provided in this Declaration, to such road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other road and public and private utility easements as may from time to time be granted or conveyed by the Association, pursuant to the provisions of paragraph (c) of Section 5.05.

(3) No improvement, excavation, fill or other work which in any way alters any common area from its natural or existing state upon the date which such common area was conveyed or leased to the Association shall be made or done except upon strict compliance with and within the

restrictions and limitations of the provisions of Section 3.05.

(4) The use thereof shall be subject to all terms, conditions and restrictions set forth in the lease of any such common area to the Association.

(5) Except to the extent otherwise permitted pursuant to the provisions of subparagraph (2) above and Section 3.05, there shall be no use of the Common Area, exclusive of roads, except recreational uses which do not injure or scar the Common Area or the vegetation thereof, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of the Common Area; without limiting the generality of the foregoing:

(i) There shall be no camping in the Common Area;

(ii) There shall be no fires started or maintained in the Common Area, except for fires contained in areas or facilities provided by the Association specifically for such purposes;

(iii) No animals shall be permitted in the Common Area except generally recognized house or yard pets when accompanied by and under the control of the Owners to whom they belong.

(6) The rights to use and enjoy the Common Area shall extend to the members of the families of all Owners and their invitees.

Section 3.07. Common Area: Construction and Alteration of Improvements. No improvement, excavation or work which in any way alters any common area or improvement thereon from its natural or existing state at the date when such common area or improvement was acquired by or leased to the Association, shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this Section.

(a) Except to the extent otherwise provided in paragraph (c) below and except to the extent otherwise permitted under any conveyance or lease of any common area to the Association, no person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter, maintain or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, ground cover or vegetation upon any common area, or construct, reconstruct, refinish, alter or maintain any part of the exterior of any improvement upon, under or above any common area.

(b) Except to the extent otherwise provided in paragraph (c) below, if the Association proposes to do any of the acts mentioned in paragraph (a) above, the Association shall submit to the Design Committee for approval the plans and specifications for any such work in such forms and containing such information as the Design Committee shall approve the plans and specifications

submitted to it pursuant to this paragraph only if the following conditions have all been satisfied:

(1) If the plans are to construct any new improvements, including any alteration of the exterior appearance of any existing improvements upon any common area, the Design Committee finds that such improvements comply with the standards and restrictions set forth in subparagraph (8) of paragraph (c) of Section 3.05 with respect to farm dwelling sites, or any private or co-tenancy area appurtenant thereto, which standards and restrictions will also apply to common areas, and that the design or such improvement is reasonably necessary or desirable in order to carry out the aims of the Association and is in harmony with other improvements and the overall appearance of the Seacliff Plantation Community as planned.

(2) The Design Committee finds that the proposed work shall not because of its design materially prejudice the Seacliff Plantation Community or any Owner therein in the use and enjoyment of its property. Such approval shall be in writing, except that plans which have neither been approved or rejected within sixty (60) days from the date of submission thereof to the Design Committee shall be deemed approved. Rejection of plans by the Design Committee shall be in writing and shall set forth with particularity the reasons for such rejection. In the event of any such rejection any member of the Board shall have the right to submit to a meeting of the Association duly called, the notice of which shall contain reference to the consideration of the matter, the question of whether to abandon the proposed work or to have the same redesigned and resubmitted to the Design Committee for approval.

(c) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any improvement or portion thereof upon a common area in accordance with the last plans therefor approved by the Design Committee, or if such improvement existed upon the common area when such common area was conveyed or leased to the Association, then in accordance with the original design, finish or standard of construction of such improvement when such common area was conveyed or leased to the Association.

(2) Construct, reconstruct, replace or refinish any road improvement upon any portion of the Common Area designated on a subdivision map as a road.

(3) Replace any destroyed trees or any other vegetation upon a common area and to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover.

(4) Place and maintain upon any common area such signs and markers as the Association may in its sole discretion deem necessary for the identification of the Seacliff Plantation Community and of roads, for the regulation of traffic including parking, and for the

regulation and use of the common area and for the health and welfare and the safety of Owners and to the public, provided that the design of any such signs or markers be first approved by the Design Committee.

Section 3.08. Presumption of Compliance. All of the following improvements, excavations, fills and other such work shall for all purposes of the Seaclyff Plantation Community Restrictions be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article III:

(a) Those existing or maintained within or upon any property within the Seaclyff Plantation Community at the time such property became a part of Seaclyff Plantation Community.

(b) Those existing or maintained within a private or co-tenancy area at the time such private or co-tenancy area was first conveyed to or leased to an Owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restrictions in the Seaclyff Plantation Community Restrictions, pursuant to plans and specifications approved by the Design Committee.

ARTICLE IV

DESIGN COMMITTEE

Section 4.01. Design Committee: Organization, Power of Appointment and Removal of Members:

(a) There shall be a Design Committee of three (3) regular members, consisting of at least one (1) representative of the Declarant and at least one (1) representative of the Owners. In addition to the three members on the Design Committee, there shall also be an alternate member, who shall act only in the absence of a regular member of the Design Committee.

(b) The following persons are hereby designated as the initial members of the Design Committee:

- (1) Dorn L. Schmidt
- (2) Coda C. Robinson
- (3) James R. O'Connor
- (4) Gregory Kaun (alternate member)

Each of said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed as herein set forth.

(c) Except as otherwise provided herein, the right from time to time to appoint and remove all members of

the Design Committee shall be and is hereby reserved and vested solely in the Declarant.

(d) The Association shall have the right to appoint and remove all members of the Design Committee from and after ten (10) years from the date of this Declaration, provided, however, that if the Declarant fails to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members of the Design Committee.

(e) Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant, or to the Association, whichever then has the right to appoint and remove members.

(f) In the event that at any time, through illness, absence, resignation or for any other reason, one or more members of the Design Committee is temporarily unable to perform his or her duties as a committee member, the alternate member may act in place of such member so long as such member is unable to perform his or her duties.

Section 4.02. Design Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article III, to adopt Design Committee rules pursuant to Section 4.04 and to perform such other duties from time to time delegated to it by the Seacliff Plantation Community Restrictions.

Section 4.03. Design Committee Meetings, Action, Compensation Expenses. The Design Committee shall meet from time to time as necessary properly to perform its duties hereunder. The vote or written consent of any two (2) members shall constitute the act of the Design Committee, unless the unanimous action of its members is otherwise required by the Seacliff Plantation Community Restrictions. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. Such fees shall be charged by the Design Committee and shall be provided for in the rules promulgated pursuant to Section 4.04, except that no fees shall be charged the Association. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Committee function.

Section 4.04. Design Committee Rules. The Design Committee may from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as the "Design Committee Rules" which, among other things, interpret or implement the provisions of the applicable sections of Article III pertaining to the design of improvements, permitted and prohibited uses and activities upon the lots and within the Seacliff Plantation at Kilauea Community; and permitted and prohibited animals upon the lots, which must be approved by

the Design Committee. A copy of the Design Committee Rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Design Committee shall be kept available at all times at the office of the Association and at the offices of the Declarant, for the inspection of any Owner, architect or agent of the Owner. The Design Committee Rules shall, to the extent practical, establish the standards which shall be required in the construction of any improvements to be constructed in the Seacliff Plantation Community.

Section 4.05. Nonwaiver. The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under the Seacliff Plantation Community Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

Section 4.06. Liability. Neither the Design Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property within the Seacliff Plantation Community, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee or any member thereof may, but is not required to, consult with or hear the Association or any Owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

Section 4.07. Absence of Committee. In the event that at any time through death, resignation or for any other reason, there shall not be a Design Committee or there shall not be the members necessary to act on a particular matter, the approval or action by the Design Committee being required hereunder for such matter and such situation lasts for a period of not less than twenty (20) days, then, and until there shall again be a Design Committee with sufficient members, during the term of (1) years of this Declaration all matters requiring such approval or action may be approved or done by the Declarant and thereafter by the President of the Seacliff Plantation Community Association, or any Vice President thereof, and their certificate that there had been no Design Committee, or that the required members were not present, and that he was acting pursuant to the authority of this Section shall be conclusive between the Owners, the Association, any purchaser, lessee, mortgagee or other encumbrances, and any other persons. The Declarant, President or Vice-President, as the case may be, acting hereunder may employ a registered Hawaii architect or engineer to render technical advice in connection with such matter and to receive reasonable compensation to be set by the Board, for his services.

ARTICLE V

SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATIONSection 5.01. Organization.

(a) The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and in its Articles and By-Laws.

(b) In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Articles.

Section 5.02. Membership.

(a) Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are the owner (herein called an "Owner") of any farm dwelling sites within the Seaclyff Plantation Community shall automatically become a member of the Association upon acquiring such ownership and shall remain a member thereof until such time as such ownership ceases for any reason, at which time such membership in the Association shall automatically cease. No person other than an Owner may be a member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any farm dwelling site.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of the Seaclyff Plantation Community Restrictions, the Articles and the By-Laws of the Association.

Section 5.03. Voting Rights.

(a) The voting rights of the members shall be as set forth in the Articles and the By-Laws of the Association. The members shall be the Owners, as defined in Article I herein, of farm dwelling sites. The Owner, or Owners in the aggregate, of any farm dwelling sites, whether individuals, corporations or other legal entities, shall be entitled to one (1) vote for each farm dwelling or potential farm dwelling permitted by the Hawaii Revised Statutes and/or the Comprehensive Zoning Ordinance of the County of Kauai on each lot owned. If more than one (1) person or entity owns one given farm dwelling site, any one of said persons or entities may exercise said one (1) vote as they shall determine, and if they cannot agree they may each vote their fractional interest in the vote allotted to their membership. In no event, however, shall more than one (1) vote be cast with respect to any one farm dwelling site.

(b) Every Owner of a residential homesite shall promptly cause to be duly recorded or filed of record the deed, assignment or other conveyance to him of such homesite or other evidence of his title thereto and shall file such conveyance with and present such other evidence of his title

to the Board of Directors, and the secretary shall maintain all such information in the record of ownership of the Association. Any Owner who mortgages his homesite or any interest therein shall notify the Board of Directors of the name and address of his mortgagee, and also of the release of such mortgage, and the secretary shall maintain all such information in the record of ownership of the Association.

(c) The Board of Directors may make such regulations, consistent with the terms of the Seacliff Plantation Community Restrictions, the Articles and the By-Laws of the Association as it deems advisable for any meeting of members, in regard to proof of membership in the Seacliff Plantation Community Association, evidence of right to vote the, the appointment and duties of inspectors of votes, registration of members for voting purposes, and such other matters concerning the conduct of meeting and voting as it shall deem fit.

(d) Any member who is in violation of the Seacliff Plantation Community Restrictions, as determined by the majority of the Board, pursuant to the provisions of this Declaration, shall not be entitled to vote during any period in which such violation continues. Any member who is delinquent in the payment of any assessment, other fees or charges levied pursuant to the provisions of this Declaration shall not be entitled to vote during any period in which any such fees or assessments are delinquent.

Section 5.04. Duties and Obligation of the Association. The Association shall have the rights, obligations and duties, subject to the Seacliff Plantation Community Restrictions, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Seacliff Plantation Community:

(a) The Association shall, as part of Seacliff Plantation Community, all property conveyed or leased to Seacliff Plantation at Kilauea Bay Community Association pursuant to Section 5.01 and shall accept all Owners as members of the Association.

(b) The Association shall accept all common areas conveyed or leased to it from time to time pursuant to Section 7.04. The Association may also acquire and accept title to any other property, real, personal or mixed, nothing herein to be construed to authorize the Association to acquire or invest in property solely for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association, or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guest of the recreational facilities on the common areas to defray the costs of construction, maintenance, repair or operation of such facilities, or of other facilities owned by or leased to the Association.

(c) The Association shall maintain or provide for the maintenance of common areas and other property owned by

or leased to the Association, including without limitation all secondary recreational facilities and all improvements of whatever kind and for whatever purpose from time to time located on the common areas and other such property in good order and repair, provided, however, that notwithstanding the foregoing the Association shall have no obligation to maintain in good order and repair any improvement constructed upon the common areas by any Owner, excluding the Declarant, but may use all legal means to force such Owner to maintain the same himself.

(d) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the common areas.

(e) Unless provided by a municipal, county or other governmental agency, and unless the cost thereof is assessed directly or indirectly against the Owners by such party, the Association may contract for, employ or otherwise provide police and refuse disposal services.

(f) The Association shall obtain and maintain in force the following policies of insurance:

(1) Fire and extended coverage insurance on all improvements from time to time owned by or leased to the Association and located upon or within any common area, in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Association as trustee for all Owners and mortgagees of farm dwelling sites in the Seacliff Plantation Community and for all mortgagees of the common area, and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board of Directors of the Association shall designate for the custody and disposition as herein provided of all proceeds of such insurance. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall to the extent such insurance is available:

(i) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counter-claim, apportionment, proration or contribution by reason of any other insurance obtained by or for any Owner.

(ii) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of said Board, or because of any breach of warranty or condition or any other act or neglect by said Board or any Owner or any other persons under either of them;

(iii) Provide that such policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by said Board) except by the insurer giving at least sixty (60) days' prior written notice thereof to said Board and every other person in interest who shall have requested such notice of the insurer;

(iv) Contain a waiver by the insurer of any right of subrogation to any right of said Board or Owners against any of them or any other persons under them; and shall:

(a) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of the fee simple interest in a lot or farm dwelling site in their respective order and preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of said Board or Owners or any persons under any of them;

(c) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagees to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by said Board.

(2) Comprehensive, general liability insurance, covering the Association, the Board of Directors, and the members of the Association, in an insurance company authorized to do business in Hawaii with minimum limits of not less than \$1,000,000 for injury to one or more persons in any one accident or occurrence and \$500,000 for property damage, without prejudice to the right of any Owners to maintain additional liability insurance for their respective lots and farm dwelling site.

(3) Any policies of insurance covering any other reasonable risks as may be determined to be proper and necessary or advisable in the sole discretion of the Board of Directors.

(g) The Association shall from time to time make, establish, promulgate, and amend and repeal the Seaciff Plantation Community Rules as provided for in Section 5.06.

(h) To the extent provided for in Section 4.01, the Association shall exercise its right to appoint and remove members of the Design Committee to insure that at all

reasonable times there is available a duly constituted and appointed Design Committee.

(1) The Association shall have all the powers set forth in the Seacliff Plantation Community Restrictions, including without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by Seacliff Plantation Community Restrictions, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of Seacliff Plantation Community Restrictions, the Seacliff Plantation Community Rules and the Design Committee Rules.

Section 5.05. Powers and Authority of Association.
The Association shall have all the powers set forth in the Articles, together with its general powers as a non-profit corporation, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in the Articles and By-Laws and in the Seacliff Plantation Community Restrictions, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Seacliff Plantation Community Restrictions, and to do and perform any and all acts which may be necessary and proper for, or incidental to, the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners of Seacliff Plantation Community. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any private area, or co-tenancy area, for the purpose of maintaining and repairing any such area, if for any reason whatsoever the Owner or Owners thereof fails to maintain and repair such areas as required under Article III hereinaabove or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair any roads, parks or other public areas in or adjoining the Seacliff Plantation Community, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Directors, have failed to do so in a manner beneficial to the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Seacliff Plantation Community Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of the Seacliff Plantation Community Restrictions.

in fulfilling any of its obligations or duties under the Seacliff Plantation Community Restrictions, including without limitation, its obligations or duties for

the maintenance, repair, operation or administration of common areas and to the extent necessary by the failure of its right to construct improvements or other work upon any common area, including, without limitation, any recreational facility, the Association shall have the power and authority;

(1) To contract and pay for, or otherwise provide for maintenance, restoration and repair of all improvements of whatever kind or whatever purpose from time to time located upon common areas and to contract and pay for or otherwise provide for the construction of improvements or other work upon such areas, or otherwise in carrying out its functions as set forth in the Seaclyff Plantation Community Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of work.

(2) To obtain, maintain and pay for such insurance policies or bonds whether or not required by Section 5.04 as the Association may deem to be appropriate for the protection or benefit of Seaclyff Plantation Community, the Association, the members of the Board, the members of the Design Committee, or the Owners, including, but without limitation, war risk insurance, builders' risk, workmen's compensation insurance, malicious mischief insurance, automobile, nonownership insurance and performance and fidelity bonds.

(3) To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water, sewer, garbage, electrical, telephone and gas services as may from time to time be required.

(4) To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys and certified public accountants or such other professional or nonprofessional services as the Association may deem necessary.

(5) To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Association shall from time to time deem necessary for the benefit of the Seaclyff Plantation Community any property located within the Seaclyff Plantation Community, and the Owners, and

(6) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any common areas or co-tenancy areas in account of work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(7) The Association shall have the power and authority from time to time to grant, convey or lease to any third party for reasonable compensation, and on such other terms as the Board may approve, the right, title and interest of the Association or any member thereof for

easements, rights-of-way, parcels or strips of land in, on, over or under any common areas, for the purpose of:

(1) Constructing, direct, operating and maintaining thereon, therein and thereunder, public roads, streets, walks, driveways, parkways and park areas.

(2) Installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and necessary facilities in connection therewith, and

(3) Constructing, operating and maintaining public and private sewers, storm waters drains, land drains and water systems, sprinkler systems, water heating and gas lines or pipes and necessary facilities in connection with the foregoing.

(d) The Association may from time to time employ the services of a managing agent to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to such manager any of its powers under the Seacliff Plantation Community Restrictions, provided, however, that the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$10,000 or for the performance of any work or services, which work or services are not to be completed within sixty (60) days, nor the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment. It is understood and agreed that the Declarant has the right to appoint and install managing agent.

(e) The Association shall have the right from time to time to pay, compromise or tender any or all taxes and assessments levied against all or any part of the common areas or upon any personal property belonging to the Association.

(f) The Association shall have the authority to exchange or to sell and convey or otherwise dispose to exchange or to sell and convey, or otherwise dispose of, for cash or on such terms as it shall approve, the right, title and interest of the Association or any member thereof in and to any portion or portions of the common area, with improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for the Association or for the members thereof, and to borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V and to secure the same by a mortgage on the common area then owned by or leased to the Association, or any part thereof, provided, however, that no such borrowing and mortgaging shall be made unless the same shall have been first approved by an affirmative vote of not less than two-thirds (2/3) of the members who

may vote in person or by proxy at a meeting of the Association duly called, the notice for which shall have described such exchange, sale or disposition, or the amount of such borrowing and the security to be mortgaged, and shall have given the reasons therefor. All proceeds of any disposition or borrowing, less the expenses thereof, shall be invested by the Association for the benefit of the Association and the members, or in improving the property of the Association.

(g) Upon payment of a reasonable fee and upon written request of any Owner, the Association shall furnish a written statement setting forth the amount of assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner, the lot owned by such Owner and such Owner's invitees and agents and the amount of the assessments for the current fiscal period of the Association payable with respect to the lot owned by such Owner, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid.

Section 5.06. Seacliff Plantation Community Association Rules.

(a) The Association may from time to time and subject to the provisions of the Seacliff Plantation Community Restrictions, adopt, amend and repeal rules and regulations to be known as the Seacliff Plantation Community Association Rules governing, among other things:

(1) The use of the common areas including without limitation the recreational facilities, if any.

(2) The collection and disposal of refuse.

(3) The maintenance of the improvements on the respective lots so as to preserve the quality of life in the Seacliff Plantation Community.

(4) The maintenance of animals within Seacliff Plantation Community which are incompatible or inconsistent with the ideals underlying the Seacliff Plantation Community.

(5) The permitting or prohibition of uses or activities within Seacliff Plantation Community which are incompatible or inconsistent with the ideals of and the residential and agricultural nature of the Seacliff Plantation Community.

(b) With respect to subparagraph (a)(1) above, the Seacliff Plantation Community Association Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Seacliff Plantation Community for all Owners, their families, invitees, licensees, lessees, and guests, restrict and/or govern the use of common areas by any Owner or by the family, invitees, licensees or lessees of such Owner.

(c) A copy of the Seacliff Plantation Community Association Rules as they may from time to time be adopted, amended or repealed, certified by the secretary or the assistant secretary of the Association, shall be filed in and available at all times at the office of the Association and duplicate copies thereof shall be delivered to each Owner on his acquisition of a lot or farm dwelling site, and a copy of each new rule or of any amendment of an existing rule and notice of repeal of any rule shall be given to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Seacliff Plantation Community Association Rules shall have the same force and effect as if they were set forth and were a part of the Seacliff Plantation Community Restrictions. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

Section 5.07. Liability of Member of the Board. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Design Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

Section 5.08. Powers of the Association. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in paragraphs (b) through (f) inclusive of Section 5.05.

ARTICLE VI

FUNDS AND ASSESSMENTS

Section 6.01. Operating Fund. There shall be an operating fund in which the Association shall deposit all moneys paid to it as:

- (a) Maintenance assessments
- (b) Special assessments
- (c) Use fees paid by users of recreational facilities, if charged by the Association
- (d) Income and profit attributable to the Operating Fund and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied

Section 6.02. Maintenance Assessment.

- (a) Within thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article V and in paying all fees and expenses of the Design Committee. The Board shall include in this estimate a

reasonable provision for reserves for contingencies, for reconstruction and replacements, and for alterations and improvements upon the common areas. From this estimate shall be subtracted an amount equal to the anticipated balance (exclusive of any accrued reserves as provided for above) in the Operating Fund at the start of each fiscal year which is attributable to maintenance assessments.

(b) The sum or net estimate determined pursuant to paragraph (a) shall be divided and assessed by the Board as a maintenance assessment against the Owners, in proportion to the numbers of farm dwelling sites owned by each Owner.

(c) The first maintenance assessment shall be adjusted according to the number of months remaining in the first fiscal year of the Association. The maintenance assessments provided for herein shall commence as to each farm dwelling site on the date that the Declarant notifies the owners of the farm dwelling sites that it will commence the maintenance assessments; provided, however, that once one owner has commenced paying maintenance assessments all owners of homesites will be billed including the Declarant, provided that the "offsite improvements" to each lot have been completed.

(d) If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (b) above.

(e) Maintenance assessments shall be due and payable by the Owners to the Association in equal monthly installments on or before the first day of each month, or in such other manner as the Association shall designate, but not in advance in any amount in excess of the estimate for the full year.

Section 6.03. Special Assessment. The Board shall levy a special assessment against any Owner as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Seaciff Plantation Community Restrictions, the Seaciff Plantation Community Rules or the Design Committee Rules, monies were expended from the Operating Fund by the Association in performing its functions under the Seaciff Plantation Community Restrictions.

Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include without limitation, engineers', architects', attorneys' and accountants' fees where reasonably incurred by the Association.

Section 6.04. Association, Declarant and Other Exemptions. Anything herein to the contrary notwithstanding, it is understood that the Association shall

be exempt in whole or in part from assessments under this Article VI.

Section 6.05. Default in Payment of Assessments.

(a) Each assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot or farm dwelling site by acceptance of any document of conveyance therefor, whether or not it shall be so expressed in any such document, is deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at twelve percent (12%) and costs, including reasonable attorney's fees, shall be and become a lien upon the lot or farm dwelling sites of such Owner upon recordation by the Association of a notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the lot or farm dwelling site of such Owner, and the sale or transfer of any lot or interest therein in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which become due prior to such sale, but not such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association shall record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in like manner as mortgage of real property, and the Association shall have power to bid on the lot or farm dwelling site at foreclosure and to acquire and hold, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any homesite or homesites and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

Section 6.06. Notice of Assessment. Notice of any maintenance or special assessment provided for herein, with the exception of the first maintenance assessment, shall be mailed to all Owners of homesites at such addresses as are shown on the record of ownership of the Association; provided, however, that notice of any change in any maintenance or special assessment shall be mailed not less

than thirty (30) days before such assessment shall become effective.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01. Amendment or Repeal - Duration.

(a) Unless specifically provided to the contrary herein, the Seacliff Plantation Community Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Seacliff Plantation Community, and any limitation, restriction, covenant or condition thereof may, at any time be amended or repealed upon the happening of all of the following events:

(1) The prior written approval of any proposed amendment or repeal by the Planning Commission of the County of Kauai for any provision or provisions of the Seacliff Plantation Community Restrictions which were required by the County of Kauai pursuant to Special Management Area Use Permit SMA(U)-82-2, approved by the County of Kauai on February 10, 1982.

(2) The vote of the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members, approving the proposed amendment or amendments or the repeal of Seacliff Plantation Community Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Seacliff Plantation Community Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be.

(3) The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Seacliff Plantation Community Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph, and

(4) The recordation of a written instrument also setting forth in full said amendment or amendments to the Seacliff Plantation Community Restrictions, executed by the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members.

(b) All of the limitations, restrictions, covenants and conditions of the Seacliff Plantation Community Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Seacliff Plantation Community, to the Owners and to the Association, subject, however, to the right to amend and repeal as provided in paragraph (a) above, until the 1st day of January, 2012, after which time the said limitations,

restrictions, covenants and conditions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by not less than a majority of the then Class A Members has been recorded, agreeing to change said covenants in whole or in part.

Section 7.02. Enforcement, Nonwaiver.

(a) Except to the extent otherwise expressly provided herein, the Declarant, Association or any Owner or Owners shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by the Seacliff Plantation Community Restrictions upon other Owners or upon any property within the Seacliff Plantation Community, and the costs of enforcement, including court costs and attorney's fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge. No entry upon the homestead of any Owner of other action to enforce any such limitation, restriction, covenant, condition, litigation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default of breach involved.

(b) Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by the Seacliff Plantation Community Restrictions upon the Seacliff Plantation Community Association, provided, however, anything herein to the contrary notwithstanding, no Owner as such shall have any right to enter upon the property of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association except by proper legal proceedings and authority of the court having jurisdiction.

(c) Every act or omission whereby any restriction, conditions or covenants of the Seacliff Plantation Community Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in paragraphs (a) and (b) above, provided, however, that any provision to the contrary notwithstanding only the Association or its duly authorized agents may enforce any limitation, restriction, covenant, condition or obligation herein set forth by its or their own action without authority of a court having jurisdiction.

(d) Each remedy provided for in the Seacliff Plantation Community Restrictions is cumulative and nonexclusive.

(e) Any and all liabilities for the violation or noncompliance with any of the limitations, restrictions, covenants, conditions, obligations, liens and charges which may be imposed by the Seacliff Plantation Community

Restrictions shall be joint and several unto all persons and/or entities holding any interest in and to the lot and/or farm dwelling sites upon which such violation or noncompliance occurs.

(f) The failure in any case to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Seaciff Plantation Community Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provisions of the Seaciff Plantation Community Restrictions in another case against or with respect to the same Owner or farm dwelling site or any other Owner or farm dwelling site.

Section 7.03. Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

(a) All of the limitations, restrictions, covenants and conditions of the Seaciff Plantation Community Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of the Seaciff Plantation Community as set forth in the introductory paragraphs of this Declaration.

(b) No provisions of the Seaciff Plantation Community Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over Seaciff Plantation Community Restrictions to the contrary notwithstanding, if all uses to which a farm dwelling site may be put under the provisions of the Seaciff Plantation Community Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use his site for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Seaciff Plantation Community Restrictions which can lawfully apply to the site as so used.

(c) Notwithstanding the provisions of paragraph (a) above, the limitations, restrictions, covenants and conditions of Seaciff Plantation Community Restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural, the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter as the context requires.

(e) All titles used in the Seaciff Plantation Community Restrictions, including those of Articles and Sections, are intended solely for convenience or reference and the same shall not, nor shall any of them, affect that which is set forth in such Articles and Sections, nor any of the terms or provisions of the Seaciff Plantation Community Restrictions.

Section 7.04. Conveyance of Lease of Common Area;
Reservation of Easements and Rights-of-Way and
Classification of Land Area.

(a) The Association shall accept all of the real property and interests in real property conveyed or leased to it as common area or as a co-tenancy area by the Declarant, provided that the Association need not accept any such property subject to any exceptions, liens and encumbrances except as follows:

(1) The lien of any real property taxes and assessments nondelinquent;

(2) Such restrictions as to use and enjoyment and such easements and rights-of-way on, over, or under all or any part thereof as may be reserved to the Declarant or granted to any Owner in any recorded document or in accordance with the provisions of the Seacliff Plantation Community Restrictions;

(3) Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant or any adjoining Owner of land for access to land contiguous to the real property, and such easements and rights-of-way on, over or under all or any part thereof as may be excepted or reserved unto persons for roadway, electrical, gas, communications and other utility purposes, and for sewer, drainage and water facilities, and for walkways, pathways, bird sanctuaries, or parks, over, under, along, across and through said real property, together with the right to grant to the United States of America, the State of Hawaii, County of Kauai, Board of Water Supply of the County of Kauai or any other appropriate governmental agency or public utility, or to any other public or private corporation or association, or to any individual, easements for such purposes over, under, across, along, and through said real property;

(4) The obligations imposed directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Hawaii, the County of Kauai or any other political or governmental organization having jurisdiction over such property;

Any other lien, encumbrance or defect in title of any kind whatsoever other than a type which would at any time or from time to time create a lien upon such properties to secure an obligation to pay money) which would not materially and actually prejudice the Owners in their use and enjoyment of such property.

(b) The land classification of any property within the Seacliff Plantation Community which is not a common area may be changed to a common area by the transfer of such property to the Association from all persons having any right, title or interest therein and the acceptance by the Association of such property.

(c) At any time and from time to time following conveyance or lease of a common area by the Declarant to the Association pursuant to this Section, the Declarant may construct, reconstruct, refinish or alter any improvements upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs, or ground cover upon such work if the Declarant shall determine that any such work (i) is reasonably necessary for any utility installation servicing any property within the Seacliff Plantation Community, (ii) is reasonably necessary for the construction of any facility for use by the Owners, (iii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of such area, or (iv) is desirable to protect, support or preserve any property which constitutes a part of the Seacliff Plantation Community.

Section 7.05. Reservation of Easements. All real property within the Seacliff Plantation Community shall be subject to the exception and reservation unto the Declarant, of easements for roadway, electrical, gas, communications, and other utility purposes and for sewer, drainage and water facilities, and for walkways, pathways, bird sanctuaries, or parks, over, under, along, across and through said real property, together with the right to grant to the United States of America, the State of Hawaii, County of Kauai, Board of Water Supply of the County of Kauai or any other appropriate governmental agency or public utility, or to any other public or private corporation or association, or to any individual, easements for such purposes over, under, across, along and through said real property under the usual terms and conditions required by the Declarant or the grantee for such easement rights; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of said real property by the Owners thereof, their successors and assigns, and in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements said real property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the condition of said real property immediately prior to the exercise thereof. Declarant shall have the right to grant or lease any such easements without the consent or joinder of the Association or any person then owning a lot or farm dwelling site in the Seacliff Plantation Community.

Section 7.06. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to the Seacliff Plantation Community Restrictions may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association and the Association shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

Section 7.07. Condemnation. In case at any time or times all or any portion of the common area shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the entire award and compensation shall be paid to the Association. No Owner

shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall in its name alone represent the interest of all Owners.

Section 7.08. Uninsured Casualty. In case at any time or times any common area or improvements thereon shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such common area or improvement shall be rebuilt, repaired or restored unless two-thirds (2/3) of the members vote to the contrary. Any such approved restoration of the common area or improvements thereon shall be completed diligently by the Association at its own expense and in accordance with plans first approved in writing by the Design Committee. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

Section 7.9. Obligation of Owners, Avoidance, Termination.

(a) No Owner through his non-use of any common area or by abandonment of his farm dwelling site, may avoid the burdens or obligations imposed on him by the Seacliff Plantation Community Restrictions by virtue of his being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such lot and payable after the date of such transfer, and no person after the termination of his status as an Owner shall incur any of the obligations or enjoy any of the benefits of an Owner under the Seacliff Plantation Community Restrictions following the date of such termination.

Section 7.10. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or the County of Kauai to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.11. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.12. Notices, Demands, Delivery.

(a) Any notice or other document permitted or required by the Seacliff Plantation Community Restrictions

to be delivered may be delivered either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Seaciff Plantation Community Association at the address designated by the Association from time to time by written notice to the Owners, and shall be deemed to have been delivered to the Design Committee seventy-two (72) hours after a copy of the same has been deposited in the same manner addressed to the Design Committee in care of the Seaciff Plantation Community Association at the latter's then current address.

The post office address of an Owner shall be the last known address of such Owner, shown in the Association's records, and delivery by mail shall be deemed complete to an Owner seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.

(b) Delivery to any member of the Board of Directors of the Association shall be deemed adequate delivery to the Association and delivery to any member of the Design Committee shall be deemed adequate delivery to the Design Committee.

(c) Where there is more than one Owner of a lot or farm dwelling site, the delivery personally or by mail to any Owner shall be effective delivery to all Owners of such lot or farm dwelling site.

IN WITNESS WHEREOF, the Declarant, as more than 90% of the Class A membership and as the Class B Member, has executed this Declaration as of this 28th day of December, 1988.

PALI MOANA COMPANY

By: Robertson Construction Company,
In: General Partner of Pali
Moana Company

Robertson
Robertson, President of
Robertson Construction Company,
Inc.

22766 601

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

On this 28th day of December, 1988, before me appeared CODA C. ROBERSON, to me personally known, who, being by me duly sworn, did say that Roberson Construction Company, Inc., is a corporation formed in the State of New Mexico, of which he is the President, and that there is no seal of said corporation, and such corporation is a General Partner of Pali Moana Company, a New Mexico Partnership, and that the instrument was signed on behalf of the partnership, and said CODA C. ROBERSON acknowledged the instrument to be the free act and deed of the partnership.

Pali Moana
Notary Public, in and for said
State and County aforesaid

My commission expires: 12/18/89

GM2



R-222 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUN 18, 2002 08:01 AM
Doc No(s) 2002-105319



/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

51 1/1 Z6

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: [XX] MAIL [] PICKUP TO:

Peter C. Miller, Esq.
P.O. Box 1230
Hanalei, Hawaii 96714

Total Pages

51

ACCOM
TG. 2181980
RS

**FOURTH AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

This Fourth Amendment to Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment") is made as of the date set forth below by the undersigned owners (the "Undersigned Owners") of Lots within Seacliff Plantation at Kilauea Bay Community ("Seacliff Plantation"), Kilauea, Island of Kauai, State of Hawaii.

WITNESSETH:

WHEREAS, PALI MOANA COMPANY, formerly known as Roberson/Larson Partners, a New Mexico partnership, whose business address and mailing address is 6001 Atrisco NW, Albuquerque, New Mexico 87120, herein called the "Declarant", developed certain real property situate at Kilauea, Island and County of Kauai, State of Hawaii, in the subdivision known as the Seacliff Plantation at Kilauea Bay; and

WHEREAS, the Declarant's predecessor, Roberson/Larson Partners, recorded that certain Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, amended by instrument (acknowledged March 1, 1988, March 2, 1988, March 3, 1988, and March 7, 1988), recorded in Liber 21704 at Page 1; and

WHEREAS, the Declarant recorded that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22367 at Page 21; and

WHEREAS, the Declarant thereafter recorded that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community dated December 28, 1988 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22766 at Page 559 (the "Third Amendment"), restating the covenants, conditions and restrictions in full; and

WHEREAS, the Undersigned Members hereby again wish to amend the Declaration (by this "Fourth Amendment") in the manner set forth hereinbelow; and

WHEREAS, the Third Amendment, in regard to its amendment, provides in pertinent part:

Section 7.01. Amendment or Repeal - Duration.

(a) Unless specifically provided to the contrary herein, the Seacliff Plantation Community Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Seacliff Plantation Community, and any limitation, restriction, covenant or condition thereof may, at any time be amended or repealed upon the happening of all of the following events:

(1) The prior written approval of any proposed amendment or repeal by the Planning Commission of the County of Kauai for any provision or provisions of the Seacliff Plantation Community Restrictions which were required by the County of Kauai pursuant to Special Management Area Use Permit SMA (U)-82-2, approved by the County of Kauai on February 10, 1982.

(2) The vote of the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members, approving the proposed amendment or amendments or the repeal of Seacliff Plantation Community Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Seacliff Plantation Community Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be.

(3) The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Seacliff Plantation Community Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph, and

(4) The recordation of a written instrument also setting forth in full said amendment or amendments to the Seacliff Plantation Community Restrictions, executed by the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members.

WHEREAS, no provisions of the Third Amendment being amended herein were part of the Seacliff Plantation Community Restrictions which were required by the County of

Kauai pursuant to Special Management Area Use Permit SMA (U)-82-2, approved by the County of Kauai on February 10, 1982; and

WHEREAS, there is no longer a Class B Member; and

WHEREAS, seventy five percent (75%) of the Class A Members have approved the amendments herein at a meeting of the Association duly held, the notice of which stated as a purpose thereof the consideration of said amendments, giving the substance of the proposed amendments therein, as certified thereto by the Secretary of the Association, said certification being attached hereto as Exhibit "A" and being recorded herewith; and

WHEREAS, not less than seventy five percent of the Class A Members hereby execute for recordation this written instrument setting forth in full said amendments; and

WHEREAS, it is most efficient and desirable to have this Fourth Amendment executed in counterparts so that, when at least seventy five percent (75%) of the Class A Members have signed them, a single copy of the Fourth Amendment with all of its executed signature pages can be recorded in the Bureau of Conveyances of the State of Hawaii in order to effectively amend the Declaration (and Third Amendment) as provided herein;

NOW, THEREFORE, the Undersigned Members hereby amend the Declaration (as stated in the Third Amendment) in the following particulars:

A. The present Subsection (o) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, is hereby amended to read in full as follows:

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants, family, employees and guests, and for no other purpose.

B. Subsection (ff) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, is hereby amended to read in full as follows:

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for bed and breakfast operations.

C. The provisions contained in this Fourth Amendment shall become effective upon its recordation. The effectiveness of this Fourth Amendment shall not affect any liens or other enforcement proceedings or remedies arising pre-Fourth Amendment.

D. Except as amended herein, the Declaration, as restated in the Third Amendment, shall remain in full force and effect.

E. The Undersigned Members agree that this instrument can be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same executed document, notwithstanding that all of the Undersigned Owners 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.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the dates set forth beside our respective signatures, to become effective upon recording hereof in the Bureau of Conveyances of the State of Hawaii.

SIGNATURE PAGE FOR

FARM DWELLING SITE: _____

FOR APPROVAL OF THE

**FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment" to the "Declaration"), the Undersigned Member(s) certify(ies) that he/she/it/they:

1. Has/have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) (i.e., the undersigned constitute(s) all persons who severally, jointly or in common are the record owner of all of the fee simple title to the said Farm Dwelling Site or certifies that he/she/it is less than all of the Owners thereof, but that no protest by any other Owner thereof to the casting of this vote by the Undersigned; and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of _____, _____, before me appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of _____, _____, before me appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of _____, _____, before me appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

Exhibit "A"
Certificate of Secretary
Seacliff Plantation at Kilauea Bay Community Association

The undersigned, being the duly elected Secretary of this Association, does hereby certify that the amendments to the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay, as restated in the Third Amendment to Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Third Amendment"), as set forth below were duly approved by vote of the Owners at a meeting of the Association held on January 25, 2000, and otherwise pursuant to Paragraph 7.02 of the Third Amendment. The portions deleted are shown ~~stricken like this~~ and the portions added are shown **in bold type face and underlined like this.**

A. Subsection (o) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, was amended as follows:

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants ~~(other than transient vacation renters)~~, family, employees and guests, and for no other purpose.

B. Subsection (ff) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, was amended as follows:

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for ~~transient vacation rental purposes~~ **bed and breakfast operations.**

Certified this 3 day of JUNE, 2002 at Kilauea, Hanalei, Kauai, Hawaii.

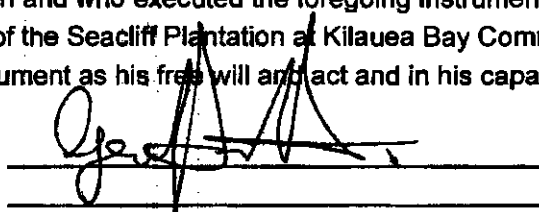

Peter J. Somers, Secretary

STATE OF HAWAII)

) ss.

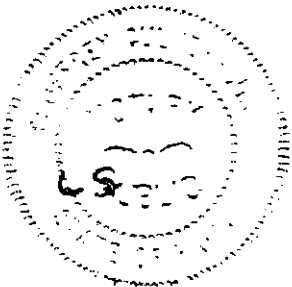
COUNTY OF KAUAI)

On this 3 day of JUNE, 2002, before me appeared PETER J. SOMERS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he is the duly elected Secretary of the Seacliff Plantation at Kilauea Bay Community Association and that he executed the foregoing instrument as his free will and act and in his capacity as such Secretary.


Notary Public, State of Hawaii

My Commission Expires: _____

GEOFFREY CULVERHOUSE
Notary Public, State of Hawaii
Commission expires 01/31/2003



SIGNATURE PAGE FOR

FARM DWELLING SITE: 3

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Feb 11/2012

Member Executing

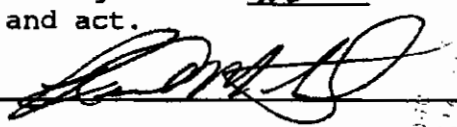
William D. Hayes
William D. Hayes

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

On this 11 day of FEBRUARY, 2000,

before me appeared WILLIAM D. HAYES,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that HE executed
the same as HIS free will and act.



Notary Public, State of CT
My Commission Expires: 8/3/2004

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR
FARM DWELLING SITE(s): 4

FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

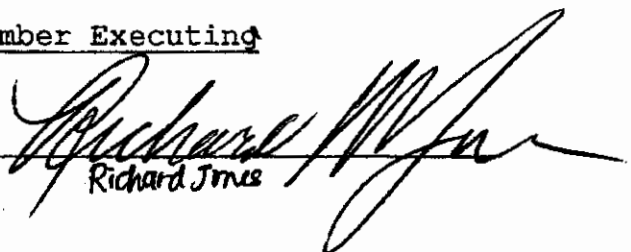
By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-23-01

Member Executing


Richard Jones

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared Richard Jones,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Witas
MARY L. WITAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR
FARM DWELLING SITE(s): 5A + 5C

FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY


By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/23/2000

Member Executing


Peter Somers

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared Peter Somers,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wises
MARY L. WISES
Notary Public, State of HAWAII
My Commission Expires: 3/14/07

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 5-B

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

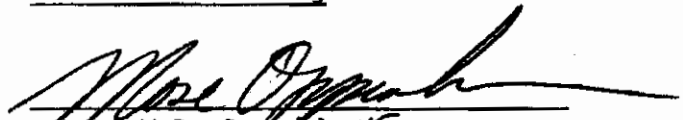
1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

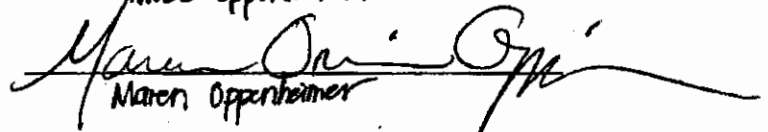
Date Executed

February 22, 2001

Feb 22, 2001

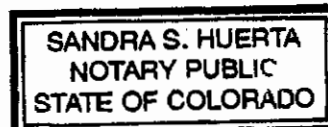
Member Executing


Mose Oppenheimer


Maren Oppenheimer

STATE OF Colorado)

COUNTY OF Delta)



My Commission Expires 05/31/2002

On this 23 day of February, 2001,

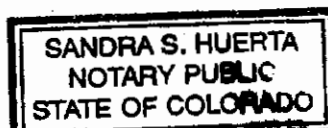
before me appeared Mose Oppenheimer,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Sandra S. Huerta

Notary Public, State of Colorado
My Commission Expires: 5/31/02

STATE OF Colorado)

COUNTY OF Delta)



My Commission Expires 05/31/2002

On this 23 day of February, 2001,

before me appeared Maren Oppenheimer,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Sandra S. Huerta

Notary Public, State of Colorado
My Commission Expires: 5/31/02

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 6-C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

1-25-2000

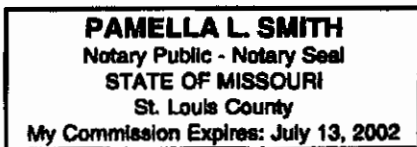
Daniel J. Kaentler
Daniel J. Kaentler

STATE OF Mo)

COUNTY OF St. Louis)

On this 25th day of January, 2000 ,

before me appeared Daniel J. Kaenter,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as _____ free will and act.



Pamella L. Smith
Pamella L. Smith
Notary Public, State of Mo
My Commission Expires: 7-13-02

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____ ,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____ ,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 7 Unit 1

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

2/6/02

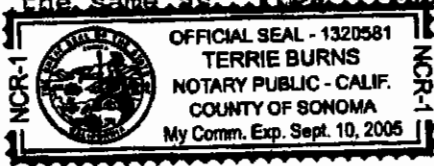
Jeannette Rothweiler (Dikeman)
Jeannette Rothweiler

STATE OF California)

COUNTY OF Sonoma)

On this 6th day of February, 2002,

before me appeared Jeannette Rothweiler,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.



Terrie Burns

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 7 Unit 2

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

9/26/02

Member Executing

Thomas C. Dikeman
Thomas C. Dikeman

STATE OF HAWAII)
)
)
COUNTY OF KAUAI)

On this 26 day of APRIL, 2002,

before me appeared THOMAS C. DIKEMAN,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

MARY L. WISAS
MARY L. WISAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 7 Unit 3

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

4/10/02

Member Executing


Robert Thompson

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 10 day of APRIL, 2002,

before me appeared Robert Thompson,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Mary L. Wijas
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 9-B

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-30-2000

1-30-2000

Member Executing

Joan C. Gehlke
Joan C. Gehlke
Larry D. Gehlke

STATE OF Delaware)

COUNTY OF New Castle)

On this 30th day of January, 2000,

before me appeared Joan C. Gehrke,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Victoria A. Thawley
VICTORIA A. THAWLEY
Notary Public, State of DE
My Commission Expires: 3-8-03

STATE OF Delaware)

COUNTY OF New Castle)

On this 30th day of January, 2000,

before me appeared Larry D. Gehrke,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Victoria A. Thawley
VICTORIA A. THAWLEY
Notary Public, State of DE
My Commission Expires: 3-8-03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 9-C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-27-2000

1-27-2000

Member Executing

George W. Atwood

George W. Atwood

Betty L. Atwood

Betty L. Atwood

STATE OF Pennsylvania)

COUNTY OF Montgomery)

On this 27th day of January, 2000,

before me appeared George W. Atwood,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Linda D. Stout

Notary Public, State of Pennsylvania
My Commission Expires April 10, 2000
Notarial Seal
Linda D. Stout, Notary Public
Souderton Boro, Montgomery County
My Commission Expires April 10, 2000
Member, Pennsylvania Association of Notaries

STATE OF Pennsylvania)

COUNTY OF Montgomery)

On this 27th day of January, 2000,

before me appeared Betty L. Atwood,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Linda D. Stout

Notary Public, State of Pennsylvania
My Commission Expires: April 10, 2000

Notarial Seal
Linda D. Stout, Notary Public
Souderton Boro, Montgomery County
My Commission Expires April 10, 2000
Member, Pennsylvania Association of Notaries

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 10-3

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/23/01

Member Executing

Darda B. Hollands
Darda B. Hollands

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of JANUARY, 2001,

before me appeared DARDA B. HOLLANDS,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Mary L. Wija
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): _____

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

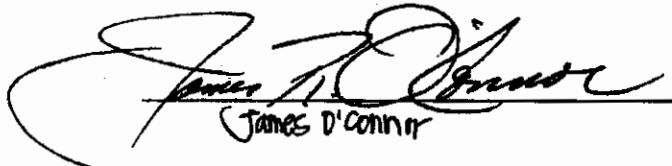
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1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

1/23/01


James D'Conna

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared James O'Connor,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wijas
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/11/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 15

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

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2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-24-00

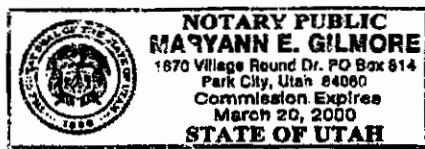
Member Executing

Pangolin Corp
Don L. Schmidt Pres
Don L. Schmidt
His President

STATE OF Utah)

COUNTY OF Summit)

On this 24th day of January, 2000,
before me appeared Dorn L Schmidt,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Maryann E Gilmore
Notary Public, State of Utah
My Commission Expires: March 20, 2000

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,
before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,
before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 16 B, C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-25-00

Member Executing

John
Lawrence J. Bm

STATE OF HAWAII)

city and COUNTY OF HONOLULU)

On this 25th day of January, 2000,

before me appeared Lawrence J. Eron,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Janice R. Omori
Janice R. Omori
Notary Public, State of Hawaii
My Commission Expires: 11/22/2000

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

265.10 →

SIGNATURE PAGE FOR
FARM DWELLING SITE: 17
FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-27-2000

2-4-2000

Member Executing


Thomas G. Rice
THOMAS G. RICE
Danna E. Rice
DANNA E. RICE

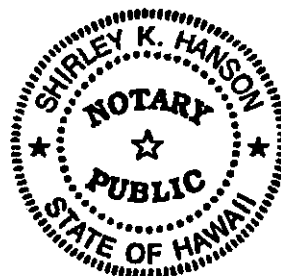
STATE OF HAWAII)

COUNTY OF KAUAI)

On this 27th day of JANUARY, 2000,

before me appeared Thomas G. Rice,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.


SHIRLEY K. HANSON
Notary Public, State of HAWAII
My Commission Expires: 10/30/2001

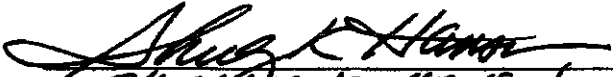


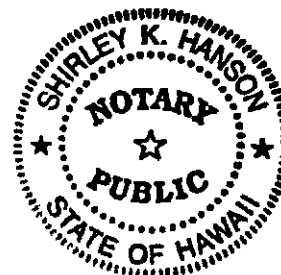
STATE OF HAWAII)

COUNTY OF KAUAI)

On this 4th day of FEBRUARY, 2000,

before me appeared DONNA E. Rice,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.


SHIRLEY K. HANSON
Notary Public, State of HAWAII
My Commission Expires: 10/30/2001



STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 18+19

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

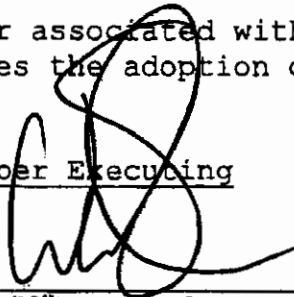
By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

04-02-01

Member Executing



William Garthson

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 2 day of APRIL, 2001,

before me appeared William Stevenson,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wiles
MARY L. WILES
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 20

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

July 2, 2001

Robert J. Campbell
Robert J. Campbell

July 2, 2001

Clarita S. Campbell
Clarita S. Campbell

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 2nd day of July, 2001,

before me appeared CLARITA S. CAMPBELL,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that SHE executed
the same as HER free will and act.



Ederlina O. Ortal

EDERLINA O. ORTAL

Notary Public, State of HAWAII

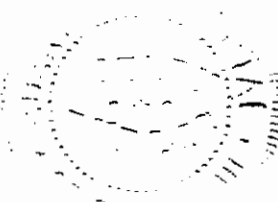
My Commission Expires: 2-06-04

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 2nd day of July, 2001,

before me appeared ROBERT J. CAMPBELL,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that HE executed
the same as HIS free will and act.



Ederlina O. Ortal

EDERLINA O. ORTAL

Notary Public, State of HAWAII

My Commission Expires: 2-06-04

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 22

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/30/01

Member Executing

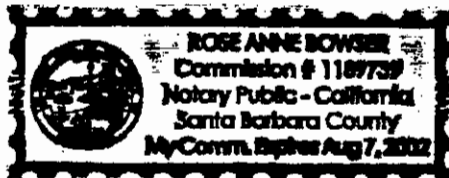
Walter Leung
Walter Leung

STATE OF California)

COUNTY OF Santa Barbara)

On this 1st day of February, 2000,

before me appeared Walter Lewis,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Rose Anne Bowser

Notary Public, State of California
My Commission Expires: 8-7-02

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 23 A+B

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

2-2-01

Elizabeth Freeman
Elizabeth Freeman

STATE OF Hawaii)
)
COUNTY OF Kauai)

On this 2nd day of February, 2001,
before me appeared Elizabeth Freeman -,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

C. KASHIWAGI is.
Notary Public, State of Hawaii
My Commission Expires: 7-7-01

STATE OF _____)
)
COUNTY OF _____)

On this _____ day of _____, 20____,
before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

On this _____ day of _____, 20____,
before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 24

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

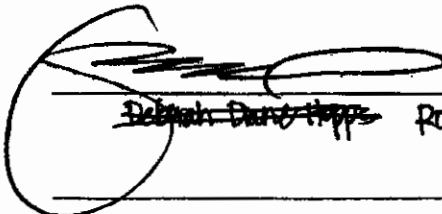
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

2/04/01

Member Executing


~~Deborah Davis Hays~~ John Boyd

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On 2/4/01 before me, DEBORAH DIANE HOPPS
(Name, Title of Officer)

personally appeared ROHN BOYD

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


(Signature of Notary Public)



(This area for notarial seal)

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 25-1

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/23/01

Member Executing


Ileana Carrero

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared Ileana Carrero,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that She executed
the same as her free will and act.

Mary L. Wijas
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 25-2

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

5-8-02

Member Executing

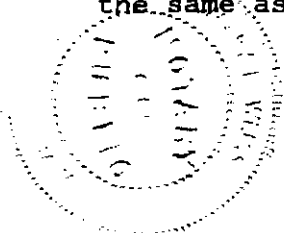


STATE OF HAWAII)

COUNTY OF KAUAI)

On this 8 day of MAY, 2002,

before me appeared MAGDI LATIF,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Mary L. Wijaya
MARY L. WIJAYA
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

From: Makaala Kaaumoana <kaaumoana@gmail.com>
Sent: Saturday, December 11, 2021 4:19 PM
To: Planning Department
Subject: Testimony Agenda item F 1 and M

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha, please accept my testimony on
Agenda Item F 1, and M - Permits for development of Lot 11-A, Sea Cliff Plantation, Kilauea

Aloha Commussioners, on behalf of Hui Hoomalu I ka Aina, we want to thank you for the department's thoughtful conditions for the proposed Sea Cliff dwelling.

We ask you to please retain the Nihokū building setback.

Please deny permits for any dwellings beyond the originally agreed upon 1982 line which was a condition of the SMA permit for Sea Cliff development, including the application for Lot 11-A.

We strongly support Nā Kia'i o Nihokū's petition to intervene as they represent community that cares for Nihokū.

Mahalo nui, Makaala Kaaumoana

Vice Chair

From: Darcie Wilcox <darciekw@yahoo.com>
Sent: Saturday, December 11, 2021 1:06 PM
To: Planning Department
Subject: House on crater hill

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Hello planing department. My name is Darcie gray and I'm writing in reference to the large house that is planing to go up on crater hill. I am humbly asking you to deny the permits to build the structure how and where they want it. Not only is it the right thing to do, It the lawful thing to do. Community members continue to do what you are paid to do and they continue to remind you of the voices and protests of the past and present. Please respect and listen to the legal process and the hard working community members who, like myself, have generational care and concerns for our beloved 'aina. Thank you , stop at the line , deny the permit

Sent from my iPhone

From: Marissa Leimakanalani Ornellas <leimakana@gmail.com>
Sent: Sunday, December 12, 2021 10:39 PM
To: Planning Department
Subject: Nihokū testimony

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha to the Kaua'i Planning Commission Members,
Please find my testimony in support of Nā Kia'i o Nihokū's application for a contested case. Let's acknowledge Nihokū and the significant place it holds for the Kīlauea community, Kaua'i, and the pae 'āina (archipelago) - this is an area of cultural and ecological importance. I ask that the Kaua'i Planning Commission members be mindful of how each new development, Nihokū included, smudges out a little more of Hawai'i's priceless past in pursuit of "progress".

Nihokū would be irreparably harmed by the proposed development as outlined in the original application. The conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital. The original 1982 setback line should also be honored.

I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report.

Mahalo for your time and consideration,
Marissa Ornellas
Wailua, Kaua'i

From: Mauiola Cook <mauliola3@gmail.com>
Sent: Sunday, December 12, 2021 10:05 PM
To: Planning Department
Subject: mauli ola cook re Nihoku

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha Planning commission Chair Apisa, Vice-chair Cox, and Honorable Kaua'i Planning Commissioners

Aloha mai

I would like to express my mana'o about the proposed house on Nohku that many of us have been discussing with your department over the last few weeks. I am sure you have a sense from the many who have written that there are deep concerns about the negative impact this proposed dwelling will have on so many aspects of our lives here on Kaua'i.

I join with all those who are humbly and persistently asking you to deny permits to build the proposed house. You have heard our repeated testimonies that the house is too large and located too high up on the mountain. We are all concerned the impact this proposed house would have on the seabird population. The seabirds are a unique and beloved part of our life here in Kilauea. Their existence is challenged in many ways. We need to be focusing on doing things that will help our seabird population to survive and refraining from doing things that might endanger them further.

The views of Nihoku, it's gentle, powerful presence, are significant and important aspects of our life here on Kaua'i.

Mahalo nui for all you folks are doing to protect our life style and the well being of our community, land and sea.

'o au nō
Maui Ola Cook
(aka Christine Anne Cook)

From: Gregory Scott <gregoryscott02@gmail.com>
Sent: Sunday, December 12, 2021 9:47 PM
To: Planning Department
Subject: Nihokū (Crater Hill)

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Kaua'I Planning Department,

Please keep promises historically made. Hold the line.

Aloha,
Greg Scott

From: Sarah Barger <sarahbarger14@gmail.com>
Sent: Sunday, December 12, 2021 9:21 PM
To: Planning Department
Subject: RE: Agenda Item F 1, and M - Permits for development of Lot 11-A, Sea Cliff Plantation, Kilauea

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha Kaua'i Planning Commission,

I am writing with aloha and gratitude for the work you've done to gather community input and stories that inform the building permit decision at the base of Nihokū. I have read the director's report and am in agreement with the majority of the thoughtful recommendations you have presented; however, I ask that you **DENY permits for any dwellings beyond the originally agreed upon 1982 line** which was a condition of the SMA permit for Sea Cliff development, including the application for Lot 11-A. In addition, I support Nā Kia'i o Nihokū's petition to intervene, given their incredibly important role as caretakers of the community spaces, histories, stories and traditions that embody, protect and honor Nihokū.

Mahalo for your consideration,
Sarah Barger

From: malia frye <maliafrye@gmail.com>
Sent: Sunday, December 12, 2021 8:02 PM
To: Planning Department
Subject: Nihokū Testimony

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Mahalo Honorable Kaua'i Planning Commission Members.

Nihokū is a vital place to the Kīlauea community of ecological and cultural significance.

I was born and raised here on the north shore in the Kīlauea area. I remember driving up to Nihokū with my dad in his rusty pickup truck to park up on the cliff and overlook the ocean. I was always terrified as a small girl of our proximity to the massive cliff drop off, but now as an adult and mother, these are the memories I cherish.

Though things have changed greatly and I'm grateful of the protections provided to the birds and wildlife, I'm saddened to see the development of the area as well. To experience the freedoms of exploring Nihokū, to the now restricted access and elaborate homes that prevent my keiki from sharing the same experiences as I had is something that saddens me. The only times I've had to share this special place with my keiki is at field trips through Kīlauea School. Those trips have been too few, but filled with memories of my childhood. It breaks my heart that my keiki may only experience this place as a place not accessible to them and with massive homes towering over them as if they themselves are the ones who do not belong.

To say that I'm in agreement with Nā Kia'i o Nihokū is an understatement. I fully support their interests and feel they represent the heartbeat of Kīlauea and Kaua'i in their purpose.

I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital. The original 1982 setback line should also be honored. Hold the line.

Mahalo for your time and consideration.

Sincerely,

Malia Frye

From: Kelvin Ho <kelkauai@gmail.com>
Sent: Sunday, December 12, 2021 7:07 PM
To: Planning Department
Subject: Testimony Agenda #1

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha Honorable Kaua'i Planning Commission Members

Dec 12, 2021

I have submitted written and oral testimony opposing the construction of Green home on Nihoku without conditions being met at the previous hearing. I would like to thank you for heeding the overwhelming testimony in opposition and listening to the voices of the community you serve. I wish to submit testimony for Agenda #1 at the next meeting.

The conditions you have put forth will go a long way in lessening the deep impact this proposed construction would have on all levels to this culturally sacred and extremely rare and valuable wildlife preserve. The community in Kilauea is supported by the rest of the island and state for the preservation of a cultural treasure and priceless environmental and wildlife resource for all that Nihoku offers us now and especially our children in time to come.

I have served with the Nā Pali Coast 'Ohana and Protect Kaho'olawe 'Ohana for decades now, and fully support the intervention status of Na Kia'i O Nihoku in this matter. There is no better informed or equipped representative for the community, conservationists and cultural practitioners on Kauai to do so.

Your steadfast insight into to this very sensitive matter is deeply appreciated and everyone is grateful for the courage you demonstrate in listening directly to the people and holding the light up so that the best path for the people whose lives will be most affected is easily seen and followed.

Thank you again for the opportunity to voice support for Na Kia'i O Nihoku and that all the conditions set forth are met and adhered to by the Greens.

Mahalo nui
Kelvin Ho
PO Box 769
Lawai, HI 96765
808. 482-1682
kelkauai@gmail.com

From: Sarah Wright <sarah.wright15@gmail.com>
Sent: Sunday, December 12, 2021 5:43 PM
To: Planning Department
Subject: Written Testimony for 12/14/21 Hearing, Agenda Item 1a

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Aloha Honorable Kaua'i Planning Commission Members.

Nihokū is a vital place to the Kīlauea community of ecological and cultural significance. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital.

Mahalo for your time and consideration.

With aloha,
Sarah Wright
sarah.wright15@gmail.com

From: Alexa Belmont <alexa.belmont88@gmail.com>
Sent: Sunday, December 12, 2021 12:19 PM
To: Planning Department
Subject: HOLD THE LINE on the Nihokū building

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha Kauai Planning Commission Members,

It has just recently been brought to my attention of the proposed development at Nihokū and I am very concerned. Not only for the protection of the birds and the controlling of predators at risk, but as hula dancer, we have performed ceremonies on that sacred land and I fear access to those locations would be diminished if building was permitted.

So I ask you to HOLD THE LINE. DENY THE PERMIT.

Thank you for your time,
Alexa Belmont

From: Gloria Estrella <alohaglow3@gmail.com>
Sent: Sunday, December 12, 2021 7:58 AM
To: Planning Department
Subject: Testimony in support of Nihoku at Crater Hill in Kilauea

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Mahalo Honorable Kaua'i Planning Commission Members.

Nihokū is a vital place to the Kilauea community of ecological and cultural significance. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital. The original 1982 setback line should also be honored. Hold the line.

Please support the agreed-upon stipulations to keep our community Pono, for those new land owners with the money to manipulate and sway those in authority with short memories.

Mahalo for your time and consideration.

Sincerely, Gloria Estrella, Kalihiwai, Kaua'i
PO Box 602, Kilauea, HI 96754

From: Jonathan Kissida <jonathan.kissida@k12.hi.us>
Sent: Sunday, December 12, 2021 6:42 AM
To: Planning Department
Subject: Aloha & Testimony on Nihoku

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Mahalo Honorable Kaua'i Planning Commission Members,

Mahalo to the planning department for their proposed conditions and share how you feel about them. My name is Jonathan Kissida. I am a 6th grade teacher at Kilauea Elementary and a concerned community member.

I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I appreciate the proposed conditions, but I am concerned that the conditions are not stringent enough. Compromise needs to include caring for flora and fauna affected by the development. Is 150 feet relocation, 15% reduction, and minimized excavation enough? **Please hold the line from the 1982 agreement.** Agreements were made to protect the beauty of Nihoku and we need to respect, care, and take care of Nihoku and other culturally significant places for current and future generations. The planning department has the opportunity to show our keiki that the 'aina comes first.

I support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital. Please consider the keiki. We are seeing a rebirth of 'aina based learning and need to protect places, such as Nihoku, which can be learned from and cared for for generations to come.

Mahalo for your time and consideration.

Sincerely,
Jonathan Kissida

--
Jonathan Kissida
Kilauea Elementary School
Cell: 8086408952

Outdoor student interested driven integrated learning <https://www.donorschoose.org/mrjon>

"Yeah, well, I've got a dream too. But it's about singing and dancing and making people happy. That's the kind of dream that gets better the more people you share it with. And well, I've found a whole bunch of friends who have the same dream. And it kind of makes us like a family." Kermit the Frog

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From: Devin Forrest <dforrest@hawaii.edu>
Sent: Sunday, December 12, 2021 11:27 PM
To: Planning Department
Subject: Opposition Testimony
Attachments: Opposition Testimony Devin Forrest.docx; Opposition Testimony Devin Forrest.pdf

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--
Devin C.K. Forrest
J.D. Candidate, Class of 2022
William S. Richardson School of Law
dforrest@hawaii.edu
'Aiawahie a Lapa ke Ahi
"Take Your Time Toward Mastery"

Kaua'i Planning Commission Meeting
Tuesday December 14, 2021 9:00 am

Testimony in:

- OPPOSITION TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT (Z_IV-2022-1), and USE PERMIT (U-2022-1)
- SUPPORT OF NĀ KIA'I O NĪHOKŪ PETITION FOR INTERVENTION.

E Kaua'i Planning Commission Aloha nui,

I would first like to thank the Planning Department and state that while I oppose this permit, I appreciate all of the conditions that seek to affirm and recognized the traditional and customary Native Hawaiian practices of this area that were fought for by the previous generations and which continue to be practiced today. The proposed "new" 150 feet from the "setback line," and semi-circular set back lines relied upon in this application, are not what resulted from the contested case hearing and actions by kūpuna of our community in the early 1980s, as conditions of the Sea Cliff development and the original SMA permit. Community members who fought to set and hold that original set-back line, do not recall nor have any record of being consulted or informed of the changes that are being relied upon by all permittees on the slopes of Nihokū. How is it possible that a full record or evidence of the change does not exist so that we, as the community and cultural practitioners of this place, can understand how a unilateral change to an important wahi pana could occur without community input.

This permit should be denied or a contested case held with Nā Kia'i o Nihokū as intervenors, to discover how such a decision was carried out without any evidence of process and how to remedy permits in the area that have relied on this information. "Ua Mau ke Ea o ka 'Āina i ka Pono," our state motto, it speaks of pono—righteousness, this attempted English equivalent does not fully encapsulate the universal harmony that pono actually expresses. Our community and kūpuna have fought to maintain the pono of this area by creating these set-back lines to allow for a Native Hawaiian environment and its related practices to return. Pono does not care about hurt feelings or people losing money on faulty real estate decisions, those are issues that need to be dealt with by parties responsible for misrepresenting what could and could not be done in this area. **THE LINE MUST BE HELD!**

From: Letani Peltier <letanip@oha.org>
Sent: Monday, December 13, 2021 8:00 AM
To: Planning Department
Subject: Written Testimony & Request for Oral Testimony - 12/14 Planning Commission Mtg
Agenda Item M1 (Nihokū)
Attachments: 21-1213_Testimony_Kauai County Planning Commission_Item M1_Nihoku.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

Please find attached written testimony from the Office of Hawaiian Affairs for Agenda Item M1 (re: Nihokū).

May I also request to provide oral testimony. My information is as follows:

Letani Peltier
Agenda Item M1
letanip@oha.org

Mahalol
-Letani

--

Letani G. Peltier, Esq.
Public Policy Advocate
Office of Hawaiian Affairs



Planning Commission
County of Kaua'i

AGENDA ITEM M1

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT (Z-IV-2022-1), and USE PERMIT (U-2022-1) for the construction of a farm dwelling unit, guest house, garage and associated site improvements within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,000 feet west of the Pali Moana Place/Makana'ano Place intersection, further identified as Tax Map Key:(4) 5-2-004:084 (Unit 1) affecting a portion of a larger parcel approximately 12.305 acres in size = Phillip J. & Linda M. Green.

December 14, 2021

8:30 a.m.

Online Meeting

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on Agenda Item M1, which relates to a Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit for construction and associated site improvements within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea.

OHA notes its appreciation for the both the Planning Commission and the Planning Department's recognition of the County' affirmative duty to preserve and protect Native Hawaiian traditional and customary rights. In furtherance of this duty, the Planning Commission has deferred decisionmaking on this item in order to provide the Planning Department with additional time to seek out and compile written and oral testimonies from individuals knowledgeable about the Native Hawaiian traditional and customary practices that may be compromised by the applicant's proposed construction.

The Planning Department's diligence has yielded a number of recommendations that will help to protect, preserve, and ultimately perpetuate Native Hawaiian traditional and customary practices. OHA is hopeful that the Planning Commission will fully consider these recommendations, including: relocating the development further down the hill and reducing its total square footage, minimizing grading and excavation to the maximum extent possible, providing easements for access to the USFWS and a portion on the property itself to

Kaua'i Planning Commission
Agenda Item M1
December 14, 2021

accommodate Native Hawaiian traditional and customary practices, as well as a number of measures to minimize impacts to Nēnē and Hawaiian seabirds.

OHA understands that Nā Kia'i o Nihokū have raised certain concerns in regard to the building setback line that applies to the subject property. OHA is optimistic that this issue will be addressed before a final decision is rendered.

Mahalo for the opportunity to provide testimony on this matter.

From: Beryl Blaich <punab4@gmail.com>
Sent: Monday, December 13, 2021 8:31 AM
To: Planning Department
Subject: Testimony on the Crater Hill Green home permits application
Attachments: Green Home Testimony 12.docx

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Please find the attached testimony.
I am also registered to testify. Zoom link received.
Thank you so much,
Beryl Blaich

RE: SMA Use Permit (U-2022-1, Use Permit No, U-2022-1, and Class IV Zoning Permit No. Z-IV 2022-1 for Seacliff Plantation Lot 11-A for development of the real property situated at TMK (4) 5-2-004-084 (CPR No. 0001)

To: the Kaua'i Planning Commission

From: Beryl Blaich
PO Box 1434 Kīlauea, HI 96754

December 12, 2021

Dear Chairman Apisa and Members of Kaua'i Planning Commission:

Aloha to each of you I am Beryl Blaich, Kīlauea resident for forty-two years and parent with my late husband of two daughters (one is Mehana Vaughan). I am testifying as an individual.

In 1984, I testified "Hold that line." when the developer of Seacliff asked for change to the 1982 agreement. Memory – mine for sure – can be faulty, fickle or fades. In my testimony of October 25th, I wrote that in 1984 "Buildable lots were renegotiated." I was incorrect. As documents submitted to you show, the Planning Commission denied any alteration of the setback line in 1984.

I appreciate and planned to support the Planning Department's judicious recommendations for this application. I very much hoped that Mr. and Mrs. Green and Kia'i o Nihokū would find them to be an acceptable consensual agreement for constructing a home on this most sensitive and important land. However, the recommendations rest on the location of the setback line. They are premised on a legal alternation from the 1982 setback line that ran horizontally along the flank of Nihokū to building envelope "bubbles."

Members of the community, led in this archival archaeology by Na Kia'i, have been searching up and digging into dusty boxes of bulging files: the long sequences of applications, correspondence and rulings regarding Seacliff Plantation. There have been several attempts to change the setback line. Did any succeed with legal finality? In the course of relying on memory and repeating what one thinks happened, did the idea of the establishment of the bubbles – which were surveyed and mapped – become a common supposition?

Looking into the history of Crater Hill attests to the great significance of this place. This is a saga: Of the business of land development here. Of hardworking, professional Planning Directors, staff, and Planning Commissioners going back to Brian Nishimoto and forward to all of you now. Of other County decision-makers and department heads weighing in with questions and evaluations. And of the constant, dedicated, informed attention of the volunteers community members, including, after its founding in 1984, h the Kilauea Neighborhood Association.

Mahalo for your attention and work,

Respectfully,
Beryl Blaich
808-346-9589

From: Erin Pickett <erin.p.pickett@gmail.com>
Sent: Monday, December 13, 2021 6:32 AM
To: Planning Department
Subject: Special Management Area Use Permit Kilauea
Attachments: Kauai Planning Comission Nihoku Dec 13 2021.docx

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Aloha,

Attached you will find my written testimony pertaining to tomorrow's meeting agenda item 1. Continued Agency Hearing a. Special Management Area Use Permit.

Erin Pickett

Erin Pickett
(808) 639 4345
erin.p.pickett@gmail.com

13 December 2021

Testimony regarding agenda item: **Agenda Item 1. Continued Agency Hearing**

a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT (Z_IV-2022-1), and USE PERMIT (U-2022-1) for the construction of a farm dwelling unit, guest house, garage, and associated site improvements within Lot 11-A of the Seacliff Plantation Subdivision in Kīlauea, involving a parcel situated approximately 1,000 feet west of the Pali Moana Place/Makana'ano Place intersection, further identified as Tax Map Key:(4)5-2-004:084 (Unit 1) affecting a portion of a larger parcel approximately 12.305 acres in size = Phillip J. & Linda M. Green. [Director's report received, hearing deferred 9/14/2021; Supplement to Planning Director's Report Numbers 1,2,3 & 4 received, hearing deferred 10/26/2021].

1. Petition for Intervention (received October 19, 2021) by Mehana Blaich Vaughn, Nicole Hoku Cody, and Jessica AK Fu on behalf of Na Kia'i O Nihoku.

2. Applicants' Opposition to a Kia'i O Nihoku's Petition to Intervene; Declaration of Timothy Irons; Exhibits "1" and "2"; Certificate of Service

Mahalo Honorable Kaua'i Planning Commission Members.

Nihokū is a vital place to the Kīlauea community of ecological and cultural significance. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital.

Mahalo for your time and consideration.

Sincerely,
Erin Pickett

From: Mehana Vaughan <mehanav@gmail.com>
Sent: Monday, December 13, 2021 7:18 AM
To: Planning Department
Subject: Testimony on agenda item f1 and m
Attachments: 2021-12-13 01-02.pdf

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Aloha. Please find attached 1982 sma permit conditions for sea Cliff development on Nihoku. Mahalo

EDUARDO E. MALAPIT
MAYOR



BRIAN K. NISHIMOTO
PLANNING DIRECTOR
AVERY H. YOUNG
DEPUTY PLANNING DIRECTOR
TELEPHONE 245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766

February 11, 1982

Mr. Walton D.Y. Hong
Attorney at Law
P. O. Box 1727
Lihue, Hawaii 96766

Subject: Special Management Area Use Permit SMA(U)-82-2
Roberson-Larson Partnership
TMK: 5-2-04:47 Kilauea, Kauai

The Planning Commission at its meeting held on February 10, 1982, voted to reconsider its action of December 23, 1981, and approved the SMA Use Permit subject to the following conditions:

- ✓ 1. The proposed building limit setback line "C" shall be established on the ground and on the map at the time of subdivision review and approval in accordance to the criteria as presented in delineation of the setback line which is presently interpreted to be generally as shown (for SMA Permit purposes) on the map submitted by the Applicant with the February 5, 1982, letter to the Planning Commission. More specifically, the criteria to be used are as follows:
- a) On the western portion of Crater Hill, the building limit setback line shall be such that no buildings shall penetrate the ridgeline horizon when viewed from Kilauea Town.
 - b) On the eastern portion of Crater Hill, the building limit setback line shall be such that no buildings appear to be placed any higher than the profile line of the flat land between Kuhio Highway and Crater Hill when viewed from the visible points along Kuhio Highway.

Mr. Walton D.Y. Hong
Page 2
February 11, 1982

- ✓ 2. As represented by the Applicant, with the adoption of building limit setback line "C", the Applicant shall:
 - a) Dedicate the 75+ acres of prime agricultural land to the County for agricultural purposes;
 - b) Fence the shoreline area of Crater Hill;
 - c) Turn management of the fenced wildlife bird refuge areas to the Nature Conservancy Organization, or equivalent; and
 - d) Substantially perform on other representations made in the proceedings of this application.
- 3. A building height limit of 25 feet, measured from grade at all points along a building to the roof peak, shall be included in the restrictive covenants for the project.
- 4. As represented by the Applicant:
 - a) All structures erected on the lots shall be painted or finished in earth tone colors;
 - b) Roofing materials shall be non-reflective; and
 - c) The use of mirrored glass, reflective sun screens or other highly reflective materials for exterior windows shall be prohibited.
- 5. Building locations and designs shall be subject to Planning Department review and approval at the time of building permit application. The building locations shall be constructed on the ground in strict adherence to the approved subdivision map and building plot plan. Buildings found constructed in violation of the approved plans shall be relocated at the owner's expense.
- 6. As represented by the applicant, all bare areas resulting from excavation by the lot owner shall be revegetated immediately to avoid erosion and visual impacts.
- ✓ 7. Lateral, traversable beach access easement to the cliffs and shoreline shall be provided by the applicant. Details shall be addressed at the time of subdivision.

- ✓8. Vehicular access easement to the communications station on the top of Crater Hill shall be provided along its existing route or along a route that does not visually scar the hillside (the exact route shall be mutually established by the subdivider and the Planning Department).
- ✓9. In order to assure proper management of the wildlife habitat, the areas involved shall be defined by an easement or as a separate lot such that it can be assigned to a Federal, State, or private non-profit managing agency.
- 10. At the time of subdivision review and approval, the following shall be adhered to by the subdivider:
 - a) The restrictive covenants document to address the SMA concerns, including but not limited to the building limit setback line, building height limits, building colors and non-reflective roof materials, landscaping, erosion control measures, etc., shall be reviewed and approved by the Planning Department prior to final subdivision approval.
 - b) Land alterations for roadways and building sites shall be kept at the very minimum to minimize erosion and scarring problems to the hillside developments. Erosion control measures as required by the Public Works Department shall be strictly adhered to. Road particulars and standards shall be addressed and resolved at time of subdivision.
 - c) As recommended by the Water Department, approval of any actual development or subdivision of this area will be dependent upon the adequacy of the source, storage and transmission facilities existing at that time.
 - d) As recommended by the State Health Department:
 - 1. Potable water from the County system shall be made available for each lot.
 - 2. Effective water pollution measures shall be provided to prevent the pollution of Kilauea Stream and the ocean.
 - 3. Due to the general nature of the plans submitted, we reserve the right to impose further environmental health restrictions on this proposal when more detailed plans are submitted.

Mr. Walton D.Y. Hong

Page 4

February 11, 1982

- e) The recommendations of the Fire Department shall be resolved at the time of subdivision application.
 - ✓ f) An irrigation system for agricultural purposes shall be provided for review and approval.
 - g) In keeping with the intent of the State Land Use Law, agricultural activity must be established before any additional dwelling in excess of one (1) per parcel will be allowed.
11. The applicant is advised that prior to and/or during construction, additional governmental agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).



BRIAN NISHIMOTO
Planning Director

cc: David Sproat
Mayor
Pub. Works Dept.
Water Dept.
Health Dept.
Real Property Div.

From: Kananaikahaku Kuhaulua <kananaik@hawaii.edu>
Sent: Monday, December 13, 2021 8:35 AM
To: Planning Department
Subject: Nihokū Testimony Support for 12-14-21

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Aloha mai Honorable Kaua'i Planning Commission Members,

Nihokū is a vital place of ecological and cultural significance to the Kīlauea community. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink its size, control predators, and include protections for birds, as well as provide for cultural access are vital. The original 1982 setback line should also be honored. Hold the line.

Mahalo for your time and consideration.
Me ka ha'aha'a,
Kanānāikahaku Kuhaulua

From: D. Kapua Sproat <kapua.sproat@gmail.com>
Sent: Monday, December 13, 2021 8:54 AM
To: Planning Department; Jodi Higuchi Sayegusa
Subject: Testimony on items F1 and M1 for tomorrow's planning commission meeting
Attachments: K. Sproat tes re F1 & M1.pdf

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Aloha,

Please find enclosed my testimony for tomorrow's Planning Commission meeting. I am profoundly disappointed that i will not be able to testify in person, but i have a prior commitment.

If your staff or commissioners have any questions, please dont hesitate to have them contact me. I would welcome the opportunity to discuss my significant concerns in greater detail. I am available via this email or at: (808) 294.0182.

Please confirm receipt of this email and that my testimony will be included as part of the record, mahalo!

me ka ha'aha'a,
kapua

KAUA'I COUNTY PLANNING COMMISSION

ATTN: Chair Donna Apisa & Vice Chair Helen Cox

**Testimony in Opposition to Agenda Items F1 and M1:
Relating to SMA (U)-2022-1, Class IV Zoning Permit Z-IV-2022-1,
and Use Permit U-2022-1**

**December 14, 2021, 9:00 a.m.
Via Zoom**

Aloha Chair Apisa, Vice Chair Cox, and Honorable Planning Commission Members:

I am testifying in strong opposition to Phillip and Linda Green's permit applications to build beyond the 1982 setback line for Nihokū. Agenda items F1 and M1 disregard generations of community efforts to preserve this incredibly special place, as well as setbacks and conditions imposed by this very Planning Commission. Moreover, these applications epitomize illegal burden shifting in its worst possible form and again place the kuleana of protecting natural and cultural resources and related traditional and customary Native Hawaiian practices on the larger Kīlauea community – despite the fact that these issues were legally and practically resolved forty years ago. Please respect our community and your Planning Commission's own decisions and orders and enforce the 1982 setback.

Although I am testifying in my personal capacity given the significant concerns that I and my 'ohana and community share about these applications, I have relevant experience in this arena. I am a Professor of Law at the University of Hawai'i at Mānoa's William S. Richardson School of Law, and the Director of Ka Huli Ao Center for Excellence in Native Hawaiian Law. I teach law school courses and write in these highly specialized fields. For example, I teach the Law School's Native Hawaiian Rights class as well as an Environmental Litigation Seminar; I have also directed and currently teach the Native Hawaiian Rights and Environmental Law Clinics – clinical courses that provide legal services to communities on issues like this. I am an Executive Editor and wrote several chapters in *NATIVE HAWAIIAN LAW: A TREATISE* – the first Indigenous law treatise of its kind, which comprehensively surveys and analyzes this legal field in 21 chapters and over 1400 pages. Our Native Hawaiian Law Center facilitates specialized trainings for members of state and county boards and commissions that cover issues precisely like this one; I am the Principal Investigator on that contract and have taught sessions and otherwise participated in every training we have offered over nearly a decade. I am also a practicing attorney with over twenty years of litigation experience in environmental law, traditional and customary Native Hawaiian rights, and other areas implicated by these permit applications and your action today. I humbly submit that the Green's permit applications fall squarely within my wheelhouse and the area of law to which I have dedicated my research, teaching, and legal practice.

Ironically, one of the reasons that I decided to go to law school and pursue public interest law is that my father, David Sproat, intervened during attempts to modify the 1982 SMA permit that created the setback line at issue today. While in elementary school, I was flabbergasted that community members like my dad would have to undertake such gargantuan efforts to preserve natural and cultural resources. I was also troubled by the fact that our community had no attorney to represent us and had to proceed *pro se* in the contested case that ensued. Yet forty years later, here we are again – except now our community has deepened its capacity and our resolve to stand firm in support of the 1982 setback line, which these permit applications seek to eviscerate.

There is no question that Nā Kia'ai o Nihokū has standing to intervene – given, for example, cultural practitioners' constitutional due process right to participate in contested case hearings involving proposed uses that may affect their practices. *See, e.g., Mauna Kea Anaina Hou v. Bd. of Land and Nat. Res. (Mauna Kea)*, 136 Hawai'i 376, 390, 363 P.3d 224, 238 (2015). Although Nā Kia'ai o Nihokū is prepared to litigate this issue, I am deeply troubled that a contested case would essentially foist the Commission's kuleana to protect natural and cultural resources and traditional and customary Native Hawaiian practices onto our community yet again. Article XII section 7 of Hawai'i's constitution imposes a mandate on state and county agencies such as this honorable Planning Commission to protect traditional and customary Native Hawaiian rights and practices. Other constitutional provisions are also implicated, including Article XI section 1's duty to conserve natural beauty and all natural resources. Initially, the burden of proof in proceedings like this one should be allocated to the applicant and then the agency consistent with Hawai'i Supreme Court precedent, including the 2014 Kaua'i Springs decision, which this Planning Commission knows well. *Kauai Springs Inc. v. Planning Comm'n*, 133 Hawai'i 141, 324 P.3d 951 (2014). Forcing the parties into a contested case hearing at this juncture essentially makes the community do the applicant's and this Commission's jobs, again. While Nā Kia'ai is poised to do so, this is particularly frustrating given that the community – and my dad in particular – already did that in the contested case hearing that resulted in a 1984 decision and order that upheld the 1982 setback line.

While I am pleased that a Ka Pa'akai analysis was finally done and applaud the staff for its efforts, I note that the report does not include some of the Native Hawaiian practitioners who actively utilize the area and their practices and interests. Moreover, the applicant's attempts to frame the issue as "new" are inaccurate at best. As only one example, for multiple generations my family, including my dad, have used Nihokū to kilo. Since Seacliff was constructed and gates installed, practice has become more difficult, but the applicant should not now be allowed to argue that cultural practices no longer exist because their subdivision tried to fence us out. That is neither accurate nor pono, and it flies in the face of our constitutional protections and case law interpreting them.

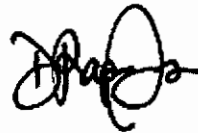
I was pleased to see the Ka Pa'akai analysis acknowledge that feasible efforts must be taken to protect Native Hawaiian rights at Nihokū, and believe that many of the proposed conditions are a good start. I am concerned, however, that the 14-day

notice for access would limit the continued exercise of traditional and customary Native Hawaiian rights and effectively regulate those rights out of existence. Therefore, I urge this Commission to eliminate or significantly reduce the notice period for cultural practices.

Finally, the 1982 setback line was crafted in consultation with Native Hawaiian and other practitioners with these specific considerations in mind. The fact that the Green's proposed development is far beyond that line is a non-starter and an independent basis to deny the applications. Importantly, if this Commission now intends to allow construction in an area where it was never contemplated, additional analysis including compliance with Hawai'i Revised Statutes chapter 343 should be completed first. I believe the initial environmental review was done in the late 1970s and much has changed since then.

For more than forty years now, developers and their proxies have sought to build on Nihokū, an area sacred to Native Hawaiians and vital for continued cultural practice and community well being. Promises and conditions have been made and broken, but the one constant appears to be developers' desire to move or otherwise evade the 1982 setback line. Enough is enough. Please respect our community and your Planning Commission's own decisions and orders and enforce the 1982 setback. Mahalo for your time and consideration.

Me ka ha'aha'a,

A handwritten signature in black ink, appearing to read 'D. Sproat', with a stylized, looping flourish at the end.

D. Kapua'ala Sproat
P.O. Box 99
Kīlauea, Hawai'i 96754
e: kapua.sproat@gmail.com

From: Sharon Gottfried <sharon.gottfried515@gmail.com>
Sent: Monday, December 13, 2021 8:57 AM
To: Planning Department
Subject: Nihoku development

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Mahalo Honorable Kaua'i Planning Commission Members.

Nihokū is a vital and important place to my ohana and the Kīlauea community of ecological and cultural significance. I appreciate the planning department's hard work on this issue and the conditions outlined in the director's report. I also support Nā Kia'i o Nihokū's application for a contested case. Nihokū would be irreparably harmed by the proposed development as outlined in the original application, and the conditions to move the dwelling down, shrink it's size, control predators, and include protections for birds, as well as provide for cultural access are vital. The original 1982 setback line should also be honored. Hold the line.

Mahalo for your time and consideration.

Sincerely,
Sharon Gottfried, Megan Wong and ohana

From: david moore <nacjh2o4me@hotmail.com>
Sent: Monday, December 13, 2021 9:08 AM
To: Planning Department; nakiainihoku@gmail.com
Subject: small edits to previous testimony: please replace older with this one !

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Planningdepartment@kauai.gov nakiainihoku@gmail.com

Aloha Planning staff,

I updated my testimony slightly and ask that you use this one to distribute to commissioners in place of the one sent earlier.

Mahalo,

Dave Moore MD

December 11, 2021

Aloha Honorable Planning Commissioners,

My name is David Moore and I am writing to you about the proposed development in Sea Cliff Plantation on Lot 11-A.

Our family moved here to Kilauea in 1980. We raised our four children in Kilauea and I was an Emergency Room doctor at Wilcox for 10 years. Linda Sproat and I were part of the intervention process to contest the Sea Cliff Plantation development when it was originally proposed. We both knew how much Crater Hill meant to the people in Kilauea. There was little development around the town then and Crater Hill was so important to everyone. Everyone went up Crater Hill to enjoy the natural beauty it afforded. And its being a volcanic crater? Than made it even more amazing. When up there, you could see that half of the caldera is gone. And the view of the mountains behind you, the ocean below, the birds soaring? It is one of those special places that fills you with wonderment and peace.

Crater Hill is really an iconic part of Kilauea; like Half Dome is iconic for Yosemite; the sandstone arches are iconic to Utah; Diamond Head is iconic for Oahu; etc. Crater Hill is part of the community, and we felt we didn't want its beauty to be lost when developed. Thankfully, the County and the developer worked with us on two of the aspects we most cared about.

First, were the sightlines

The community and intervenors wanted unblemished sightlines to the top of Crater Hill when coming to Kilauea from the east. We didn't want any houses visible up on Crater Hill as one approached Kilauea. We agreed structures up on the crater would ruin its natural beauty. (Visualize how unsightly structures on Half Dome would be).

By placing people up on Crater Hill, and viewing them from the east, we determined at what elevation one could begin to see any development. We set that elevation as the highest that any structure could reach. To be clear, this was NOT the elevation at which the foundation of a structure could start, but the highest elevation that any part of any structure could reach.

Once that elevation line was determined (and it ran horizontally across the upper slope) it was accepted by the developer, and agreed to by all parties, including the Planning Commission. That line was then included into the subdivision map, and cited as an accepted part of the development's conditions of approval. And that is why upper Crater Hill remains relatively "empty" from most angles.

Second, was ACCESS

It was also very important to the community and intervenors that the public continue to have access to Crater Hill. And it was agreed by the developer that the public would keep its access when "Sea Cliff" was finished. It was clear to us that you would be able to drive your car on the roads there as we had for years. Unfortunately, when the development was finished, we were NOT given access by car, but by only when walking or cycling. We felt that the developer had violated the spirit of the agreement by constructing a gate across the road, but we felt it was too late to change it. Especially for the kupuna, and anyone with mobility issues, this slight remains a real loss.

When the highest road for the subdivision (Makana 'ano Place) was finished, including the upslope swale, the construction had cut off so much of the buildable land on the higher lots, there was not sufficient room to build homes without violating the agreed-upon elevation line. But that was not the community's fault and it was clear that the set-back line should be honored.

The planning department continued to honor the line too because Linda and I were called once to ask if the line could be moved for one house. We went up and walked the property and the location they wanted to move to was actually lower, and more tucked away into a gully, so we said, "no problem." That was the only time they contacted me about moving the line.

I believe that the highest elevation of the house being proposed for Lot 11-A would be far above the sightline elevation that was originally agreed to by the developer to gain approval for the subdivision. This is nothing against any of the owners, but it seems to be the

developer's and Planning Commission's responsibility to live up to the original agreement, and to inform purchasers of its constraints.

I just hope everyone appreciates the Kilauea community's investment in protecting our beloved, iconic, Crater Hill. We've worked during the past 40 years to help the development of it to be a win/win for all. It was approved after the developer, the community, and the intervenors agreed to specific parameters: these should be honored so we may maintain the beauty and iconic aspects of Crater Hill into the future - not just for this particular application, but for any in the future that might violate the original sightline elevation.

Mahalo for your time and attention,
David Moore, MD

From: Nā Kia'i Nihokū <nakiainihoku@gmail.com>
Sent: Monday, December 13, 2021 8:22 AM
To: Planning Department
Subject: Fwd: In the Matter of the Application of Philip J. Green and Linda M. Green
Attachments: image950621.png; image434485.png; image329687.png; image262379.jpg; image434814.jpg; image152051.png; image193393.png; image475373.png; Letter to KPD - 12.10.21.pdf; Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf; Exhibit D.pdf; Exhibit E.pdf; Exhibit F.pdf

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Testimony regarding item f1 and m -

RE: In the Matter of the Application of Philip J. Green and Linda M. Green, Trustee of the Philip J. Green, Jr. Trust, dated December 4, 2018, and the Linda M. Green Trust, dated December 4, 2018 for a Special Management Area Use Permit, a Use Permit, and a Class IV Zoning Permit for Sea Cliff Plantation Lot 11-A for development of the real property situated at Kilauea, Kaua'i, Hawaii, identified by Kaua'i Tax Map Key No. (4) 5-2- 004:084 (CPR NO. 0001).

Subject: Fw: In the Matter of the Application of Philip J. Green and Linda M. Green

Date: December 10, 2021 at 12:12:20 PM HST

To: Mehana Vaughan <mehanav@gmail.com>, "hokucody@gmail.com" <hokucody@gmail.com>, Kapua Chandler <kapua@ucla.edu>, Jessica Fu <kauifu@gmail.com>

Cc: Kirsha Durante <Kirsha.Durante@nhlchi.org>

Aloha mai,

As discussed during our last meeting, the attached was transmitted to the Planning Department re the setback line.

Mahalo,
Daylin

Daylin-Rose H. Heather
Staff Attorney

t: (808) 521-2302 | f: (808) 537-4268

e: daylinrose.heather@nhlchi.org

w: nativehawaiianlegalcorp.org

a: 1164 Bishop Street, Suite 1205, Honolulu, HI 96813

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From: Kirsha Durante <Kirsha.Durante@nhlchi.org>

Sent: Friday, December 10, 2021 11:50 AM

To: Kaaina Hull <khull@kauai.gov>; Jodi Higuchi Sayegusa <jhiguchi@kauai.gov>

Cc: Daylin-Rose H. Heather

<daylinrose.heather@nhlchi.org>; NKiaioNihokZ9823459@projects.filevine.com <NKiaioNihokZ9823459@projects.filevine.com>

Subject: In the Matter of the Application of Philip J. Green and Linda M. Green

Aloha Ka'āina and Jodi,

Attached please find a letter we are formally submitting on behalf of Nā Kia'i o Nihokū. We respectfully request that it also be forwarded to all other appropriate parties.

Please note that we will be forwarding a copy to Mr. Irons, as well.

We look forward to further discussion during our meeting later today.

Mahalo,
Kirsha and Daylin

Kirsha Durante
Senior Staff Attorney

t: (808) 521-2302 | f: (808) 537-4248

e: Kirsha.Durante@nhlchi.org

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Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
Phone (808) 521-2302 • Fax (808) 537-4268 • www.nativehawaiianlegalcorp.org



December 10, 2021

Ka'āina Hull
Planning Director
C/O Kaua'i Planning Department
4444 Rice Street
Līhu'e, Kaua'i 96766

RE: In the Matter of the Application of Philip J. Green and Linda M. Green, Trustee of the Philip J. Green, Jr. Trust, dated December 4, 2018, and the Linda M. Green Trust, dated December 4, 2018 for a Special Management Area Use Permit, a Use Permit, and a Class IV Zoning Permit for Sea Cliff Plantation Lot 11-A for development of the real property situated at Kilauea, Kaua'i, Hawaii, identified by Kaua'i Tax Map Key No. (4) 5-2-004:084 (CPR NO. 0001).

Aloha e Mr. Hull,

This letter is being submitted on behalf of Nā Kia'i o Nihokū ("the Hui"). As was discussed during an informal meeting on Monday, November 29, 2021, the Hui has considerable concerns regarding the building setback line that applies to the subject property, Lot 11-A, TMK No. (4) 5-2-004:084 (CPR NO. 0001) ("subject property"). Recently discovered public documents call into question the location of the setback line referenced in the Greens' permit application. Since our last meeting, we have conducted further research and continue to caution against a recommendation to approve the Greens' permit application without first confirming what setback line applies to the subject property. Without any evidence or information received to the contrary, the public record suggests that the setback line that applies to properties built on the slopes of Nihokū, including the Greens' property, should be different from the "Existing Building Setback Line" (described as a semi-circle area) referenced in Preliminary Recommendation No. 6 of the Supplement #6 to the Planning Director's Report (Amended) dated December 6, 2021 ("Planning Director's Report").

Numerous documents from a variety of sources support the conclusion that a different setback line should be employed by the Kaua'i Planning Department as the framework for the conditions it recommends in response to the Greens' permit application. First, a lower building setback line was established pursuant to the approval of Special Management Area permit in 1982. On February 10, 1982, the Kaua'i Planning Commission approved Special Management Area permit SMA(U)-82-2 ultimately resulting in a twenty-five (25) lot subdivision then known as "Crater Hill." One condition of the permit was a building setback line ("1982 setback line"). *See Findings of Fact, Conclusions of Law, Decision and Order*, attached hereto as Exhibit "A." The Greens' property is located within this subdivision. *See Site Plan with 1982 and 1994 setback lines*, attached hereto as Exhibit "B." Public records suggest that the conditions for the SMA(U)-82-2 permit, which includes the 1982 setback line, continue to apply today.

Second, an attempt in 2002 to apply a setback line other than the 1982 setback line to the lot immediately adjacent to the Greens' property appears to have been ultimately unsuccessful. In 2002, an application for the construction of a single-family residence on TMK No. (4) 5-2-004:085 was proposed. The application proposed that the structure would be located within a "1994 setback." On November 4, 1994, the Kaua'i Planning Commission had approved a permit for a master planned multi-property project involving a subdivision of three agricultural lots within the Crater Hill subdivision. That permit approval established a different setback line ("1994 setback line"), but included conditions such as the creation of a market lot, an agricultural lot, a community park lot, a school site, and a botanical garden. An August 27, 2002, Kaua'i Planning Department Staff Report, which contained findings in response to the 2002 project application, addressed the 1994 setback line noting as follows: "the conditions of approval of these [1994] permits have not been met, and the two year duration of the SMA permit as indicated in the County of Kauai SMA Rules and Regulations has expired. **Therefore the original 1982 setback line remains in effect**, and the applicant's structure should be located behind that 1982 line." (emphasis added). *See* "Staff Report," attached hereto as Exhibit "C." It is our understanding that this applicant subsequently withdrew their project application.

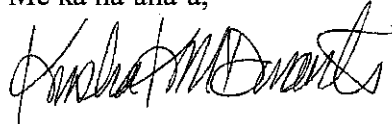
Third, a review of public records regarding the subject parcel – apart from the Greens' deed in 2019 – confirms the applicability of the 1982 setback line. The Quitclaim Deed from James Fields and Denise Gilmartin to Seacliff Kilohana LLC recorded in January 2017, the Seacliff Kilohana Declaration of Condominium Property Regime for Lot 11-A recorded in April 2017, and the First Amendment to Seacliff Kilohana Declaration of Condominium Property Regime recorded in June 2017 all reference the 1982 setback line as controlling. However, in 2019, the Greens' condominium unit deed from Seacliff Kilohana suddenly refers to the 1994 setback line. There is no document recorded with the Bureau of Conveyances ("BOC") that explains the change to the 1994 setback line in the Greens' 2019 deed.

Fourth, the Greens' deed for the subject property itself contains conflicting references to an applicable setback line. The Greens' deed references the 1994 setback line, but it also confirms that the property is subject to the terms and provisions contained in the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community as amended on December 28, 1988 ("1988 Amendment") and then on June 3, 2002 ("2002 Amendment"). *See* the Greens' Seacliff Kilohana Condominium Unit Deed, attached hereto as Exhibit "D." The 2002 Amendment references the 1988 Amendment, which specifically notes that "Lot[] 11 . . . in the Seacliff Plantation Community [is] subject to a building setback line which was approved by the County of Kauai in the said SMA(U)-82-2 on February 10, 1982 and as shown on the subdivision map approved by the County of Kauai." *See* 1988 Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, attached hereto as Exhibit "E." Nothing in the 2002 Amendment affected the 1982 setback line. *See* 2002 Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, attached hereto as Exhibit "F."

Finally, the deeds to all four lots east of the Greens' property – which are also located within the same subdivision – each reference the 1982 setback line. Public records through the BOC confirm that TMK No. (4) 5-2-004:085 owned by David Wilmot Trust, TMK No. (4) 5-2-004:086 owned by Serenity US LLC, TMK No. (4) 5-2-004:087 owned by Bruce Whale, and TMK No. (4) 5-2-004:088 owned by Ellen and Paul Barker Trust all reference the 1982 setback line as controlling. These deeds were recorded in 2014, 2020, 2018, and 2021 respectively. Without further information, it is difficult to reconcile how the 1982 setback line would apply to the properties immediately adjacent to the Greens' property and within the same subdivision, yet somehow not apply to the Greens' property.

For all these reasons, we urge the Planning Department to carefully evaluate and determine which setback line applies to the subject property particularly since Preliminary Recommendation No. 6 of the Planning Director's Report relies upon a setback line for the subject parcel. Absent confirmation of the controlling setback line, the parties' good-faith efforts to engage in any type of settlement negotiations are futile, and we welcome any information you may have that provides clarity to this issue. Mahalo in advance for your prompt attention to this matter.

Me ka ha'aha'a,

A handwritten signature in black ink, appearing to read "Kirsha K.M. Durante". The signature is fluid and cursive, with the first name "Kirsha" being more prominent.

Kirsha K.M. Durante, Esq.
Senior Staff Attorney
Native Hawaiian Legal Corporation

8. The subject property also known as "Crater Hill," is located in Kilauea, approximately 1,000 feet east of Kilauea Town; originally identified as Tax Map Key: 5-2-04:47 (now, Tax Map Keys: 5-2-04:74-101) and contains an overall area of 397 acres.

9. It is classified by the State as Agriculture and Conservation, with the latter being a 300-foot strip along the makai boundary. It is general-planned Agriculture and Open, while County zoning consists of approximately 200 acres of Agriculture and 180 acres of Open.
10. The makai boundary of the parcel is sheer cliffs of heights up to 500 feet. The southeast portion of the parcel drops to Kilauea Stream over "Open"-zoned lands with slopes greater than 20%. The southwest side of the hill descends to a relatively flat plateau and the "Ag"-zoned lands. (See Exhibit G).

PROJECT BACKGROUND

11. Since 1976 proposals have been received for development of the property. In all instances, concern has been expressed regarding the importance of seabird colonies and the unique landform and landmark characteristics of Crater Hill. The following chronology summarizes these applications:
 - a. October 1976 -- A subdivision and SMA permit application was submitted showing the majority of the lots located within the prime Agriculture-zoned portion of the property. The application could not be accepted until the applicant provided an environmental assessment which evaluated any impacts to seabird colonies and social, physical, and aesthetic impacts that could have resulted from the subdivision.
 - b. SMA(U)-79-2 - July 1979 -- An environmental impact assessment was prepared by the former owner (i.e., the 1976 applicant, Panorama Consortium), and an application was resubmitted for an SMA, Variance and Class IV Zoning Permit to create a 15-lot subdivision which included a 97+-acre lot along the ridge proposed for conveyance to the nature conservancy. The majority of the 14 lots were now proposed in the "Open"-zoned portion of the property. These applications were denied because of the following reasons:
 - 1) the impacts of a subdivision on the important seabird colonies and a unique landform and landmark;
 - 2) access, soil erosion and drainage problems were anticipated should the steep slope areas be subdivided;
 - 3) subdivision of the sloped areas should be restricted to prevent excessive cuts and fills and erosion and pollution of Kilauea Stream estuary;
 - 4) the application did not adequately address concerns of wildlife preservation, man-made encroachment on a natural landmark, erosion potentials on steep slopes and agricultural intent.
 - c. SMA(U)-80-1 - September 1979 -- The applicant reapplied for an SMA, Variance, and Class IV Zoning Permit to create a 2-lot subdivision with the boundary roughly following the Conservation District Boundary. Again, the 108+-acre parcel containing the seabird colonies was proposed for conveyance to the Nature Conservancy. Since the variance request was to allow resubdivision of the second lot, at the request of the Commission, the applicant submitted a proposed future 10-lot subdivision for the second lot. Again, serious concerns were expressed regarding wildlife preservation, man-made encroachments on a landmark, erosion potentials and agricultural intent. It was concluded that, as conveyance of the 108+-acre parcel to the Nature Conservancy would benefit the public and maintain the integrity of Crater Hill, the variance to resubdivide could be considered provided several restrictions relating to building setbacks and density controls were imposed.

The applicant requested to have the conditions modified or deleted and eventually withdrew the application because the Commission voted to follow staff's recommendations.

- d. SMA(U)-82-2 - October 1981 -- The applicant applied for a 14-lot subdivision and proposed to dedicate 90± acres of the remnant parcel for a County Agricultural park. As the same concerns expressed in previous applications were raised, approval was subject to stringent conditions which included the building setback line and construction of a fence for wildlife protection. Prior to action, the applicant requested an amendment to the setback line condition and offered a compromise setback line. In response, the Commission readjusted the setback line to a third location and approved the application. Shortly thereafter, the applicant requested reconsideration of the action stating that location of the setback line was misunderstood and that if the line remained as approved, they would not be able to dedicate the 90 acres for the "Ag" park. Eventually, a fourth setback line "C" was agreed upon (see Exhibit F). However, to accommodate such, the applicant redesigned the subdivision from 14 lots to 25 lots, reduced the area for Ag park dedication from 90± acres to 75± acres and the applicable conditions of approval were revised to read as follows:

- "1) The proposed building limit setback line "C" shall be established on the ground and on the map at the time of subdivision review and approval in accordance to the criteria as presented in delineation of the setback line which is presently interpreted to be generally as shown (for SMA Permit purposes) on the map submitted by the applicant with the February 5, 1982, letter to the Planning Commission. More specifically, the criteria to be used are as follows:
- a) On the western portion of Crater Hill, the building limit setback line shall be such that no buildings shall penetrate the ridgeline horizon when viewed from Kilauea Town.
 - b) On the eastern portion of Crater Hill, the building limit setback line shall be such that no buildings appear to be placed any higher than the profile line of the flat land between Kuhio Highway and Crater Hill when viewed from the visible points along Kuhio Highway."
- 2) As represented by the applicant, with the adoption of building limit setback line "C" the Applicant shall: "...b) Fence the shoreline area of Crater Hill;..."

After several field trips by Planning staff, the Planning Commission, the applicant's engineer, and U. S. Fish and Wildlife representatives, both the building setback and fence lines were established (see Exhibit E - Subdivision Map - Red line).

12. On May 12, 1982, tentative approval for subdivision of the property was granted subject to several conditions. Condition #12 read as follows:

"12. Prior to final subdivision approval and commencement of subdivision construction drawings design, the applicant shall establish on the ground, for verification by the Planning Department, those applicable setback lines and easements as discussed in this report and when SMA(U)-82-2 was approved. The final design of the subdivision including the final subdivision map shall be based using the said building limit lines as one of the controls in the layout of the lots and roadways."

The line was established and verified, and the 27-lot subdivision received final approval on August 15, 1983.

13. North Shore Development Plan Update

The Update recognizes Crater Hill as a "significant, scenic, ecological, and recreational resource" which "must be protected from incompatible land use." It further states that "the view of Crater Hill from the town center and Kuhio Highway should not be obstructed and that Crater Hill should remain without conspicuous man-made improvements." The plan recognizes that "an extremely valuable seabird habitat area exists along the steep sea cliffs in the Kilauea Lighthouse area from Kauapea Beach to Mokolea Point," and recommends that "important natural habitat areas for wildlife should be protected and enhanced."

As such, the Update proposes to place Crater Hill itself within the "Open/Special Treatment Resource" zone. The zoning line would follow the SMA line along the base of the hill.

APPLICANT'S PROPOSAL

14. By letter of August 27, 1984, the Applicant requested to have Condition No. 1 (relating to the building setback line) removed and to modify the location of the fence line. The applicant provided the following justification in part:

a. Relating to the building setback line:

- 1) "The siting of subdivision roads and the setback lines were based largely on topographic maps and field reconnaissance made under dense vegetative conditions. The applicant, engineer, and consultants believed the setback lines to be workable at that time.
- 2) As vegetation was cleared and roads developed, the location of the setback line could be surveyed and its physical location on the ground determined. It then became apparent that the setback line in relation to subdivision roads and natural topography was unreasonable, unworkable, and unrealistic.
- 3) The established setback line prohibits owners from selecting suitable and reasonable building sites based on natural topography. For example, the setback line restricts construction to the top of a large cut which resulted from roadway construction, or to areas of steeper slopes, instead of flat buildable areas.
- 4) The topography of the site will naturally dictate logical and feasible areas of building, and no setback is required. Practical engineering problems and prohibitive costs of access to higher, steeper elevations will dictate that construction on lots makai of the road be on lower, flatter areas.
- 5) Extensive restrictive covenants and conditions will sufficiently mitigate any visual impact caused by structures, alleviating the need for any setback line."

b. Relating to the fence line:

"A U.S. Fish and Wildlife service representative has indicated that the downward jog, which was intended to protect several bird nesting sites, is unnecessary and there would be no objection to continuing the fence line in a straight line."

15. At the September 26, 1984, public hearing, the Applicant withdrew his request to remove the jog in the fenceline and requested to establish a building setback criteria rather than remove the setback line. Specifically, he proposed:
 - a. in the vicinity of Lots 11-16, houses could be sited such that the peak of the roof would be no higher than the elevation of the fenceline; and
 - b. in the vicinity of the lighthouse (Lots 1,2,3 and remainder of Lot 9) houses could be built up the hill so long as the peak of the roof was not visible from the lighthouse (not above the orange line on the Applicant's Exhibit "A" attached).
16. The Applicant contends that the fenceline and 108+ acre remnant parcel prevents construction on the hill and that house sites further up the hill would be biologically acceptable to the bird wildlife provided roof peaks not extend above the fenceline.
17. The Applicant provided one witness, Mr. David Klages of Klages and Associates, an architecture and planning firm hired by the owner. Mr. Klages presented several renderings proposing reforestation to mitigate adverse visual aspects of structures higher up the hill. According to Klages, reforestation would provide an additional buffer for bird nesting areas, visually enhance the site, stop erosion, add privacy to homesites and screen homes from sensitive views. Vegetation can buffer buildings such that none appear to penetrate the ridgeline.
18. The owner claims that he has already contributed to the community in terms of an agricultural park dedication, bird sanctuary lot, predator fence for the birds and water system improvements.

INTERVENORS' CONCERNS

19. Intervenor Sproat and Boynton, along with witness Dr. David Moore, stated the following concerns:
 - a. Removal of the setback line will cause structures to protrude above the ridgeline when viewed from Kilauea Town. Homes could be built up to the fenceline.
 - b. Vegetation does not hinder or prevent accurate survey; and accurate topography map of the property was produced. The setback line was established on the ground first, then transposed to a map. The survey preceded the road construction. The fenceline, setback line and roadway locations were known prior to grading of roads.
 - c. If reforestation is undertaken, it should be coordinated with owners and be in keeping with existing trees and vegetation, however, it is questionable as to who would enforce such requirements. Reforestation could serve to screen roadway cut and house sites constructed in accordance with the building setback line as it exists today.
 - d. The subdivision lines were drawn in relation to the setback line and not the other way around. "The setback line is the given element in the approved plan--everything else was promised to be in correct relation to it."
 - e. The original SMA application repetitively refers to the setback line, preservation of view planes, or building on lower slopes to establish the acceptability and reasonableness of the Applicant's proposal. If the setback line is removed, the SMA permit should be retracted.

- f. The large road cuts which, in the Applicant's opinion, leave several lots with less desirable building sites, were made by the developer. The location was the Applicant's choice and was not mandated by any government agency.
 - g. Site topography and feasibility will not dictate buildable areas. Potential owners of the lots will pick the best site for views, etc. regardless of the added costs to build at higher elevations. Houses will dot the face of a scenic landmark.
 - h. Imposing restrictive covenants to mitigate visual aspects of homes doesn't work. It is highly unlikely that other homeowners will enforce or crackdown on violations.
 - i. If the setback line is further adjusted, they request that a re-evaluation of the Environmental Impact Statement requirements be made, the line adjustment be kept to a minimum, that the public receive something in return (e.g. no houses be visible from the lighthouse) and that a qualified professional group manage the refuge, or deed it over to the public.
- 20. Jerry Leinecke, Pacific Island Administrator for the U. S. Fish and Wildlife Service, testified that although alignment of house roof peaks with the fence line would be biologically acceptable, he would be opposed to reforestation if it were not natural to the habitat. Also, if houses are lit up at night, shearwaters will fly into them.
 - 21. Letters or speakers in opposition to the proposed request were Kaipo Asing, representing the North Shore 'Ohana; Kelsey Maddox-Bell, representing the Kilauea Neighborhood Association; Clinton Anderson; Libert K. Landgraf, representing the State Department of Land and Natural Resources; Rick Scudder, Chairman of the Conservation Council for Hawaii; Gary L. Blaich, representing the 1000 Friends of Kauai; Beryl B. Blaich, JoAnn Yoshimoto, Barbara Morrison and a petition with 1,106 signatures.
 - 22. Jack Bennington spoke in support of the project.

PLANNING DEPARTMENT CONSIDERATIONS

- 23. In addition to the serious concerns for protecting a natural landmark and preservation of a bird sanctuary, the setback line was also established to prevent excessive cuts and fills during development and potential associated erosion. The previous re-establishment of the setback line further up the hill has permitted construction of the subdivision road at a higher elevation on steeper slopes, resulting in excessive cuts that reduced the size of the buildable area. Such proof indicates that the setback line is still needed for this reason in addition to preserving the scenic landmark and wildlife sanctuary. The line has been compromised and readjusted 4 times throughout the course of this application with the final location being submitted by the applicant and approved by the Planning Commission.
- 24. The setback line was established on the ground on the hill itself by a survey crew and not through aerial surveys whereby the accuracy could be affected by vegetation. Characteristic vegetation of Crater Hill is not of a dense impassable nature and should not have interfered with accurate field surveying of the site. The field survey with setback line, was then transposed to the base map and then the subdivision lines were drawn onto it. The problem could have occurred if the contours on the base maps were inaccurate whereby greater cuts than anticipated occurred on the ground during construction of the roadway.

25. Substitution to allow setback criteria as proposed by the applicant would permit structures on the higher slopes of Crater Hill. This would be contrary to the policies and guidelines of the SMA Rules and Regulations which stress protection and preservation of coastal scenic resources and ecosystems. For Lots 1-3 and remainder of Lot 9, siting of houses in conformance with the applicant's proposed criteria would allow houses closer to the bird nesting areas and could result in structures protruding over the ridgeline or profile of Crater Hill when viewed from Kilauea Town. The existing criteria, which prevent the roofs of structures from protruding above the profile of the Hill, is still valid in order to protect the integrity of the Hill as a landmark. Furthermore, maintenance of the existing setback line on these lots does not deprive the applicant of reasonable use of the lots since the buildable area on these lots is more than adequate. Regarding Lots 11-15, the final subdivision map showing the setback line indicated ample areas available for house sites, varying from 90' to 140' deep by 420' to 730' wide. Field measurements indicate that cutting of the road has reduced this area to almost half (in some cases) leaving a strip of buildable area varying from 46' to 118' deep, as indicated in the following chart:

Lot No.	DEPTH OF BUILDABLE AREA		Average
	Minimum	Maximum	
11	0	118'	73'
12	55'	118'	96'
13	55'	70'	67'
14	57'	80'	61'
15	46'	92'	69'

26. Of the above, we conclude that Lots 13 and 14 will be those mostly affected by the roadway cut being too close to the setback line. Lot 11 will have a triangular shaped buildable area with more than adequate space for a residence. Lot 12 also appears to have an adequate buildable area. Although Lot 15 has the narrowest distance to the setback line (46 ft.), the remainder of the lot has an 80 feet wide buildable area which is also adequate to accommodate a reasonable size residence. It is anticipated that homes constructed in this subdivision will be larger than average. Furthermore, engineering and safety problems may occur with a house being located too close to the roadway cut, and ample space, at least 10 feet, between the house foundation or wall line and the top of the road cut should be allowed for. This would further reduce the buildable area for Lots 13 and 14 to approximately 45 feet and 47 feet deep. For comparison purposes, a house 45 feet square would yield a floor area of 2,025 square feet, which is slightly larger than an average-sized home.
27. On this basis, it can be concluded that adequate buildable area still exists on these lots even with the building setback line located in its present position. It must be stressed that the reduction resulted because of the severe road cuts, which were designed and constructed with the applicant's full knowledge of the location of the setback line and the consequences thereof. The lots are still workable and another modification of the setback line is not justifiable.
28. If the building setback line is further compromised on Lots 11-15, structures would be permitted as proposed by the applicant on the original application of 1982 (SMA(U)-82-2). It was determined then that these sites were unacceptable and the setback line was established to limit structures to the base of the hill. Thus, to further compromise the setback line will defeat its original purpose and intent.

CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction over the application under provisions of Article XIV of the Kauai County Charter, Chapter 205-A of the Hawaii Revised Statutes, and the Special Management Area (SMA) Rules and Regulations of the County of Kauai.
2. The procedural requirements have been met, all interested persons and parties have been given due notice of the proceedings on this matter, and all interested persons and parties have been afforded the opportunity to present testimony, evidence, and argument on proposed amendments herein.
3. That the proposed amendment to the conditions of approval do not fully comply with Chapter 205-A of the Hawaii Revised Statutes and the Special Management Area Rules and Regulations of the County of Kauai in that:
 - a. Crater Hill is a unique, scenic landmark and a significant ecological resource within the coastal zone. Further compromising of the setback line and the criteria for such would negatively impact these resources and be contrary to the policies and guidelines of the SMA Rules and Regulations of the County of Kauai.
 - b. Approval of structures further up Crater Hill would go directly against the recommendation of the North Shore Development Plan Update.
 - c. The subdivision was designed around the setback line affording each lot ample buildable area. Construction of the roadway reduced this area, however, the applicant was fully aware of the location of the setback line on the ground and the impact of the roadway prior to construction of such.
 - d. There is still buildable area on each lot and adherence to the setback line and its criteria will limit the buildable area on few of the lots, but not deprive the applicant of reasonable use of the property.

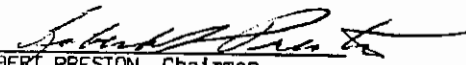
DECISION AND ORDER

On the basis of the Findings of Fact and Conclusion of Law contained herein, it is the Decision and Order of this Planning Commission that the proposed revisions to the conditions of approval for Special Management Area Use Permit SMA(U)-82-2 is not justified.

IT IS HEREBY ORDERED that the application for revisions to the conditions of approval for Special Management Area Use Permit SMA(U)-82-2 be denied pursuant to a motion duly passed by the Planning Commission on December 12, 1984, at Lihue, Kauai, Hawaii.

BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI, STATE OF HAWAII.

By


ROBERT PRESTON, Chairman
Planning Commission

Dated: 12/15/84

**COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHU'E, KAUAI**

STAFF REPORT

HEARING DATE: August 27, 2002

PROJECT: Class IV Zoning Permit Z-IV- 2003-2
Use Permit U-2003-2

APPLICANT: New Seacliff Estates, LLC

FINDINGS

LOCATION: On the makai side of Makaano Place at its intersection with Pali Moana Place, in the Seacliff Plantation Subdivision in Kilauea

TAX MAP KEY: TMK:5-2-04:85

AREA: 5.239 acres

ZONING: Open/Special Treatment-
Resource (O/ST-R)

SLUD: Agricultural

GEN. PLAN: Agriculture

EXIST. USE: Vacant

I. ACTIONS REQUIRED:

A Use Permit is required for all uses, structures or development in a Special Treatment District except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures or land. A Class IV Zoning Permit is a procedural requirement when applying for a Use Permit within the Open (O) District.

II. PROJECT DESCRIPTION AND USE:

The applicant is proposing construction of a two story, 4,360 square foot single family residence with an 840 square foot garage, pool, and landscaping. The residence will have a maximum height of 25 feet as measured at all points of the building to the top of the roof. According to the application, proposed lot coverage is 6.8%. Access to the site will be from Makaano Place, via a gravel driveway.

The applicant has indicated that the exterior of the structure will be a light sand or beige/tan color, with brown stained cedar shingles for roof material. Landscaping will emphasize native species, with ornamental landscaping restricted to the areas immediately adjacent to the residence.

D.2.c.

AUG 27 2002

III. LEGAL REQUIREMENTS:

The requirements of Section 8-19.6 of the Kauai County Code pertaining to public hearing notification have been satisfied.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Please refer to application.

V. PROJECT SITE AND SURROUNDINGS:

The project site is located on former sugar cane lands, now covered primarily with grasses and scattered small trees and shrubs. The project site is located on the hillside above Makaano Place, and slopes moderately down to the road. The Kilauea Point National Wildlife Refuge is located immediately north of the subject property with the ocean beyond the refuge. Most other properties in the immediate vicinity to the south and east remain vacant, although several other residential developments are distributed throughout the subdivision.

Kilauea Lighthouse is located approximately 3,700 feet to the north, and Kilauea Stream and Bay are situated below the bluffs approximately 4,000 feet to the east. Kilauea town is approximately one mile to the southwest, with Kuhio Highway running generally east/west beyond the town.

AGENCY COMMENTS: (See Attachments)

The State Department of Health provided comments regarding wastewater disposal, construction activities, and use of best management practices.

The Fire Department had no comments.

The Department of Public Works indicated that a grading permit may be required, and requested grading plans with mitigating erosion control measures.

The County Department of Water will require approval of construction drawings for necessary water system facilities.

The State Historic Preservation Division stated that since intensive cultivation has altered the land, no historic properties will be affected.

ADDITIONAL FINDINGS:

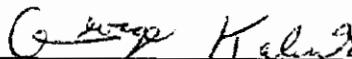
PROJECT SITING

On February 10, 1982, the Planning Commission approved Special Management Area SMA(U)-82-2 for what ultimately became a 25 lot subdivision then known as Crater Hill. The permit was approved subject to several conditions including establishment of a building setback line that resulted in the "1982 SETBACK" identified on the applicant's site plan.

The project application indicates that the proposed structure is to be located within an area identified as the "1994 SETBACK". The 1994 setback line was approved by the Planning Commission on November 4, 1994 as part of a master planned multi property project involving subdivision of three agricultural lots into market lots, ag lots, a community park lot, a school site, and a botanical garden lot, with the development of related infrastructure (see attached approval letter for Special Management Area Use Permit SMA(U)-94-14, Variance Permit V-94-16, Class IV Zoning Permit Z-IV-94-56, Amendment to Conditions of Approval SMA(U)-82-2). However, the conditions of approval of these permits have not been met, and the two year duration of the SMA Permit as indicated in the County of Kauai SMA Rules and Regulations has expired. Therefore the original 1982 setback line remains in effect, and the applicant's structure should be located behind that 1982 line.

If the applicant wishes to utilize the 1994 setback line, potential options include:

1. Reactivate the 1994 permit, which would require resubmitting the application for reevaluation by applicable agencies, and the Planning Commission.
2. Request that establishment of the 1994 setback line be considered as part of this application.
3. Request a modified 2002 setback line that would allow development in locations other than within the 1982 or 1994 lines.


George Kalisik
Planner

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED August 12, 2019 8:01 AM
Doc No A71630168
CONVEYANCE TAX: \$5,250.00

/s/ LESLIE T. KOBATA, Registrar
KEO 12

LAND COURT SYSTEM	REGULAR SYSTEM
After Recordation, Return by: Mail () Pickup ()	
OREXCO AS QI FOR PHILIP J. GREEN	TG: 201836366 -5
AND LINDA GREEN, TRUSTEES	TGE: 24219132006
P O BOX 86	Glenda Matsushima
KILAUEA HI 96754	12 pages

RS

TYPE OF DOCUMENT:

SEACLIFF KILOHANA CONDOMINIUM
UNIT DEED

PARTIES TO DOCUMENT:

GRANTOR: SEACLIFF KILOHANA, LLC, a Hawaii limited liability company

GRANTEE: PHILIP J. GREEN, JR. and LINDA M. GREEN, Trustees of the Philip J. Green, Jr. Trust dated December 4, 2018; and LINDA M. GREEN and PHILIP J. GREEN, JR., Trustees of the Linda M. Green Trust dated December 4, 2018
P. O. Box 86, Kilauea, Hawaii 96754

TAX MAP KEY FOR PROPERTY:

(4) 5-2-004-084

CPR No. 0001

Unit No. 1

SEACLIFF KILOHANA CONDOMINIUM
UNIT DEED

THIS INDENTURE, made this 7th day of August, 2019 by and between SEACLIFF KILOHANA, LLC, a Hawaii limited liability company, whose mailing address is 3762 Keli'i Place, Princeville, Hawaii 96722 (hereinafter referred to as the "Grantor"), and PHILIP J. GREEN, JR. and LINDA M. GREEN, Trustees of the Philip J. Green, Jr. Trust dated December 4, 2018; and LINDA M. GREEN and PHILIP J. GREEN, JR., Trustees of the Linda M. Green Trust dated December 4, 2018, both of whose mailing address is P. O. Box 86, Kilauea, Hawaii 96754 (hereinafter referred to as the "Grantee");

WITNESSETH:

That the Grantor, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by the Grantee, receipt whereof is hereby acknowledged, and of the promises and covenants hereinafter set forth and on the part of the Grantee to be faithfully observed and performed, does hereby grant, bargain, sell and convey unto the Grantee, as tenants in common, in the following proportionate shares:

An undivided fifty percent (50%) interest to PHILIP J. GREEN, MR. and LINDA M. GREEN, Trustees of the Philip J. Green, Jr. Trust dated December 4, 2018, their successors in trust and assigns, 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, convey, exchange, partition, mortgage, lease, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the their sole judgment and discretion; and

The remaining undivided fifty percent (50%) interest to LINDA M. GREEN and PHILIP J. GREEN, JR., Trustees of the Linda M. Green Trust dated December 4, 2018, their successors in trust and assigns, 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, convey, exchange, partition, mortgage, lease, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the their sole judgment and discretion.

The following described property, 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:

That certain unit and common interest comprising a portion of the Seacliff Kilohana Condominium Property Regime (hereinafter referred to as the "Project"), as established by the Seacliff Kilohana Declaration of Condominium Property Regime dated March 31, 2017, and recorded at the Bureau of Conveyances of the State of Hawaii (hereinafter referred to as the "Bureau") as Document No. A-63160587, as amended by that certain First Amendment to Seacliff Kilohana Declaration of Condominium Property Regime dated June 9, 2017, and recorded in the Bureau as Document No. A-63730575, and as the same may be further amended from time to time (hereinafter referred to as the "Declaration"). The

Project consists of that certain parcel of land situate at Kilauea, Kauai, Hawaii, and more particularly described in Exhibit "A" attached hereto and expressly made a part hereof, and in said Declaration, together with the improvements located thereon, as more particularly described in said Declaration. The unit and common interest constituting the premises hereby conveyed are more particularly described as follows:

FIRST:

Unit 1 of the Project as described in the Declaration and as shown on the plans thereof recorded in the Bureau as Condominium Map No. 5843, as the same may be amended from time to time (hereinafter referred to as the "Condominium Map"), together with the limited common elements and rights and easements appurtenant to said unit as established by and described in the Declaration.

SUBJECT to the restriction that such limited common elements, rights and easements may not be transferred or assigned separate and apart from the unit hereinabove described and shall be deemed conveyed or encumbered with said unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. This restriction shall be binding on the Grantee and shall be a covenant running with the land.

SECOND:

An undivided fifty percent (50%) interest in the common elements of the Project as described in and established by the Declaration, or such other percentage interest as hereafter established for said Unit by any amendment of the Declaration, as tenant in common with the Grantor, its successor and assigns, and the holders from time to time of other undivided interests therein.

SUBJECT, as to said undivided interest in the common elements of the Project, to the restriction that it may not be transferred or assigned separately and apart from said unit.

SUBJECT, FURTHER, as to FIRST and SECOND, to the encumbrances set forth in said Exhibit "A".

SUBJECT, FURTHER, as to FIRST and SECOND, to the rights and easements excepted and reserved in the Declaration and Condominium Map, and any amendments thereto, and to all easements appurtenant to any unit of the Project and to all easements required for drainage, sewers and any utilities serving the Project.

ALL TOGETHER WITH AND SUBJECT TO, as to FIRST and SECOND, the encumbrances, restrictions, covenants, agreements, easements in addition to those described above, obligations, conditions, exceptions, reservations and other matters and provisions of the Declaration of Covenants, Conditions and Restrictions of the Seaciff Plantation at Kilauea Bay Community recorded in the Bureau in Liber 17405 at Page 411, as amended by instruments by instruments

dated --- (acknowledged March 1, 1988, March 2, 1988, March 3, 1988 and March 7, 1988), recorded in the Bureau in Liber 21704 at Page 1, dated September 9, 1988, recorded in the Bureau in Liber 22387 at Page 21, dated December 28, 1988, recorded in the Bureau in Liber 22766 at Page 559, and dated --- (acknowledged February 11, 2000 through May 8, 2002), recorded in the Bureau as Document No. 2002-105319, and any association rules adopted thereunder, as the same may be further amended from time to time (hereinafter referred to as the "Master CCRs"), the Declaration of Restrictive Covenants and Conditions -- Seacliff Kiloohana, Kilauea, Kauai, Hawaii recorded in the Bureau as Document No. A-63160586, as the same may be amended from time to time (hereinafter referred to as the "Project CCRs"), the Declaration and exhibits attached thereto and documents referenced therein, the Bylaws of the Association of Unit Owners of Seacliff Kiloohana Condominium dated March 31, 2017, recorded in the Bureau as Document No. 63160588, as the same may be amended from time to time (hereinafter referred to as the "Bylaws"), and all amendments thereto, and all plans and rules and regulations which from time to time may be duly promulgated pursuant thereto, and the Condominium Map, all of which are incorporated herein by this reference and which constitute and shall constitute covenants running with the land, equitable servitudes and liens to the extent set forth therein and as provided by law, and which are hereby accepted by the Grantee as binding and to be binding on the Grantee, and the Grantee's successors and assigns.

Being a portion of the premises acquired by the Grantor by Quitclaim Deed dated December 14, 2016, recorded on January 9, 2017, in the Bureau of Conveyances of the State of Hawaii as Document No. A-62180738.

TO HAVE AND TO HOLD the same, together with all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, as Trustees aforesaid, forever.

AND said Grantor, for itself and its successors, does hereby covenant and agree to and with the Grantee as follows: that the real property is free and clear of and from all encumbrances except as herein mentioned, and except for the lien of real property taxes for the current year not yet by law required to be paid; that the Grantor has good right to sell and convey said real property in the manner set forth herein; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee forever against the lawful claims and demands of all persons, except as herein mentioned.

The Grantee does hereby covenant and agree, for the benefit of the owners from time to time of all condominium units in said Project, to at all times observe, perform, comply with and abide by all of the covenants, agreements, obligations, conditions and other provisions set forth in the Master CCRs, the Project CCRs, the Declaration and exhibits attached thereto and documents referenced therein, the Bylaws, and all plans, rules and regulations which may from time to time be duly promulgated pursuant thereto, as any of the same exist or may hereafter be amended in accordance with law, and does hereby accept and approve said Master CCRs, Project CCRs, Declaration and exhibits attached thereto and documents referenced therein, and said Bylaws (and all plans and rules and regulations duly promulgated pursuant thereto), and the Grantee will indemnify and save harmless them and each of them for any failure so to observe

and perform any such term, covenants, conditions and restrictions for so long as said Master CCRs, Project CCRs, Declaration and exhibits attached thereto and documents referenced therein, and Bylaws (and all plans and rules and regulations duly promulgated pursuant thereto) exist and are in effect.

The Grantee hereby agrees to and acknowledges that pursuant to the Declaration, the Grantor has reserved certain rights, including, but not limited to, rights (i) to grant, realign, delete, etc., certain easements and rights of way over the Project's units, common elements and limited common elements as necessary, and amend the Declaration and Condominium Map in accordance therewith, until December 31, 2027; (ii) to amend the Declaration, Bylaws, Condominium Map, and house rules (if any) to comply with laws that apply to the Project, until December 31, 2027; (iii) to divide existing units into two or more units to facilitate the transfer of a portion of a unit to the government; (iv) any time prior to the first conveyance of a unit to a party other than Grantor, to amend the Declaration, Bylaws and/or Condominium Map; (v) upon satisfying certain conditions, to amend the Declaration and Condominium Map, without the consent or joinder of any unit owner, to record the certification required by section 514B-34, Hawaii Revised Statutes; (vi) to act on any matter relating to development, construction or improvements in the common elements; (vii) to implement the Driveway Plan (as defined in the Declaration); and (viii) to relocate, remove, and dispose of plants in the common elements.

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property, except claims which are based on the Grantor's concealment of material facts and defects which Grantor is required by law to disclose.

Grantee is acquiring the property described in Exhibit "A" attached hereto in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, by direct conveyance pursuant to that certain Exchange Agreement dated August 5, 2019 with OLD REPUBLIC EXCHANGE COMPANY, a California corporation.

The rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, devisees, personal representatives, successors, successors in trust and assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein. Without limiting the generality of the foregoing, each and every acknowledgment, acceptance, appointment, agreement and covenant of the Grantee herein shall run with the land and constitute an equitable servitude and lien, and is made by the Grantee for himself or herself and on behalf of his or her estate, heirs, devisees, personal representatives, successors, successors in trust and assigns. Each and every person hereafter acquiring from the Grantee or his or her estate, heirs, devisees, personal representatives, successors, successors in trust or assigns, an interest in the property hereby conveyed, by such acquisition, makes said acknowledgments, acceptances, appointments, agreements and covenants for himself and for his estate, heirs, devisees, personal representatives, successors, successors in trust and assigns.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, his or her heirs, devisees, personal representatives and assigns.

The terms "Grantor" and "Grantee" as and when used herein or any pronouns used in place thereof, shall mean and include masculine, feminine or neuter, the singular or plural number, individuals, associations, trustees or corporations, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context thereof. This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or same counterparts. For all purposes, including, without limitation, recording, filing, and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one instrument.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents the day and year first above written.

(SIGNATURES CONTINUED ON NEXT PAGE)

GRANTOR:

SEACLIFF KILOHANA, LLC,
a Hawaii limited liability company

By

JAMES FIELDS

Its Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

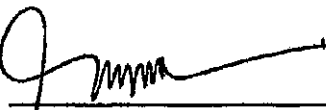
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COUNTY OF LOS ANGELES

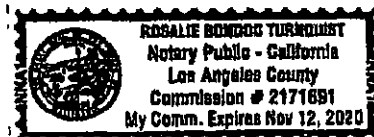
On 8/6/2019, before me, ROSALIE BONDOC TURNQUIST, a Notary Public, personally appeared JAMES FIELDS, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



GRANTEE:

Philip J. Green, Jr.
Philip J. Green, Jr., Trustee of the Philip J.
Green, Jr. Trust dated December 4, 2018

Linda M. Green
Linda M. Green, Trustee of the Philip J. Green, Jr.
Trust dated December 4, 2018

Linda M. Green
Linda M. Green, Trustee of the Linda M. Green
Trust dated December 4, 2018

Philip J. Green, Jr.
Philip J. Green, Jr., Trustee of the Linda M.
Green Trust dated December 4, 2018

STATE OF HAWAII
COUNTY OF KAUAI

SS:

On this 7th day of August, 2019, before me appeared PHILIP J. GREEN, JR. Trustee of the Philip J. Green, Jr. Trust dated December 4, 2018, and Trustee of the Linda M. Green Trust dated December 4, 2018, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing SEACLIFF KILOHANA CONDOMINIUM UNIT DEED dated August 7, 2019, which document consists of 12 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Glenda Matsushima
Name of Notary:

Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: GLENDA MATSUSHIMA
Expiration Date: November 18, 2019

STATE OF HAWAII
COUNTY OF KAUAI

SS:

On this 7th day of August, 2019, before me appeared LINDA M. GREEN, Trustee of the Philip J. Green, Jr. Trust dated December 4, 2018, and Trustee of the Linda M. Green Trust dated December 4, 2018, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing SEACLIFF KILOHANA CONDOMINIUM UNIT DEED dated August 7, 2019, which document consists of 12 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Glenda Matsushima
Name of Notary:

Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: GLENDA MATSUSHIMA
Expiration Date: November 18, 2019

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2896 to Charles Titcomb) situate, lying and being at Kilauea, Island and County of Kauai, State of Hawaii, being LOT 11-A, as shown on Subdivision map approved by the Planning Commission of the County of Kauai on May 26, 1994, being a portion of the consolidation of Lot 9 (Portion "B"), of the "SEACLIFF PLANTATION", and thus bounded and described:

Beginning at a point at the northwestern corner of this parcel of land and on the southwestern corner of Lot 9A, the same being also on the easterly side of Makana'ano Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILAUEA" being 514.01 feet north and 1,406.25 feet west, thence running by azimuths measured clockwise from true South:

1. 271° 31' 38" 774.94 feet along Lot 9A;
2. 346° 22' 00" 462.25 feet along remainder of Lot 9, Portion "A";
3. 34° 31' 00" 610.69 feet along Lot 12, Seacliff Plantation;

Thence along Makana'ano Place on a curve to the right having a radius of 970.00 feet, the chord azimuth and distance being:

4. 142° 40' 27" 550.74 feet;
5. 159° 10' 00" 572.55 feet along same to the point of beginning and containing an area of 12.305 acres, more or less.

Together with a nonexclusive easement appurtenant to said Lot to use Roadway Lots 27, 28 and 29 of the Seacliff Plantation at Kilauea Bay Community for ingress and egress purposes, reserving, however, unto Roberson/Larson Partners, and its successors and assigns, the right from time to time to convey said Roadway Lots 27, 28 and/or 29 to a community organization or such other entity for the care and maintenance of the same, or to convey said Roadway Lots 27, 28 and/or 29 to the County of Kauai as a public road, in which latter event, the said easements shall be automatically extinguished.

Together also with a non-exclusive easement for ingress and egress for beach access and parking of vehicles over and across Easement "Q-1", known as Kahili Quarry Road, as granted by Easement Deed for Access and Parking dated March 1, 1988, recorded in Liber 21703 at Page 797, being more particularly described therein.

Together also with a nonexclusive easement for pedestrian and vehicular purposes as a roadway over and across a thirty feet wide road, known as "KAHILI QUARRY ROAD," as granted by GRANT OF EASEMENT dated December 17, 2002, recorded as Document No. 2003-003808; and subject to the terms and provisions contained therein.

Being the same premises conveyed to SEACLIFF KILOHANA, LLC, a Hawaii limited liability company, by QUITCLAIM DEED dated December 14, 2016, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-62180738.

-Note:- The aforementioned premises has been divided into 2 apartment units more particularly described in the Declaration of Condominium Property Regime dated March 31, 2017, recorded as Document No. A-63160587, as shown on Condominium Map No. 5643, and recorded in the Bureau of Conveyances of the State of Hawaii.

TOGETHER WITH an installed water meter.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. Building setback line as referenced on Subdivision map approved by the Planning Commission of the County of Kauai on May 26, 1994.
3. The terms and provisions contained in the following:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY dated August 31, 1983, recorded in Liber 17405 Page 411.

Said Declaration was amended by instruments dated — (acknowledged March 1, 1988, March 2, 1988, March 3, 1988 and March 7, 1988), recorded in Liber 21704 at Page 1, dated September 9, 1988, recorded in Liber 22367 at Page 21, dated December 28, 1988, recorded in Liber 22766 at Page 559, and dated — (acknowledged February 11, 2000 through May 8, 2002), recorded as Document No. 2002-105319.

4. Requirement of signing an elevation agreement with the Department of Water for water service, as set forth in Section 3.01(bb) of Declaration of Covenants, Conditions and Restrictions dated August 31, 1983, recorded in Liber 17405 at Page 411.

5. Requirements for driveways bridging drainage culverts, as set forth in Section 3.03(c) of Declaration of Covenants, Conditions and Restrictions dated August 31, 1983, recorded in Liber 17405 at Page 411.

6. Easement "D-1" (15' wide) for drainage purposes, being more particularly described in Instrument dated June 2, 1994, recorded as Document No. 94-108675.

7. The terms and provisions contained in the DEED OF OPEN SPACE EASEMENT dated February 29, 1988, recorded in Liber 21704 at Page 43.

8. The terms and provisions contained in the DECLARATION RE ELECTRICAL USE dated July 25, 1988, recorded in Liber 22226 at Page 340.

9. RIGHT-OF-ENTRY to CITIZENS UTILITIES COMPANY, now known as CITIZENS COMMUNICATIONS COMPANY, whose interest is now held by KAUAI ISLAND UTILITY COOPERATIVE, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as HAWAIIAN TELCOM, INC., dated October 12, 1988, recorded in Liber 22768 at Page 454, granting a right-of-entry for utility purposes.

10. The terms and provisions contained in the AGREEMENT FOR NON-GRANT OF UTILITY EASEMENTS dated April 29, 1993, recorded as Document No. 93-073992, by and between PALI MOANA COMPANY, formerly known as ROBERSON/LARSON PARTNERS, a New Mexico partnership, "Declarant", and UNITED STATES OF AMERICA, acting by and through the Fish and Wildlife Service, "USA".

11. The terms and provisions contained in the DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS - SEACLIFF KILOHANA, KILAUEA, KAUAI, HAWAII, dated March 31, 2017, recorded as Document No. A-63160586.

12. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "SEACLIFF KILOHANA dated March 31, 2017, recorded as Document No. A-63160587.

Condominium Map No. 5643 and any amendments thereto.

Said Declaration was amended by instrument dated June 9, 2017, recorded as Document No. A-63730575.

-NOTE:- Any recorded amendments to the Declaration of Horizontal or Condominium Property Regime amending the assignment of parking stalls to and from apartments other than the specific apartment described herein, are not shown.

13. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS dated March 31, 2017, recorded as Document No. A-63160588.

14. Easement "U-1" for utility purposes, being more particularly described in instrument dated March 31, 2017, recorded as Document No. A-63160587.

15. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

16. Any unrecorded leases and matters arising from or affecting the same.

17. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

44-
RECORDATION REQUESTED BY:

89 5213

NEW JAN 13 AM 8:04

LIBER/22766/559
KAWAII, HAWAII, REGISTRAR

AFTER RECORDATION RETURN TO:

WHL COMPANY ESCROW SERVICES, INC.
4200 Kila St., P.O. Box 1937
Lihue, Kauai, Hawaii 96766

RETURN BY: MAIL () PICKUP (X)

THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

WHEREAS, PALI MOANA COMPANY, formerly known as Roberson/Larson Partners, a New Mexico partnership, whose business address and mailing address is 6001 Atrisco NW, Albuquerque, New Mexico 87120, herein called the "Declarant", developed certain real property situate at Kilauea, Island and County of Kauai, State of Hawaii, in the subdivision known as the Seacliff Plantation at Kilauea Bay; and

WHEREAS, the Declarant's predecessor, Roberson/Larson Partners, recorded that certain Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, amended by instrument (acknowledged March 1, 1988, March 2, 1988, March 3, 1988, and March 7, 1988), recorded in Liber 21704 at Page 1; and

WHEREAS, the Declarant recorded that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22367 at Page 21; and

WHEREAS, due to changes in the law or interpretations thereof or in contemplation of such changes, all of which have an effect on the quality and desirability of the development, the Declarant wishes to further amend the said Declaration, as amended;

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" of the said Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, as amended by instrument recorded in Liber 21704 at Page 1, and as further amended by the said Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of

Conveyances of the State of Hawaii in Liber 22367 at Page 21, and any other property as may be hereafter annexed thereto as provided herein, shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY RESTRICTIONS, meaning the limitations, restrictions, covenants and conditions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the surrounding environment. The limitations, restrictions, covenants and conditions contained in this Declaration shall run with said property and shall be binding upon all parties having or acquiring any right, title or interest in and to the described property or any part thereof and shall inure to the benefit of each owner thereof, the Declarant and the Seaciff Plantation at Kilauea Bay Community Association.

ARTICLE I

DEFINITIONS

Unless the context in the Seaciff Plantation at Kilauea Bay Community Restrictions otherwise specifies or requires, the terms defined in this Article I shall for all purposes of this Declaration of Covenants, Conditions and Restrictions have the meanings herein specified:

1. "Architect" shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464, Hawaii Revised Statutes, as amended.
2. "Articles" shall mean the Articles of Incorporation of the Association granted or to be granted pursuant to Chapter 416, Hawaii Revised Statutes, as amended, substantially in the form attached hereto as Exhibit "B" and incorporated herein, as such Articles may from time to time be amended.
3. "Association" shall mean the Seaciff Plantation at Kilauea Bay Community Association, a non-profit corporation described in Article V herein and its successors and assigns.
4. "Board" shall mean the Board of Directors of the Association.
5. "By-Laws" shall mean the By-Laws of the Association which have been or shall be duly adopted substantially in the form attached hereto as Exhibit "C" and incorporated herein, as such By-Laws may from time to time be amended.
6. "Class A Member" shall mean those owners as set forth in the By-Laws of the Seaciff Plantation at Kilauea Bay Community Association.
7. "Class B Member" shall mean the Declarant as

set forth in the By-Laws of the Seacliff Plantation at Kilauea Bay Community Association.

8. "Common Area" shall mean all of the real property which has been conveyed to or leased to the Association for the common use and enjoyment of all Owners of the Seacliff Plantation at Kilauea Bay Community, pursuant to the provisions hereinafter set forth, together with all of the improvements from time to time constructed thereon, for the general use of all Owners in the Seacliff Plantation at Kilauea Bay Community.

9. "Condominiumizing" shall mean any means or manner whereby separate and distinct interests (other than as tenants in common of an undivided interest in the whole) in any lot within the Seacliff Plantation at Kilauea Bay Community are created which permits individual ownership of a specific portion of the lot and/or the individual financing of that specific portion. This includes registration as a condominium under the laws of the State of Hawaii (whether the same be designated as a horizontal property regime, condominium property regime, or any other nomenclature), the conveyance of the property to a land trust under the laws of the State of Hawaii for the purposes of permitting individual ownership of specific portions of the lot, or any other means to achieve such ends.

10. "Declarant" shall mean the Pali Moana Company, and its successors and assigns.

11. "Design Committee" shall mean the Committee created pursuant to Article IV hereinafter set forth.

12. "Design Committee Rules" shall mean those rules adopted by the Design Committee pursuant to Section 4.04 of Article IV.

13. "Excavation" shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock for a depth of more than eighteen (18) inches or an area exceeding one hundred (100) square feet.

14. "File" or "Filed" shall mean with respect to any subdivision map or file plan such map or plan which has been recorded in the Bureau of Conveyances of the State of Hawaii.

15. "Fill" shall mean any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen (18) inches or an area exceeding one hundred (100) square feet.

16. "Fiscal Year" shall mean the year from January 1 to December 31.

17. "Farm Dwelling" shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. In keeping with the intent of the

State Land Use Law (Chapter 205, Hawaii Revised Statutes), agricultural activity must be established before any additional farm dwellings in excess of one (1) per parcel will be permitted by the County of Kauai.

18. "Farm dwelling site" shall mean those areas within a lot in the Seacliff Plantation at Kilauea Bay Community wherein farm dwellings are permitted to be constructed by the County of Kauai, pursuant to Special Management Area Use Permit SMA(U)-82-2.

19. "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind, and shall include any physical appearance of the structure, including by way of example, but not limited to, adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape, or physical appearance of any structure.

20. "Maintenance Assessment" shall mean any assessment levied pursuant to Section 6.02.

21. "Maintenance Reserve Fund" shall mean such fund established pursuant to Section 6.02.

22. "Managing Agent" shall mean the person or corporation appointed as such pursuant to Section 5.05.

23. "Notice" shall mean notice delivered pursuant to Section 7.12.

24. "Ohana Unit" shall mean any additional dwelling unit or farm dwelling in excess of the allowable density under the applicable zoning code which may be permitted under any ohana zoning law of the State of Hawaii or the County of Kauai as presently enacted or as may be enacted in the future. Ohana zoning law shall mean any legislation which, notwithstanding allowable density under a zoning law, permits additional dwelling or dwellings to be built provided certain conditions are met. An example of an ohana zoning law is Section 8-3.3(d) of Article 3 of the County of Kauai's Comprehensive Zoning Ordinance.

25. "Operating Fund" shall mean the fund created pursuant to Section 6.01.

26. "Owner" shall mean the person or persons, corporation or corporations, or other legal entity or entities, as set forth in Section 5.02, provided, however, that:

(a) For the purposes of limitations and restrictions set forth in Article III, "Owner" shall not include the Declarant with respect to any real property not yet conveyed to an individual lot owner.

(b) "Owner" shall include for the purposes of Article III, unless the context otherwise requires, family, invitees, licensees, and lessees of any Owner.

27. "Primary Recreational Facility" shall mean and include any improvement for the general use of all Owners of lots in the Seacliff Plantation at Kilauea Bay Community for or in connection with any recreational purpose of activity, interpreted broadly to include without limitation, park and picnic facilities, riding trails, and/or pedestrian pathway systems, as the same may be designated as such on any map or file plan.

28. "Private Area" shall mean any real property for the exclusive use of the Owner of a certain lot or farm dwelling site in the Seacliff Plantation at Kilauea Bay Community, whether or not conveyed to such Owner, together with all improvements from time to time constructed thereon.

29. "Record" and "Recorded" shall mean with respect to any document, that such document has been recorded in the Bureau of Conveyances of the State of Hawaii.

30. "Road" shall mean any paved vehicular way constructed within or upon any portion of any common area, co-tenancy area, or private area, or upon other lands of the Declarant used to provide access to the Seacliff Plantation at Kilauea Bay Community, except any apron or other paved area constructed for the purpose of providing paved access from such way to any private area.

31. "Seacliff Plantation at Kilauea Bay Community Association Rules" and/or "Seacliff Plantation Community Association Rules" shall mean the rules from time to time in effect pursuant to the provisions of Section 5.06.

32. "Seacliff Plantation at Kilauea Bay Community" and/or "Seacliff Plantation Community" shall mean all of the real property referred to in Section 2.01, together with all improvements from time to time constructed thereon.

33. "Seacliff Plantation at Kilauea Bay Community Restrictions" and/or "Seacliff Plantation Restrictions" shall mean, with respect to all property within the Seacliff Plantation at Kilauea Bay Community, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended.

34. "Special Assessment" shall mean any assessment levied pursuant to Section 6.03.

35. "Subdivision Map" shall mean any map prepared for the subdivision of Parcel 9, Kilauea, Kauai, Hawaii, or a portion thereof, which map may be recorded in the Bureau of Conveyances of the State of Hawaii.

36. "Transient Vacation Rental" shall mean the renting or leasing of any farm dwelling or other improvement

within the Seacliff Plantation at Kilauea Bay Community for money or other consideration by an owner to any third party, where the duration of any occupancy is less than thirty (30) days.

ARTICLE II

SEACLIFF PLANTATION AT KILAUEA BAY PROPERTY SUBJECT TO COMMUNITY RESTRICTIONS

Section 2.01. The Development.

(a) The development shall be all of the property described in Exhibit "A", attached hereto and made a part hereof, or as may hereafter be annexed and made a part of the Seacliff Plantation at Kilauea Bay Community, and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Seacliff Plantation at Kilauea Bay Community Restrictions.

(b) No property, except that described in said Exhibit "A" or as may hereafter be annexed, and hereby made subject to the Seacliff Plantation Community Restrictions shall be deemed subject to the Seacliff Plantation Community Restrictions, whether or not shown on any subdivision map or file plan filed by the Declarant or described or referred to in any document executed and/or recorded by the Declarant. No designation of any parcel, lot or other area on any map or plan filed by the Declarant as a private area, common area, road, street, park or as any other type of parcel, lot or area shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, lots or areas specifically described in Exhibit "A" and so designated on a subdivision map or file plan for such use, nor shall any Owner, or the public, or any public body or agency or any other person, corporation or entity, acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. Nothing herein or in any amendment hereto, or in any recorded or unrecorded subdivision map or file plan, nor in any picture, drawing, brochure or other representation of a scheme of development, shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject or be construed as requiring the Declarant to commit or subject to the Seacliff Plantation Community Restrictions any real property situated in Kilauea aforesaid, other than that described in said Exhibit "A" or such amendment.

(c) Declarant reserves the right, at any time prior to December 31, 2002, without the consent of the Association or any Owner of a lot or any other person or corporation or entity holding any interest in a farm dwelling site, from time to time and in its sole discretion, to annex to the Seacliff Plantation Community the roadway lots within the Seacliff Plantation Community by conveying and/or leasing said roadway lots to the Seacliff Plantation Community Association, or to annex additional lands resulting from further subdivision of said Parcel 9 to the Seacliff Plantation Community.

ARTICLE III

RESTRICTIVE COVENANTS

Section 3.01. Use Restrictions: Homesites and Private Areas. Each lot and farm dwelling site in the Seaciff Plantation Community, and any private or co-tenancy area appurtenant thereto, shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in Section 5.05 with respect to each farm dwelling site or lot.

(b) No improvement or other work which in any way significantly alters any lot or farm dwelling site from its natural or improved state existing on the date such lot was first conveyed by the Declarant to an Owner shall be made or done except upon strict compliance with and within the restrictions of the provisions of Section 3.05.

(c) So long as the zoning of the lots in the Seaciff Plantation Community remains unchanged, only farm dwellings, as may be permitted by applicable law, shall be constructed within those areas approved by the County of Kauai, pursuant to Special Management Area Use Permit SMA(U)-82-2. In keeping with the intent of the State Land Use Law (Chapter 205, Hawaii Revised Statute, as may be amended), agricultural activity must be established before any additional dwellings in excess of one (1) per parcel will be permitted by the County of Kauai.

(d) Lots 1, 2, 3, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25 in the Seaciff Plantation Community are subject to a building setback line which was approved by the County of Kauai in the said SMA(U)-82-2 on February 10, 1982 and as shown on the subdivision map approved by the County of Kauai. All structures on the lots must be in conformity with the said building setback line, as approved or as may be amended from time to time with the approval of the County of Kauai.

(e) All building locations and designs shall be subject to the review and approval of the Planning Department of the County of Kauai at the time of building permit application. The building locations shall be constructed on the ground in strict adherence to the approved subdivision map for the Seaciff Plantation Community and the building plot plan submitted to and approved by the Planning Department during the building permit application process. Any structures found constructed in violation of the approved plans shall be relocated at the owner's expense.

(f) To protect views and to maximize a blending of structures with the natural environment, no structure erected on any of the said lots shall exceed a building height limit of twenty-five (25) feet, measured from grade at all points along the structure to the roof peak; provided, however, that notwithstanding compliance with the

foregoing height limitation, the Design Committee shall have the power to deny approval of any structure or improvement on a lot which substantially impairs views from the adjoining lot or lots.

(g) All farm dwellings shall contain not less than 2,000 square feet of liveable floor area, exclusive of lanais, patios, servant's quarters, attached guest house or facility, garage storage space, and workshop. Each farm dwelling shall have appurtenant to it a garage designed to accommodate at least two automobiles which is architecturally harmonious with the farm dwelling to which it is appurtenant.

(h) All structures shall be built entirely of new materials, and no old and/or "quonset" or "geodesic dome" type of building shall be erected, placed or maintained on any of said lots.

(i) No structure erected on the lots shall use mirrored glass, reflective sun screens, or other highly reflective materials for any exterior windows.

(j) The roofs of all structures erected on the lots shall be surfaced with wood shakes or shingles, clay tile or other materials of minimum reflectivity. The use of any roofing materials which is highly reflective, such as corrugated iron, tiles with a smooth, shiny finish, and the like, shall be prohibited.

(k) All structures erected on the lots, including the roof, shall have an earthen tone exterior color, or have a finish of earthen tone color.

(l) The area around each structure exceeding 2,000 square feet in floor area shall be landscaped with trees, shrubbery, and/or plantings in such a fashion so as to minimize the visual intrusion of such structures upon that portion of Parcel 9, Kilauea, Kauai, Hawaii, more commonly known as "Crater Hill".

In the event that an owner desires to construct any structure exceeding 2,000 square feet in floor area, he shall submit a complete landscaping plan to, and obtain the approval of the Design Committee as herein provided, prior to obtaining a building permit for such structure. The Design Committee as herein provided, shall have the right, in its discretion, to approve, approve with modifications, or deny the landscaping plan so submitted, the criteria being whether the proposed landscaping is reasonably sufficient to minimize the visual intrusion of such structure upon Crater Hill as viewed from Kilauea town and Kuhio Highway.

(m) Any bare areas resulting from excavation or fill by a lot owner shall be revegetated immediately to avoid erosion and visual impacts.

(n) No fences, corrals, and the like shall be painted or contain a finish other than earthen tones.

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants (other than transient vacation renters), family, employees and guests, and for no other purpose.

(p) Each farm dwelling and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to the Seacliff Plantation Community or any part thereof, all at such Owner's sole cost and expense.

(q) No signs whatsoever, including without limitation, commercial, political or similar signs, visible from neighboring property, shall be erected or maintained upon any lot except:

(1) Such signs as may be required by legal proceedings.

(2) Residential identification signs of a combined total face area of one (1) square foot or less for each resident.

(3) During the time of construction of any farm dwelling or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen, and

(4) Not more than one (1) "For Sale" or "For Rent" sign having a maximum face area of two (2) square feet, such sign to refer only to the premises on which it is situated.

(r) No house trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any lot at any time, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted in Section 3.05.

(s) No vehicle of more than one (1) ton capacity shall be kept, placed or maintained upon any lot in such manner that such truck is visible from the adjoining streets and neighboring property, unless such vehicle is necessary to and regularly used for agricultural activities conducted on the lot, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted by Section 3.05.

(t) No accessories, structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the farm dwelling, provided, however, that the provisions of this paragraph

shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the farm dwelling, nor apply to facilities reasonably required in the conducting of agricultural activities on the lot. Guest houses (as allowed by law) may be permitted to be constructed by the Design Committee prior to the construction of the main structure of the farm dwelling if, and only if, such guest house is part of the master plan for the construction of farm dwelling(s) on the lot and sufficient assurances are given to the satisfaction of the Design Committee that the farm dwelling(s) shown on such master plan will be built in accordance therewith within a reasonable time.

(u) No trailer, vehicle or boat shall be reconstructed or repaired upon any homesite in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintained upon any lot so as to be visible from any adjoining streets or neighboring properties, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage.

(v) No garbage or trash shall be permitted on any lot except in closed receptacles screened from view from any adjoining street, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property, or as a necessary part of the agricultural activities conducted on such lot.

(w) No open storage of boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted. These items may only be stored in an enclosed structure. No outside clothes line or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from neighboring property.

(x) The Owner shall not violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, building, fires, signs or other matter relating to the use and development of his lot or farm dwelling site.

(y) No garage shall be for other than the parking of vehicles and boats, unless the same be enclosed so as not to be visible from neighboring property by a partition, wall, door or screen, normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage not so enclosed shall be used for laundry or for storage purposes.

(z) Except for dogs, cats and other typical household pets kept in reasonable numbers and under reasonable conditions, no animals shall be kept or maintained on any lot except with the approval of the Design Committee, which shall have the power to control in

accordance with uniformly applied standards as may be adopted from time to time, the kinds of animals which may be kept or maintained on a lot, the numbers of each type of animal which may be kept or maintained on a lot, and the conditions under which such animals may be kept or maintained, including, without limitation, the kind of structures or enclosures in which such animals may be kept. All animals kept or maintained on a lot, whether domestic pets, livestock, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal in an ecologically sound manner of any effluent from the practice of agriculture or other processes; (c) control of flies, insects, worms and other pests; (d) control of weeds and other noxious grasses; (e) adequate fencing and animal housing facilities adequate to restrict such animals to the lot where maintained; and (e) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such manner as to prevent scattering of such materials by the wind and water runoff. Notwithstanding the foregoing, the keeping and maintaining of pigs, chickens (except for personal use and consumption) and fighting chickens are expressly prohibited as being incompatible with the neighboring residential and agricultural use.

(aa) No noxious or offensive activity shall be carried on upon the Common Area or any lot or any farm dwelling site, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions, and amplifiers that may disturb other occupants.

(bb) Access from any of the lots in the Seaciff Plantation Community to both the Kildeer Lighthouse Road and the Kahili Quarry Road is restricted. Access to and from the lots in the Seaciff Plantation Community will be limited to the subdivision.

(cc) Building setback lines have been established along the natural watercourse that traverses through the Seaciff Plantation Community property, as shown on the subdivision map approved by the County of Kauai, and in particular affecting Lots 16, 17, 18, 21, 22, 23, 24, and 25, to prevent structures from being constructed in an area subject to flooding and drainage problems. No structures will be permitted within these setback areas. The Owners of lots affected by the watercourse setback lines are required to maintain the function of the watercourse by not constructing, filling or fencing within the setback areas.

(dd) Because of the high elevation of portions of Lots 1, 2, 3, 4, 5, 6, 11, 12, 13, 14 and the remainder of

Lot 9, a dependable supply of water cannot be assured above the 375 feet elevation above sea level. The lot owner of those lots will be required to sign an elevation agreement with the Department of Water of the County of Kauai upon application for water service, agreeing to accept such water service as the Department is able to render.

(ee) Notwithstanding any laws to the contrary, as now existing or as may hereafter be enacted, ohana dwelling units are expressly prohibited within the Seacliff Plantation at Kilauea Bay Community.

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for transient vacation rental purposes.

(gg) The condominiumizing of any lot or lots within the Seacliff Plantation at Kilauea Bay Community may be permitted only if approved by the Design Committee in the manner set forth herein and developed in accordance with the conditions of such approval, failing which such condominiumizing shall be deemed in violation of these covenants and restrictions. The condominiumizing of any lot within the Community shall not result in a number of units or interests larger than the maximum number of farm dwellings permitted under the applicable zoning ordinance and this Declaration for that particular lot.

(hh) The Design Committee shall have the authority to prohibit additional types of activities on and uses of the lots by the Owner through the due adoption of the Seacliff Plantation Community Association Rules, where such activities and/or uses are not compatible with the neighboring residential and agricultural uses within the Seacliff Plantation at Kilauea Bay Community.

Section 3.02. Easements Affecting Lots.

(a) As an incident of ownership of lots in the Seacliff Plantation Community, the Owners also have rights to use Easement "ET-1" (being a 20 foot wide equestrian trail), Easement "PT-1" (being a 20 foot wide pedestrian trail), and Easement "PA-1" (being a picnic area), which easements are over and across the Remainder of Lot 9 of the Seacliff Plantation subdivision, which easements are shown in that certain subdivision map prepared by Portugal and Associates, Inc., dated July 12, 1988, for the Consolidation of A Portion of the Remainder of Lot 9 with Lot 11 into Lot 11-A and Remainder of Lot 9, which map is incorporated by reference herein.

(b) Lots 3, 4, 5, 6, 7, 8, 9, 10 and 26 shall be subject to a nonexclusive irrigation easement for the purposes of providing agricultural irrigation waters to any of these lots in the Seacliff Plantation Community desiring such irrigation water. The irrigation easement area shall be a ten foot wide strip fronting the respective lot and abutting the subdivision roadway serving the lot. Any Owner of any of these lots in the Seacliff Plantation Community desiring the use of this irrigation easement for the purpose

of bringing irrigation water to his lot shall have the right to install pipelines, conduits, or other means of carrying irrigation water within the said 10-foot easement area on the lots between the nearest source of such water and his lot, provided that the use of the easement area shall not unreasonably interfere with the use nor infringe upon the rights of access to and from the roadway of any servient lot; and provided, further, that the Owner utilizing such easement area shall restore the easement area as reasonably possible to its original condition upon completion of the installation of the irrigation water system. No open ditches shall be permitted as a means of transporting irrigation water across the easement area.

(c) Each of the lots in the Seacliff Plantation Community shall be subject to sheetflow of surface waters to such lot from the roadways fronting the respective lot.

(d) The following lots are affected by the following drainage easements:

Drainage Easement "D-1": Lots 11, 12, 13, 14 and 15

Drainage Easement "D-2": Lots 2, 3, 4, 5, 6 and 7

Drainage Easement "D-3": Lots 8 and 9

Drainage Easement "D-4": Lots 10, 23, 24, 25 and 26.

(e) The following lots are affected by the following utility easements:

Utility Easement "U-1" : Lot 2

Utility Easement "U-2" : Lot 3

Utility Easement "U-3" : Lot 4

Utility Easement "U-4" : Lot 5

Utility Easement "U-5" : Lot 18

Utility Easement "U-6" : Lot 19

Utility Easement "U-7" : Lot 22

Section 3.03. Restrictions on Drainage Ditches and Culverts. Surface runoff and storm waters for the Seacliff Plantation Community shall be handled through a system of open ditches, drainage inlets, culverts and outlets. In order for the designed system to function properly, this system must be kept free from obstructions or impeding of the water flow. As such, all of the lots in the Seacliff Plantation Community are subject to the following restrictions and covenants:

(a) Each Owner is responsible to maintain the drainage ditches, inlets, culverts, and outlets upon his property for the free flowage of storm water.

(b) The Owner will accept full responsibility and liabilities of the drainage ditch and culvert system, such as falling or driving into the ditch, and ditch flowage such as erosion, volume of water, etc.

(c) The Owners of Lots 6, 7, 10, 11, 12, 13, 14, 15, 25, 26 and the remainder of Lot 9 must construct driveways or other accesses that completely bridge the ditch so that there are no obstructions to flow of waters therein.

(d) The Owners shall absolve and hold the County of Kauai harmless from any responsibility and liabilities as a result of the drainage system and any damages or injuries that may result therefrom.

Section 3.04. Use of Lots Zoned "Agriculture", Pursuant to Chapter 205, Hawaii Revised Statutes.

(a) Pursuant to Act 199, Session Laws of Hawaii 1976, the use of the lands classified as "Agriculture" by the State Land Use Commission shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Chapter 205, Hawaii Revised Statutes, as amended, which provides as follows:

(1) Within the agricultural district all lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be restricted to the following permitted uses:

- (a) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber;
 - (b) Game and fish propagation;
 - (c) Raising of livestock, including but not limited to poultry, bees, fish and other animal or aquatic life that are propagated for economic or personal use;
 - (d) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal industry.
- Farm dwellings as used herein shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling;
- (e) Public institutions and buildings

which are necessary for agricultural practices;

- (f) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (g) Public, private, and quasi-public utility lines and roadways, transformer stations, solid waste transfer stations, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures;
- (h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interests;
- (i) Roadside stands for the sale of agricultural products grown on the premises;
- (j) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses; or
- (k) Agricultural parks.

(2) All of the aforementioned restrictive covenants and conditions contained in this Section 3.04 shall run with the land until such time as the land is reclassified to a Land Use District other than Agriculture.

(3) Any violation of the above restrictive covenants and conditions contained in this Section 3.04 shall be subject to a citation and a fine of not more than \$5,000 pursuant to Chapter 205, Hawaii Revised Statutes, as amended.

Section 3.05. Farm Dwelling Sites, Privacy and Private Areas: Landscaping, Construction and Alteration of Improvements, Excavations, etc.

(a) The Owner of each farm dwelling site shall at its sole cost and expense comply and observe the covenants

contained in Section 3.01 hereinbefore, including but not limited to condominiumizing, landscaping and revegetation requirements where applicable. In the event the Owner fails to comply with such landscaping and/or revegetation requirements within a reasonable time, then the Declarant and/or Association may at its option perform all such landscaping and/or revegetation work upon the farm dwelling site, and Owner shall reimburse Declarant or the Association for the cost thereof promptly upon demand together with interest thereon at the rate of twelve percent (12%) per annum; provided, however, that in no event shall such costs and expenses chargeable to Owner exceed \$20,000.00. In the event of Owner's default in the payment of the same, the amount thereof shall be and become a lien upon the homesite as provided in Section 6.05 hereof.

(b) The right of an Owner to construct, reconstruct, refinish or alter any improvement upon, under or above any lot or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or landscape said farm dwelling site, or to condominiumize a lot is prohibited until and unless the Owner of such lot or farm dwelling site has obtained prior written approval therefor from the Design Committee as herein provided and has otherwise complied with all of the provisions of this Section.

(c) Any Owner proposing to perform any work which under the provisions of paragraph (b) above requires prior approval of the Design Committee shall apply to the Design Committee for approval thereof as follows:

(1) The Owner shall submit to the Design Committee for approval prior to commencing such work preliminary plans for the proposed work, prepared by an architect, unless otherwise permitted by the Design Committee, and showing in detail with dimensions the nature of the improvements. The Design Committee shall review any such preliminary plans within sixty (60) days after the submission of them to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. Failure to make such return within said sixty (60) day period shall be deemed to mean that the plans are approved.

(2) Thereafter and still prior to commencement of such work, the Owner shall submit six (6) sets of the final plans and specifications of the proposed work to the Design Committee, including where appropriate and without limitation, a plot plan showing easements and setback contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the proposed sanitary disposal facilities, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. Also the Owner shall indicate his proposed construction schedule. The Design Committee shall require that the submission of plans and specifications be accompanied by a reasonable fee for the inspection thereof. The Design Committee shall from time to

time adopt and post with the Association a schedule of its inspection fees; provided, however, that no change in such fees shall be effective until thirty (30) days after the same have been posted.

(3) The Design Committee shall review the final plans and specifications submitted to it pursuant to subparagraph (2) and shall either approve the same or disapprove the same in writing within sixty (60) days. Any disapproval shall set forth in writing the reasons for disapproval. Failure to so approve or disapprove within said sixty (60) day period shall be deemed to mean that the plans are approved. On request of an Owner, at any time, the Chairman or any member of the Design Committee shall give to the Owner a certificate in writing evidencing the approval of any plans which have been so approved.

(4) Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee as to any interior improvements or alterations, or as to any exterior alterations or improvements which are not visible from neighboring property, nor shall an Owner be required to obtain approval from the Design Committee when simply reconstructing or refinishing in accordance with the color and design of previous improvements made by the Declarant or previously approved by the Design Committee.

(5) Approval as hereinbefore provided shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced such work within said one (1) year period and shall not thereafter complete the same within one (1) year after the commencement of such construction, or in the case of condominiumizing if the Owner shall not have completed the process within one (1) year. If the Owner shall not so commence within said one (1) year period, or completed the condominiumizing process within said one (1) year period, the Owner shall be required to resubmit said final plans and specifications for approval, and the Design Committee shall not be bound by any previous decision in reviewing again such plans and specifications, but shall either approve or disapprove the same in writing within sixty (60) days after such resubmission, and the Design Committee may require another inspection fee.

(6) Upon the completion of any work for which approved plans are required pursuant to this Section, the Owner shall give written notice thereof to the Design Committee which shall within thirty (30) days inspect such work to determine whether it was completed in substantial compliance with the approved plans and specifications. If the Design Committee finds that such work was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the Owner has in good faith commenced action to remedy within said sixty (60) days period, the Design Committee shall notify the Association of

such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Design Committee shall fail to notify the Owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the Owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(7) The Design Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in the Seacliff Plantation Community Restrictions, except as may be specifically permitted therein, and in the event of violation of any of such Seacliff Plantation Community Restrictions by an Owner, whether or not the Design Committee shall have approved the plans and specifications, the Association or any other Owner shall have the right to commence and pursue any remedy provided in the Seacliff Plantation Community Restrictions for the violation by an Owner of any such restrictions.

(8) In reviewing plans and specifications, the Design Committee shall consider the requirements and restrictions set forth in this Declaration and also shall consider whether the proposed improvement:

(1) Is compatible and in harmony with the surrounding environment as well as to quality and type of materials and workmanship and as to external design and appearance with reference to existing structures and other improvements in the area and with reference to the location of the proposed improvement with respect to topography and ground elevations.

(2) Conforms to the general plan of the entire development.

(3) Constituted a suitable and adequate development of the lot and/or farm dwelling site.

(9) In reviewing plans and specifications for the condominiumizing of any lot, and in addition to the foregoing considerations, the Design Committee shall further consider the following:

(1) The size and quality of the individual interests and farm dwellings to be constructed thereon.

(2) The placement of farm dwellings and other improvements relative to the roadways, adjacent lots and the viewplanes affected by the proposed placement. A master plan for the entire lot, showing the exclusive, common and limited common elements of the proposed condominiumizing, and the placement of farm dwellings and other improvements shall be submitted to the Design Committee at the time of application. The Design Committee may require such other details and information as may be deemed appropriate by the Design Committee to permit a

thorough evaluation of the application to address the restrictive covenants and conditions herein contained and to avoid a lessening of the quality of the Community.

(3) The adequacy and quality of landscaping for the lot. A master landscaping plan shall be submitted to the Design Committee at the time of application, indicating in sufficient detail the nature, type and degree of landscaping proposed;

(4) The adequacy of the condominiumizing documents to insure the observance and conformance of the restrictive covenants and conditions herein contained.

(d) The Association shall, in the event of any violation of the provisions of this Section, restore such lot or farm dwelling site to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The Owner of such lot or farm dwelling site shall reimburse the Association for all expenses incurred by it in performing its obligations under this paragraph.

Section 3.06. Common Area: Uses and Restrictions. The Declarant may, but shall be under no obligation to set aside certain areas within the Seaclyff Plantation Community as common areas for recreational use by the Owners. In such event, the use of the common areas shall be subject to the following terms and conditions hereinafter set forth or as may be contained herein.

(a) The use of the Common Area shall be reserved to all Owners, except as herein specifically provided, and every Owner shall have an easement for the use of the Common Area, which easement shall be appurtenant to and shall pass with the title to every lot, subject, however, to the following limitations and restrictions:

(1) The use of the Common Area shall be subject to the Seaclyff Plantation Community Rules.

(2) The use of the Common Area shall be subject to such easements and rights-of-way reserved therefrom at the time of conveyance or lease of any common area to the Association, to such rights as may be reserved to the Declarant, the County of Kauai and its successors, and to any other person or association or governmental authority as provided in this Declaration, to such road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other road and public and private utility easements as may from time to time be granted or conveyed by the Association, pursuant to the provisions of paragraph (c) of Section 5.05.

(3) No improvement, excavation, fill or other work which in any way alters any common area from its natural or existing state upon the date which such common area was conveyed or leased to the Association shall be made or done except upon strict compliance with and within the

restrictions and limitations of the provisions of Section 3.05.

(4) The use thereof shall be subject to all terms, conditions and restrictions set forth in the lease of any such common area to the Association.

(5) Except to the extent otherwise permitted pursuant to the provisions of subparagraph (2) above and Section 3.05, there shall be no use of the Common Area, exclusive of roads, except recreational uses which do not injure or scar the Common Area or the vegetation thereof, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of the Common Area; without limiting the generality of the foregoing:

(i) There shall be no camping in the Common Area;

(ii) There shall be no fires started or maintained in the Common Area, except for fires contained in areas or facilities provided by the Association specifically for such purposes;

(iii) No animals shall be permitted in the Common Area except generally recognized house or yard pets when accompanied by and under the control of the Owners to whom they belong.

(6) The rights to use and enjoy the Common Area shall extend to the members of the families of all Owners and their invitees.

Section 3.07. Common Area: Construction and Alteration of Improvements. No improvement, excavation or work which in any way alters any common area or improvement thereon from its natural or existing state on the date when such common area or improvement was acquired by or leased to the Association, shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this Section.

(a) Except to the extent otherwise provided in paragraph (c) below and except to the extent otherwise permitted under any conveyance or lease of any common area to the Association, no person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter, maintain or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, ground cover or vegetation upon any common area, or construct, reconstruct, refinish, alter or maintain any part of the exterior of any improvement upon, under or above any common area.

(b) Except to the extent otherwise provided in paragraph (c) below, if the Association proposes to do any of the acts mentioned in paragraph (a) above, the Association shall submit to the Design Committee for approval the plans and specifications for any such work in such form and containing such information as the Design Committee shall approve the plans and specifications

submitted to it pursuant to this paragraph only if the following conditions have all been satisfied:

(1) If the plans are to construct any new improvements, including any alteration of the exterior appearance of any existing improvements upon any common area, the Design Committee finds that such improvements comply with the standards and restrictions set forth in subparagraph (8) of paragraph (c) of Section 3.05 with respect to farm dwelling sites, or any private or co-tenancy area appurtenant thereto, which standards and restrictions will also apply to common areas, and that the design or such improvement is reasonably necessary or desirable in order to carry out the aims of the Association and is in harmony with other improvements and the overall appearance of the Seaciff Plantation Community as planned.

(2) The Design Committee finds that the proposed work shall not because of its design materially prejudice the Seaciff Plantation Community or any Owner therein in the use and enjoyment of its property. Such approval shall be in writing, except that plans which have neither been approved or rejected within sixty (60) days from the date of submission thereof to the Design Committee shall be deemed approved. Rejection of plans by the Design Committee shall be in writing and shall set forth with particularity the reasons for such rejection. In the event of any such rejection any member of the Board shall have the right to submit to a meeting of the Association duly called, the notice of which shall contain reference to the consideration of the matter, the question of whether to abandon the proposed work or to have the same redesigned and resubmitted to the Design Committee for approval.

(c) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any improvement or portion thereof upon a common area in accordance with the last plans thereof approved by the Design Committee, or if such improvement existed upon the common area when such common area was conveyed or leased to the Association, then in accordance with the original design, finish or standard of construction of such improvement when such common area was conveyed or leased to the Association.

(2) Construct, reconstruct, replace or refinish any road improvement upon any portion of the Common Area designated on a subdivision map as a road.

(3) Replace any destroyed trees or any other vegetation upon a common area and to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover.

(4) Place and maintain upon any common area such signs and markers as the Association may in its sole discretion deem necessary for the identification of the Seaciff Plantation Community and of roads, for the regulation of traffic including parking, and for the

regulation and use of the common area and for the health and welfare and the safety of Owners and to the public, provided that the design of any such signs or markers be first approved by the Design Committee.

Section 3.08. Presumption of Compliance. All of the following improvements, excavations, fills and other such work shall for all purposes of the Seaciff Plantation Community Restrictions be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article III:

(a) Those existing or maintained within or upon any property within the Seaciff Plantation Community at the time such property became a part of Seaciff Plantation Community.

(b) Those existing or maintained within a private or co-tenancy area at the time such private or co-tenancy area was first conveyed to or leased to an Owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restrictions in the Seaciff Plantation Community Restrictions, pursuant to plans and specifications approved by the Design Committee.

ARTICLE IV

DESIGN COMMITTEE

Section 4.01. Design Committee: Organization, Power of Appointment and Removal of Members:

(a) There shall be a Design Committee of three (3) regular members, consisting of at least one (1) representative of the Declarant and at least one (1) representative of the Owners. In addition to the three members on the Design Committee, there shall also be an alternate member, who shall act only in the absence of a regular member of the Design Committee.

(b) The following persons are hereby designated as the initial members of the Design Committee:

- (1) Don L. Schmidt
- (2) Coda C. Roberson
- (3) James R. O'Connor
- (4) Gregory A. Kamm (alternate member)

Each of said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as herein set forth.

(c) Except as otherwise provided herein, the right from time to time to appoint and remove all members of

the Design Committee shall be and is hereby reserved and vested solely in the Declarant.

(d) The Association shall have the right to appoint and remove all members of the Design Committee from and after ten (10) years from the date of this Declaration, provided, however, that if the Declarant fails to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members of the Design Committee.

(e) Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant, or to the Association, whichever then has the right to appoint and remove members.

(f) In the event that at any time, through illness, absence, resignation or for any other reason, one or more members of the Design Committee is temporarily unable to perform his or her duties as a committee member, the alternate member may act in place of such member so long as such member is unable to perform his or her duties.

Section 4.02. Design Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article III, to adopt Design Committee rules pursuant to Section 4.04 and to perform such other duties from time to time delegated to it by the Seaciff Plantation Community Restrictions.

Section 4.03. Design Committee Meetings, Action, Compensation Expenses. The Design Committee shall meet from time to time as necessary properly to perform its duties hereunder. The vote or written consent of any two (2) members shall constitute the act of the Design Committee, unless the unanimous action of its members is otherwise required by the Seaciff Plantation Community Restrictions. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. Such fees shall be charged by the Design Committee and shall be provided for in the rules promulgated pursuant to Section 4.04, except that no fees shall be charged the Association. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Committee function.

Section 4.04. Design Committee Rules. The Design Committee may from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as the "Design Committee Rules" which, among other things, interpret or implement the provisions of the applicable sections of Article III pertaining to the design of improvements, permitted and prohibited uses and activities upon the lots and within the Seaciff Plantation at Kilauea Community; and permitted and prohibited animals upon the lots, which must be approved by

the Design Committee. A copy of the Design Committee Rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Design Committee shall be kept available at all times at the office of the Association and at the offices of the Declarant, for the inspection of any Owner, architect or agent of the Owner. The Design Committee Rules shall, to the extent practical, establish the standards which shall be required in the construction of any improvements to be constructed in the Seaciff Plantation Community.

Section 4.05. Nonwaiver. The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under the Seaciff Plantation Community Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

Section 4.06. Liability. Neither the Design Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property within the Seaciff Plantation Community, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee or any member thereof may, but is not required to, consult with or hear the Association or any Owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

Section 4.07. Absence of Committee. In the event that at any time through death, resignation or for any other reason, there shall not be a Design Committee or there shall not be the members necessary to act on a particular matter, the approval or action by the Design Committee being required hereunder for such matter and such situation lasts for a period of not less than twenty (20) days, then, and until there shall again be a Design Committee with sufficient members, during the first ten (1) years of this Declaration all matters requiring such approval or action may be approved or done by the Declarant and thereafter by the President of the Seaciff Plantation Community Association, or any Vice President thereof, and their certificate that there had been no Design Committee, or that the required members were not present, and that he was acting pursuant to the authority of this Section shall be conclusive between the Owners, the Association, any purchaser, lessee, mortgagee or other encumbrances, and any other persons. The Declarant, President or Vice-President, as the case may be, acting hereunder may employ a registered Hawaii architect or engineer to render technical advice in connection with such matter and to receive reasonable compensation to be set by the Board, for his services.

ARTICLE V

SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATIONSection 5.01. Organization.

(a) The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and in its Articles and By-Laws.

(b) In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Articles.

Section 5.02. Membership.

(a) Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are the owner (herein called an "Owner") of any farm dwelling sites within the Seaciff Plantation Community shall automatically become a member of the Association upon acquiring such ownership and shall remain a member thereof until such time as such ownership ceases for any reason, at which time such membership in the Association shall automatically cease. No person other than an Owner may be a member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any farm dwelling site.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of the Seaciff Plantation Community Restrictions, the Articles and the By-Laws of the Association.

Section 5.03. Voting Rights.

(a) The voting rights of the members shall be as set forth in the Articles and the By-Laws of the Association. The members shall be the Owners, as defined in Article I herein, of farm dwelling sites. The Owner, or Owners in the aggregate, of any farm dwelling sites, whether individuals, corporations or other legal entities, shall be entitled to one (1) vote for each farm dwelling or potential farm dwelling permitted by the Hawaii Revised Statutes and/or the Comprehensive Zoning Ordinance of the County of Kauai on each lot owned. If more than one (1) person or entity owns one given farm dwelling site, any one of said persons or entities may exercise said one (1) vote as they shall determine, and if they cannot agree they may each vote their fractional interest in the vote allotted to their membership. In no event, however, shall more than one (1) vote be cast with respect to any one farm dwelling site.

(b) Every Owner of a residential homesite shall promptly cause to be duly recorded or filed of record the deed, assignment or other conveyance to him of such homesite or other evidence of his title thereto and shall file such conveyance with and present such other evidence of his title

to the Board of Directors, and the secretary shall maintain all such information in the record of ownership of the Association. Any Owner who mortgages his homesite or any interest therein shall notify the Board of Directors of the name and address of his mortgagee, and also of the release of such mortgage, and the secretary shall maintain all such information in the record of ownership of the Association.

(c) The Board of Directors may make such regulations, consistent with the terms of the Seacliff Plantation Community Restrictions, the Articles and the By-Laws of the Association as it deems advisable for any meeting of members, in regard to proof of membership in the Seacliff Plantation Community Association, evidence of right to vote the, the appointment and duties of inspectors of votes, registration of members for voting purposes, and such other matters concerning the conduct of meeting and voting as it shall deem fit.

(d) Any member who is in violation of the Seacliff Plantation Community Restrictions, as determined by the majority of the Board, pursuant to the provisions of this Declaration, shall not be entitled to vote during any period in which such violation continues. Any member who is delinquent in the payment of any assessment, other fees or charges levied pursuant to the provisions of this Declaration shall not be entitled to vote during any period in which any such fees or assessments are delinquent.

Section 5.04. Duties and Obligation of the Association. The Association shall have the rights, obligations and duties, subject to the Seacliff Plantation Community Restrictions, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Seacliff Plantation Community:

(a) The Association shall accept as part of Seacliff Plantation Community, all property conveyed or leased to Seacliff Plantation at Kilauea Bay Community Association pursuant to Section 2.01 and shall accept all Owners as members of the Association.

(b) The Association shall accept all common areas conveyed or leased to it from time to time pursuant to Section 7.04. The Association may also acquire and accept title to any other property, real, personal or mixed, nothing herein to be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and the Association shall not carry on any business, trade, association or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guest of the recreational facilities on the common areas to defray the costs of construction, maintenance, repair or operation of such facilities, or of other facilities owned by or leased to the Association.

(c) The Association shall maintain or provide for the maintenance of common areas and other property owned by

or leased to the Association, including without limitation all secondary recreational facilities and all improvements of whatever kind and for whatever purpose from time to time located on the common areas and other such property in good order and repair, provided, however, that notwithstanding the foregoing the Association shall have no obligation to maintain in good order and repair any improvement constructed upon the common areas by any Owner, excluding the Declarant, but may use all legal means to force such Owner to maintain the same himself.

(d) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the common areas.

(e) Unless provided by a municipal, county or other governmental agency, and unless the cost thereof is assessed directly or indirectly against the Owners by such party, the Association may contract for, employ or otherwise provide police and refuse disposal services.

(f) The Association shall obtain and maintain in force the following policies of insurance:

(1) Fire and extended coverage insurance on all improvements from time to time owned by or leased to the Association and located upon or within any common area, in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Association as trustee for all Owners and mortgagees of farm dwelling sites in the Seaciff Plantation Community and for all mortgagees of the common area, and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board of Directors of the Association shall designate for the custody and disposition as herein provided of all proceeds of such insurance. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall to the extent such insurance is available:

(i) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counter-claim, apportionment, proration or contribution by reason of any other insurance obtained by or for any Owner.

(ii) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of said Board, or because of any breach of warranty or condition or any other act or neglect by said Board or any Owner or any other persons under either of them;

(iii) Provide that such policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by said Board) except by the insurer giving at least sixty (60) days' prior written notice thereof to said Board and every other person in interest who shall have requested such notice of the insurer;

(iv) Contain a waiver by the insurer of any right of subrogation to any right of said Board or Owners against any of them or any other persons under them; and shall:

(a) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of the fee simple interest in a lot or farm dwelling site in their respective order and preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of said Board or Owners or any persons under any of them;

(c) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by said Board.

(2) Comprehensive, general liability insurance, covering the Association, the Board of Directors, and the members of the Association, in an insurance company authorized to do business in Hawaii with minimum limits of not less than \$1,000,000 for injury to one or more persons in any one accident or occurrence and \$500,000 for property damage, without prejudice to the right of any Owners to maintain additional liability insurance for their respective lots and farm dwelling site.

(3) Any policies of insurance covering any other reasonable risks as may be determined to be proper and necessary or advisable in the sole discretion of the Board of Directors.

(g) The Association shall from time to time make, establish, promulgate, and amend and repeal the Saadcliff Plantation Community Rules as provided for in Section 5.06.

(h) To the extent provided for in Section 4.01, the Association shall exercise its right to appoint and remove members of the Design Committee to insure that at all

reasonable times there is available a duly constituted and appointed Design Committee.

(1) The Association shall have all the powers set forth in the Seaclyff Plantation Community Restrictions, including without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by Seaclyff Plantation Community Restrictions, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of Seaclyff Plantation Community Restrictions, the Seaclyff Plantation Community Rules and the Design Committee Rules.

Section 5.05. Powers and Authority of Association.
The Association shall have all the powers set forth in the Articles, together with its general powers as a non-profit corporation, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in the Articles and By-Laws and in the Seaclyff Plantation Community Restrictions, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Seaclyff Plantation Community Restrictions, and to do and perform any and all acts which may be necessary and proper for, or incidental to, the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners of Seaclyff Plantation Community. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any private area, or co-tenancy area, for the purpose of maintaining and repairing any such area, if for any reason whatsoever the Owner or Owners thereof fails to maintain and repair such areas as required under Article III hereinabove or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair any roads, parks or other public areas in or adjoining the Seaclyff Plantation Community, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Directors, have failed to do so in a manner benefitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Seaclyff Plantation Community Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of the Seaclyff Plantation Community Restrictions.

(b) In fulfilling any of its obligations or duties under the Seaclyff Plantation Community Restrictions, including without limitation, its obligations or duties for

the maintenance, repair, operation or administration of common areas and to the extent necessary by the failure of its rights to construct improvements or other work upon any common area, including, without limitation, any recreational facility, the Association shall have the power and authority;

(1) To contract and pay for, or otherwise provide for maintenance, restoration and repair of all improvements of whatever kind or whatever purpose from time to time located upon common areas and to contract and pay for or otherwise provide for the construction of improvements or other work upon such areas, or otherwise in carrying out its functions as set forth in the Seaciff Plantation Community Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of work.

(2) To obtain, maintain and pay for such insurance policies or bonds whether or not required by Section 5.04 as the Association may deem to be appropriate for the protection or benefit of Seaciff Plantation Community, the Association, the members of the Board, the members of the Design Committee, or the Owners, including but without limitation, war risk insurance, builders' risk, workmen's compensation insurance, malicious mischief insurance, automobile, nonownership insurance and performance and fidelity bonds.

(3) To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water, sewer, garbage, electrical, telephone and gas services as may from time to time be required.

(4) To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys and certified public accountants or such other professional or nonprofessional services as the Association may deem necessary.

(5) To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Association shall from time to time deem necessary for the benefit of the Seaciff Plantation Community any property located within the Seaciff Plantation Community, and the Owners, and

(6) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any common areas or co-tenancy areas on account of work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(7) The Association shall have the power and authority from time to time to grant, convey or lease to any third parties for reasonable compensation, and on such other terms as the Board may approve, the right, title and interest of the Association or any member thereof for

esements, rights-of-way, parcels or strips of land in, on, over or under any common areas, for the purpose of:

(1) Constructing, direct, operating and maintaining thereon, therein and thereunder, public roads, streets, walks, driveways, parkways and park areas.

(2) Installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and necessary facilities in connection therewith, and

(3) Constructing, operating and maintaining public and private sewers, storm waters drains, land drains and water systems, sprinkler systems, water heating and gas lines or pipes and necessary facilities in connection with the foregoing.

(d) The Association may from time to time employ the services of a managing agent to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to such manager any of its powers under the Seacliff Plantation Community Restrictions, provided, however, that the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$10,000 or for the performance of any work or services, which work or services are not to be completed within sixty (60) days, nor the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment. It is understood and agreed that the Declarant has the right to appoint the initial managing agent.

(e) The Association shall have the right from time to time to pay, compromise or contest any or all taxes and assessments levied against all or any part of the common areas or upon any personal property belonging to the Association.

(f) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose to exchange or to sell and convey, or otherwise dispose of, for cash or on such terms as it shall approve, the right, title and interest of the Association or any member thereof in and to any portion or portions of the common area, with improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for the Association or for the members thereof, and to borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V and to secure the same by a mortgage of the common area then owned by or leased to the Association, or any part thereof, provided, however, that no such borrowing and mortgaging shall be made unless the same shall have been first approved by an affirmative vote of not less than two-thirds (2/3) of the members who

may vote in person or by proxy at a meeting of the Association duly called, the notice for which shall have described such exchange, sale or disposition, or the amount of such borrowing and the security to be mortgaged, and shall have given the reasons therefor. All proceeds of any disposition or borrowing, less the expenses thereof, shall be invested by the Association for the benefit of the Association and the members, or in improving the property of the Association.

(g) Upon payment of a reasonable fee and upon written request of any Owner, the Association shall furnish a written statement setting forth the amount of assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner, the lot owned by such Owner and such Owner's invitees and agents and the amount of the assessments for the current fiscal period of the Association payable with respect to the lot owned by such Owner, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid.

Section 5.06. Seaciff Plantation Community Association Rules.

(a) The Association may from time to time and subject to the provisions of the Seaciff Plantation Community Restrictions, adopt, amend and repeal rules and regulations to be known as the Seaciff Plantation Community Association Rules governing, among other things:

(1) The use of the common areas including without limitation the recreational facilities, if any.

(2) The collection and disposal of refuse.

(3) The maintenance of the improvements on the respective lots so as to preserve the quality of life in the Seaciff Plantation Community.

(4) The maintenance of animals within Seaciff Plantation Community which are incompatible or inconsistent with the ideals underlying the Seaciff Plantation Community.

(5) The permitting or prohibition of uses or activities within Seaciff Plantation Community which are incompatible or inconsistent with the ideals of and the residential and agricultural nature of the Seaciff Plantation Community.

(b) With respect to subparagraph (a)(1) above, the Seaciff Plantation Community Association Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Seaciff Plantation Community for all Owners, their families, invitees, licensees, lessees, and guests, restrict and/or govern the use of common areas by any Owner or by the family, invitees, licensees or lessees of such Owner.

(c) A copy of the Seaciff Plantation Community Association Rules as they may from time to time be adopted, amended or repealed, certified by the secretary or the assistant secretary of the Association, shall be filed in and available at all times at the office of the Association and duplicate copies thereof shall be delivered to each Owner on his acquisition of a lot or farm dwelling site, and a copy of each new rule or of any amendment of an existing rule and notice of repeal of any rule shall be given to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Seaciff Plantation Community Association Rules shall have the same force and effect as if they were set forth and were a part of the Seaciff Plantation Community Restrictions. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

Section 5.07. Liability of Member of the Board. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Design Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

Section 5.08. Powers of the Association. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in paragraphs (b) through (f) inclusive of Section 5.03.

ARTICLE VI

FUNDS AND ASSESSMENTS

Section 6.01. Operating Fund. There shall be an operating fund in which the Association shall deposit all moneys paid to it as:

- (a) Maintenance assessments;
- (b) Special assessments;
- (c) Use fees paid by users of recreational facilities, if charges by the Association;
- (d) Income and profits attributable to the Operating Fund and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.02. Maintenance Assessment.

(a) Within thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article V and in paying all fees and expenses of the Design Committee. The Board shall include in this estimate a

reasonable provision for reserves for contingencies, for reconstruction and replacements, and for alterations and improvements upon the common areas. From this estimate shall be subtracted an amount equal to the anticipated balance (exclusive of any accrued reserves as provided for above) in the Operating Fund at the start of each fiscal year which is attributable to maintenance assessments.

(b) The sum or net estimate determined pursuant to paragraph (a) shall be divided and assessed by the Board as a maintenance assessment against the Owners, in proportion to the numbers of farm dwelling sites owned by each Owner.

(c) The first maintenance assessment shall be adjusted according to the number of months remaining in the first fiscal year of the Association. The maintenance assessments provided for herein shall commence as to each farm dwelling site on the date that the Declarant notifies the owners of the farm dwelling sites that it will commence the maintenance assessments; provided, however, that once one owner has commenced paying maintenance assessments all owners of homesites will be billed including the Declarant, provided that the "offsite improvements" to each lot have been completed.

(d) If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (b) above.

(e) Maintenance assessments shall be due and payable by the Owners to the Association in equal monthly installments on or before the first day of each month, or in such other manner as the Association shall designate, but not in advance in any amount in excess of the estimate for the full year.

Section 6.03. Special Assessment. The Board shall levy a special assessment against any Owner as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Seacliff Plantation Community Restrictions, the Seacliff Plantation Community Rules or the Design Committee Rules, monies were expended from the Operating Fund by the Association in performing its functions under the Seacliff Plantation Community Restrictions.

Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include without limitation, engineers', architects', attorneys' and accountants' fees where reasonably incurred by the Association.

Section 6.04. Association, Declarant and Other Exemptions. Anything herein to the contrary notwithstanding, it is understood that the Association shall

be exempt in whole or in part from assessments under this Article VI.

Section 6.05. Default in Payment of Assessments.

(a) Each assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot or farm dwelling site by acceptance of any document of conveyance therefor, whether or not it shall be so expressed in any such document, is deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at twelve percent (12%) and costs, including reasonable attorney's fees, shall be and become a lien upon the lot or farm dwelling sites of such Owner upon recordation by the Association of a notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the lot or farm dwelling site of such Owner, and the sale or transfer of any lot or interest therein in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which become due prior to such sale, but not such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter becoming due. The Association shall record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in like manner as mortgage of real property, and the Association shall have power to bid on the lot or farm dwelling site at foreclosure sale to acquire and hold, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any homesite or homesites and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

Section 6.06. Notice of Assessment. Notice of any maintenance or special assessment provided for herein, with the exception of the first maintenance assessment, shall be mailed to all Owners of homesites at such addresses as are shown on the record of ownership of the Association; provided, however, that notice of any change in any maintenance or special assessment shall be mailed not less

than thirty (30) days before such assessment shall become effective.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01. Amendment or Repeal - Duration.

(a) Unless specifically provided to the contrary herein, the Seacliff Plantation Community Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Seacliff Plantation Community, and any limitation, restriction, covenant or condition thereof may, at any time be amended or repealed upon the happening of all of the following events:

(1) The prior written approval of any proposed amendment or repeal by the Planning Commission of the County of Kauai for any provision or provisions of the Seacliff Plantation Community Restrictions which were required by the County of Kauai pursuant to Special Management Area Use Permit SMA(U)-82-2, approved by the County of Kauai on February 10, 1982.

(2) The vote of the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members, approving the proposed amendment or amendments or the repeal of Seacliff Plantation Community Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Seacliff Plantation Community Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be.

(3) The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Seacliff Plantation Community Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph, and

(4) The recordation of a written instrument also setting forth in full said amendment or amendments to the Seacliff Plantation Community Restrictions, executed by the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members.

(b) All of the limitations, restrictions, covenants and conditions of the Seacliff Plantation Community Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Seacliff Plantation Community, to the Owners and to the Association, subject, however, to the right to amend and repeal as provided in paragraph (a) above, until the 1st day of January, 2012, after which time the said limitations,

restrictions, covenants and conditions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by not less than a majority of the then Class A Members has been recorded, agreeing to change said covenants in whole or in part.

Section 7.02. Enforcement, Nonwaiver.

(a) Except to the extent otherwise expressly provided herein, the Declarant, Association or any Owner or Owners shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by the Seaciff Plantation Community Restrictions upon other Owners or upon any property within the Seaciff Plantation Community, and the costs of enforcement, including court costs and attorney's fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge. No entry upon the homestead of any Owner of other action to enforce any such limitation, restriction, covenant, condition, litigation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default of breach involved.

(b) Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by the Seaciff Plantation Community Restrictions upon the Seaciff Plantation Community Association, provided, however, anything herein to the contrary notwithstanding, no Owner as such shall have any right to enter upon the property of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association except by proper legal proceedings and authority of the court having jurisdiction.

(c) Every act or omission whereby any restriction, conditions or covenant of the Seaciff Plantation Community Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in paragraphs (a) and (b) above, provided, however, that any provision to the contrary notwithstanding only the Association or its duly authorized agents may enforce any limitation, restriction, covenant, condition or obligation herein set forth by its or their own action without authority of a court having jurisdiction.

(d) Each remedy provided for in the Seaciff Plantation Community Restrictions is cumulative and nonexclusive.

(e) Any and all liabilities for the violation or noncompliance with any of the limitations, restrictions, covenants, conditions, obligations, liens and charges which may be imposed by the Seaciff Plantation Community

Restrictions shall be joint and several unto all persons and/or entities holding any interest in and to the lot and/or farm dwelling sites upon which such violation or noncompliance occurs.

(f) The failure in any case to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Seaciff Plantation Community Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provisions of the Seaciff Plantation Community Restrictions in another case against or with respect to the same Owner or farm dwelling site or any other Owner or farm dwelling site.

Section 7.03. Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

(a) All of the limitations, restrictions, covenants and conditions of the Seaciff Plantation Community Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of the Seaciff Plantation Community as set forth in the introductory paragraphs of this Declaration.

(b) No provisions of the Seaciff Plantation Community Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over Seaciff Plantation Community Restrictions to the contrary notwithstanding, if all uses to which a farm dwelling site may be put under the provisions of the Seaciff Plantation Community Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use his site for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Seaciff Plantation Community Restrictions which can lawfully apply to the site as so used.

(c) Notwithstanding the provisions of paragraph (a) above, the limitations, restrictions, covenants and conditions of Seaciff Plantation Community shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural, the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter as the context requires.

(e) All titles used in the Seaciff Plantation Community Restrictions, including those of Articles and Sections, are intended solely for convenience or reference and the same shall not, nor shall any of them, affect that which is set forth in such Articles and Sections, nor any of the terms or provisions of the Seaciff Plantation Community Restrictions.

Section 7.04. Conveyance of Lease of Common Area;
Reservation of Easements and Rights-of-Way and
Classification of Land Area.

(a) The Association shall accept all of the real property and interests in real property conveyed or leased to it as common area or as a co-tenancy area by the Declarant, provided that the Association need not accept any such property subject to any exceptions, liens and encumbrances except as follows:

(1) The lien of any real property taxes and assessments nondelinquent;

(2) Such restrictions as to use and enjoyment and such easements and rights-of-way on, over, or under all or any part thereof as may be reserved to the Declarant or granted to any Owner in any recorded document or in accordance with the provisions of the Seaciff Plantation Community Restrictions;

(3) Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to the Declarant or any adjoining Owner of land for access to land contiguous to the real property, and such easements and rights-of-way on, over or under all or any part thereof as may be excepted or reserved unto persons for roadway, electrical, gas, communications and other utility purposes, and for sewer, drainage and water facilities, and for walkways, pathways, bird sanctuaries, or parks, over, under, along, across and through said real property, together with the right to grant to the United States of America, the State of Hawaii, County of Kauai, Board of Water Supply of the County of Kauai or any other appropriate governmental agency or public utility, or to any other public or private corporation or association, or to any individual, easements for such purposes over, under, across, along and through said real property;

(4) The obligations imposed directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Hawaii, the County of Kauai or any other political or governmental organization having jurisdiction over such property;

(5) Any other lien, encumbrance or defect in title of any kind whatsoever (other than a type which would at any time or from time to time create a lien upon such properties to secure an obligation to pay money) which would not materially and actually prejudice the Owners in their use and enjoyment of such property.

(b) The land classification of any property within the Seaciff Plantation Community which is not a common area may be changed to a common area by the transfer of such property to the Association from all persons having any right, title or interest therein and the acceptance by the Association of such property.

(c) At any time and from time to time following conveyance or lease of a common area by the Declarant to the Association pursuant to this Section, the Declarant may construct, reconstruct, refinish or alter any improvements upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs, or ground cover upon such work if the Declarant shall determine that any such work (i) is reasonably necessary for any utility installation servicing any property within the Seacliff Plantation Community, (ii) is reasonably necessary for the construction of any facility for use by the Owners, (iii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of such area, or (iv) is desirable to protect, support or preserve any property which constitutes a part of the Seacliff Plantation Community.

Section 7.05. Reservation of Easements. All real property within the Seacliff Plantation Community shall be subject to the exception and reservation unto the Declarant, of easements for roadway, electrical, gas, communications, and other utility purposes and for sewer, drainage and water facilities, and for walkways, pathways, bird sanctuaries, or parks, over, under, along, across and through said real property, together with the right to grant to the United States of America, the State of Hawaii, County of Kauai, Board of Water Supply of the County of Kauai or any other appropriate governmental agency or public utility, or to any other public or private corporation or association, or to any individual, easements for such purposes over, under, across, along and through said real property under the usual terms and conditions required by the Declarant or the grantee for such easement rights; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of said real property by the Owners thereof, their successors and assigns, and in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements said real property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the condition of said real property immediately prior to the exercise thereof. Declarant shall have the right to grant or lease any such easements without the consent or joinder of the Association or any person then owning a lot or farm dwelling site in the Seacliff Plantation Community.

Section 7.06. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to the Seacliff Plantation Community Restrictions may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association and the Association shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

Section 7.07. Condemnation. In case at any time or times all or any portion of the common area shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the entire award and compensation shall be paid to the Association. No Owner

shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall in its name alone represent the interest of all Owners.

Section 7.08. Uninsured Casualty. In case at any time or times any common area or improvements thereon shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such common area or improvement shall be rebuilt, repaired or restored unless two-thirds (2/3) of the members vote to the contrary. Any such approved restoration of the common area or improvements thereon shall be completed diligently by the Association at its own expense and in accordance with plans first approved in writing by the Design Committee. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

Section 7.9. Obligation of Owners. Avoidance, Termination.

(a) No Owner through his non-use of any common area or by abandonment of his farm dwelling site, may avoid the burdens or obligations imposed on him by the Seacliff Plantation Community Restrictions by virtue of his being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such lot and payable after the date of such transfer, and no person after the termination of his status as an Owner shall incur any of the obligations or enjoy any of the benefits of an Owner under the Seacliff Plantation Community Restrictions following the date of such termination.

Section 7.10. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or the County of Kauai to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.11. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.12. Notices, Demands, Delivery.

(a) Any notice or other document permitted or required by the Seacliff Plantation Community Restrictions

to be delivered may be delivered either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Seaclyff Plantation Community Association at the address designated by the Association from time to time by written notice to the Owners, and shall be deemed to have been delivered to the Design Committee seventy-two (72) hours after a copy of the same has been deposited in the same manner addressed to the Design Committee in care of the Seaclyff Plantation Community Association at the latter's then current address.

The post office address of an Owner shall be the last known address of such Owner, shown in the Association's records, and delivery by mail shall be deemed complete to an Owner seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.

(b) Delivery to any member of the Board of Directors of the Association shall be deemed adequate delivery to the Association and delivery to any member of the Design Committee shall be deemed adequate delivery to the Design Committee.

(c) Where there is more than one Owner of a lot or farm dwelling site, the delivery personally or by mail to any Owner shall be effective delivery to all Owners of such lot or farm dwelling site.

IN WITNESS WHEREOF, the Declarant, as more than 90% of the Class A membership and as the Class B Member, has executed this Declaration as of this, 26th day of December, 1988.

PALI MOANA COMPANY

By: Robertson Construction Company,
In, General Partner of Pali
Moana Company

Code C. Robertson
Code C. Robertson, President of
Robertson Construction Company,
Inc.

STATE OF NEW MEXICO }
COUNTY OF BERNALILLO } ss.

On this 28th day of December, 1988, before me appeared CODA C. ROBERSON, to me personally known, who, being by me duly sworn, did say that Roberson Construction Company, Inc., is a corporation formed in the State of New Mexico, of which he is the President, and that there is no seal of said corporation, and such corporation is a General Partner of Pali Moana Company, a New Mexico Partnership, and that the instrument was signed on behalf of the partnership, and said CODA C. ROBERSON acknowledged the instrument to be the free act and deed of the partnership.

P. C. Mullen
Notary Public, in and for said
State and County aforesaid

My commission expires: 12/18/89

GM2



R-222

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUN 18, 2002 08:01 AM

Doc No(s) 2002-105319

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

51 1/1 Z6

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: [XX] MAIL [] PICKUP TO:

Peter C. Miller, Esq.
P.O. Box 1230
Hanalei, Hawaii 96714

Total Pages (51)

ACCOM
TG-2181980
RS

**FOURTH AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

This Fourth Amendment to Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment") is made as of the date set forth below by the undersigned owners (the "Undersigned Owners") of Lots within Seacliff Plantation at Kilauea Bay Community ("Seacliff Plantation"), Kilauea, Island of Kauai, State of Hawaii.

WITNESSETH:

WHEREAS, PALI MOANA COMPANY, formerly known as Roberson/Larson Partners, a New Mexico partnership, whose business address and mailing address is 6001 Atrisco NW, Albuquerque, New Mexico 87120, herein called the "Declarant", developed certain real property situate at Kilauea, Island and County of Kauai, State of Hawaii, in the subdivision known as the Seacliff Plantation at Kilauea Bay; and

WHEREAS, the Declarant's predecessor, Roberson/Larson Partners, recorded that certain Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, amended by instrument (acknowledged March 1, 1988, March 2, 1988, March 3, 1988, and March 7, 1988), recorded in Liber 21704 at Page 1; and

WHEREAS, the Declarant recorded that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22367 at Page 21; and

WHEREAS, the Declarant thereafter recorded that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community dated December 28, 1988 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22766 at Page 559 (the "Third Amendment"), restating the covenants, conditions and restrictions in full; and

WHEREAS, the Undersigned Members hereby again wish to amend the Declaration (by this "Fourth Amendment") in the manner set forth hereinbelow; and

WHEREAS, the Third Amendment, in regard to its amendment, provides in pertinent part:

Section 7.01. Amendment or Repeal - Duration.

(a) Unless specifically provided to the contrary herein, the Seacliff Plantation Community Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Seacliff Plantation Community, and any limitation, restriction, covenant or condition thereof may, at any time be amended or repealed upon the happening of all of the following events:

(1) The prior written approval of any proposed amendment or repeal by the Planning Commission of the County of Kauai for any provision or provisions of the Seacliff Plantation Community Restrictions which were required by the County of Kauai pursuant to Special Management Area Use Permit SMA (U)-82-2, approved by the County of Kauai on February 10, 1982.

(2) The vote of the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members, approving the proposed amendment or amendments or the repeal of Seacliff Plantation Community Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Seacliff Plantation Community Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be.

(3) The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Seacliff Plantation Community Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph, and

(4) The recordation of a written instrument also setting forth in full said amendment or amendments to the Seacliff Plantation Community Restrictions, executed by the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members.

WHEREAS, no provisions of the Third Amendment being amended herein were part of the Seacliff Plantation Community Restrictions which were required by the County of

Kauai pursuant to Special Management Area Use Permit SMA (U)-82-2, approved by the County of Kauai on February 10, 1982; and

WHEREAS, there is no longer a Class B Member; and

WHEREAS, seventy five percent (75%) of the Class A Members have approved the amendments herein at a meeting of the Association duly held, the notice of which stated as a purpose thereof the consideration of said amendments, giving the substance of the proposed amendments therein, as certified thereto by the Secretary of the Association, said certification being attached hereto as Exhibit "A" and being recorded herewith; and

WHEREAS, not less than seventy five percent of the Class A Members hereby execute for recordation this written instrument setting forth in full said amendments; and

WHEREAS, it is most efficient and desirable to have this Fourth Amendment executed in counterparts so that, when at least seventy five percent (75%) of the Class A Members have signed them, a single copy of the Fourth Amendment with all of its executed signature pages can be recorded in the Bureau of Conveyances of the State of Hawaii in order to effectively amend the Declaration (and Third Amendment) as provided herein;

NOW, THEREFORE, the Undersigned Members hereby amend the Declaration (as stated in the Third Amendment) in the following particulars:

A. The present Subsection (o) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, is hereby amended to read in full as follows:

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants, family, employees and guests, and for no other purpose.

B. Subsection (ff) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, is hereby amended to read in full as follows:

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for bed and breakfast operations.

C. The provisions contained in this Fourth Amendment shall become effective upon its recordation. The effectiveness of this Fourth Amendment shall not affect any liens or other enforcement proceedings or remedies arising pre-Fourth Amendment.

D. Except as amended herein, the Declaration, as restated in the Third Amendment, shall remain in full force and effect.

E. The Undersigned Members agree that this instrument can be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same executed document, notwithstanding that all of the Undersigned Owners 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.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the dates set forth beside our respective signatures, to become effective upon recording hereof in the Bureau of Conveyances of the State of Hawaii.

SIGNATURE PAGE FOR
FARM DWELLING SITE:_____

FOR APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment" to the "Declaration"), the Undersigned Member(s) certify(ies) that he/she/it/they:

1. Has/have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) (i.e., the undersigned constitute(s) all persons who severally, jointly or in common are the record owner of all of the fee simple title to the said Farm Dwelling Site or certifies that he/she/it is less than all of the Owners thereof, but that no protest by any other Owner thereof to the casting of this vote by the Undersigned; and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of _____, _____, before me appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of _____, _____, before me appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____) ss.

On this _____ day of _____, _____, before me appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

Exhibit "A"
Certificate of Secretary
Seacliff Plantation at Kilauea Bay Community Association

The undersigned, being the duly elected Secretary of this Association, does hereby certify that the amendments to the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay, as restated in the Third Amendment to Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Third Amendment"), as set forth below were duly approved by vote of the Owners at a meeting of the Association held on January 25, 2000, and otherwise pursuant to Paragraph 7.02 of the Third Amendment. The portions deleted are shown ~~stricken like this~~ and the portions added are shown **in bold type face and underlined like this.**

A. Subsection (o) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, was amended as follows:

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants ~~(other than transient vacation renters)~~, family, employees and guests, and for no other purpose.

B. Subsection (ff) of ARTICLE III RESTRICTIVE COVENANTS, Section 3.01 Use Restrictions: Homesites and Private Areas, was amended as follows:

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for ~~transient vacation rental purposes~~ **bed and breakfast operations.**

Certified this 3 day of JUNE, 2002 at Kilauea, Hanalei, Kauai, Hawaii.


Peter J. Somers, Secretary

ss.

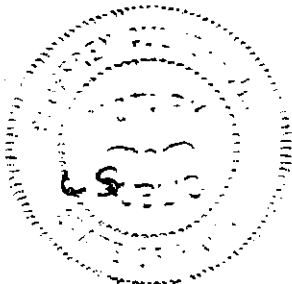
STATE OF HAWAII)
COUNTY OF KAUAI)

On this 3 day of JUNE, 2002, before me appeared PETER J. SOMERS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he is the duly elected Secretary of the Seacliff Plantation at Kilauea Bay Community Association and that he executed the foregoing instrument as his free will and act and in his capacity as such Secretary.


Notary Public, State of Hawaii

My Commission Expires: _____

GEOFFREY CULVERHOUSE
Notary Public, State of Hawaii
Commission expires 01/31/2003



SIGNATURE PAGE FOR

FARM DWELLING SITE: 3

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Feb 11/2012

Member Executing


William D. Hayes
William D. Hayes

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

On this 11 day of FEBRUARY, 2000,

before me appeared WILLIAM D. HAYES,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that HE executed
the same as HIS free will and act.



Notary Public, State of CT
My Commission Expires: 8/3/2004

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 4

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

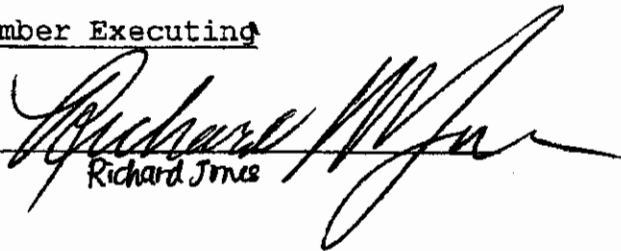
By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-23-01

Member Executing


Richard Jones

STATE OF HAWAII)
)
)
COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared Richard Jones,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wiza
MARY L. WIZA
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 5A + 5C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**


By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/23/2007

Member Executing


Peter Smith

STATE OF HAWAII)
)
COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared Peter Somers,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wises
MARY L. WISES
Notary Public, State of HAWAII
My Commission Expires: 3/14/07

STATE OF _____)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): S.B

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

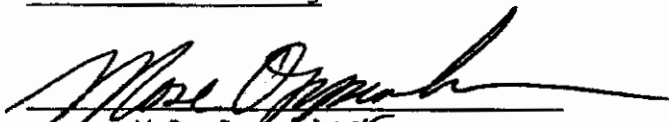
1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

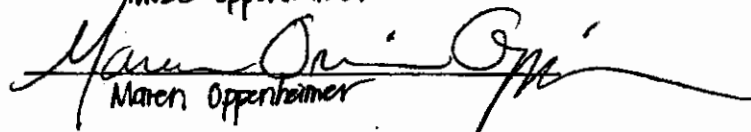
Date Executed

February 22, 2001

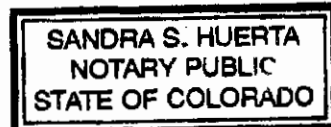
Feb 22, 2001

Member Executing


Mose Oppenheimer


Maren Oppenheimer

STATE OF Colorado)
)
)
COUNTY OF Delta)



My Commission Expires 05/31/2002

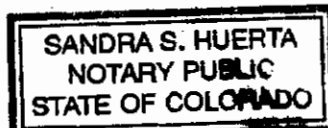
On this 23 day of February, 2001,

before me appeared Mose Oppenheimer,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Sandra S. Huerta

Notary Public, State of Colorado
My Commission Expires: 5/31/02

STATE OF Colorado)
)
)
COUNTY OF Delta)



My Commission Expires 05/31/2002

On this 23 day of February, 2001,

before me appeared Maren Oppenheimer,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Sandra S. Huerta

Notary Public, State of Colorado
My Commission Expires: 5/31/02

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 6-C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

1-25-2000

Daniel J. Kaenter
Daniel J. Kaenter

STATE OF Mo)

COUNTY OF St. Louis)

On this 25th day of January, 2000 ,

before me appeared Daniel J. Kaenter,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as _____ free will and act.

PAMELLA L. SMITH
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: July 13, 2002

Pamella L. Smith
Pamella L. Smith
Notary Public, State of Mo
My Commission Expires: 7-13-02

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____ ,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____ ,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 7 UNIT 1

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

2/6/02

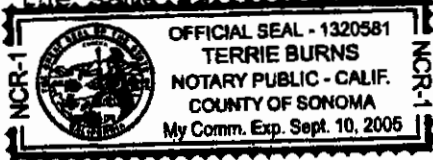
Jeannette Rothweiler (Birkeman)
Jeannette Rothweiler

STATE OF California)

COUNTY OF Sonoma)

On this 6th day of February, 2002.

before me appeared Jeannette Rothweber,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.



Terrie Burns

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 7 Unit 2

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

9/26/02

Member Executing

Thomas C. Dikeman
Thomas C. Dikeman

STATE OF HAWAII)
)
)
COUNTY OF KAUAI)

On this 26 day of APRIL, 2002,

before me appeared THOMAS C. DIKEMAN,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wijas
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)
)
)
COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 7 UNIT 3

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

4/10/02

Member Executing


Robert Thompson

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 10 day of APRIL, 2002,

before me appeared Robert Thompson,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Mary L. Wisas
MARY L. WISAS

Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 9-B

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-30-2000

1-30-2000

Member Executing

Joan C. Gelrke
Joan C. Gelrke
Larry D. Gelrke

STATE OF Delaware)

COUNTY OF New Castle)

On this 30th day of January, 2000,

before me appeared Joan C. Behrke,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Victoria A. Thawley
VICTORIA A. THAWLEY
Notary Public, State of DE
My Commission Expires: 3-8-03

STATE OF Delaware)

COUNTY OF New Castle)

On this 30th day of January, 2000,

before me appeared Larry D. Behrke,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Victoria A. Thawley
VICTORIA A. THAWLEY
Notary Public, State of DE
My Commission Expires: 3-8-03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 9-C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-27-2000

1-27-2000

Member Executing

Gray W. Atwood

George W. Atwood

Betty L. Atwood

Betty L. Atwood

STATE OF Pennsylvania)

COUNTY OF Montgomery)

On this 27th day of January, 2000,

before me appeared George W. Atwood,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Linda D. Stout

Notary Public, State of _____
My Commission Expires: _____
Notarial Seal
Linda D. Stout, Notary Public
Souderton Boro, Montgomery County
My Commission Expires April 10, 2000
Member, Pennsylvania Association of Notaries

STATE OF Pennsylvania)

COUNTY OF Montgomery)

On this 27th day of January, 2000,

before me appeared Betty L. Atwood,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Linda D. Stout

Notary Public, State of _____
My Commission Expires: _____

Notarial Seal
Linda D. Stout, Notary Public
Souderton Boro, Montgomery County
My Commission Expires April 10, 2000
Member, Pennsylvania Association of Notaries

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 10-3

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/23/01

Member Executing

Darda B. Hollands
Darda B. Hollands

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of JANUARY, 2001,

before me appeared DARDA B. HOLLANDS,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Mary L. Wisas
MARY L. WISAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): _____

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**


By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

1/23/01


James D'Connors

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared James O'Connor,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Mary L. Wijas
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/11/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 15

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-24-00

Member Executing

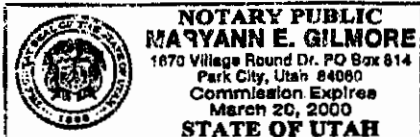
Pangolin Corp
Don L. Schmidt Pres
Don L. Schmidt
His President

STATE OF Utah)

COUNTY OF Summit)

On this 24th day of January, 2000,

before me appeared Dorn L Schmidt,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Maryann E. Gilmore

Notary Public, State of Utah
My Commission Expires: March 20, 2000

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 16 B, C

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

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2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1-25-00

Member Executing

John

Darrence J. Bm

CITY AND COUNTY OF HONOLULU

before me appeared Lawrence J. Eron,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Janice R. Omori
Janice R. Omori
 Notary Public, State of Hawaii
 My Commission Expires: 11/22/2000

COUNTY OF

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

COUNTY OF)

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

265.10

SIGNATURE PAGE FOR

FARM DWELLING SITE: 17

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

By execution below and submission of this signature page to the Secretary of the Seacliff Plantation at Kilauea Bay Community Association (the "Association"), for inclusion into the final assembled original of the Fourth Amendment to the declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community (the "Fourth Amendment to the Declaration"), the Undersigned Member(s) certify (ies) that he/she/they/it:

1. Have read the foregoing Fourth Amendment; and
2. Is either the sole "Owner" of the above Farm Dwelling Site within the meaning of Section 5.02 of Article V of the Declaration (as restated in the Third Amendment) or that the undersigned constitute(s) all persons who severally, jointly or in common are the record owner(s) of all of the fee simple title to the said Farm Dwelling Site, or certify(ies) that he/she/they/it is less than all of the Owners thereof, but that no protest has been made by any other Owner thereof to the casting of this vote by the Undersigned Member(s); and
3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

1-27-2000

2-4-2000

Thomas G. Rice
THOMAS G. RICE
Donna E. Rice
DONNA E. RICE

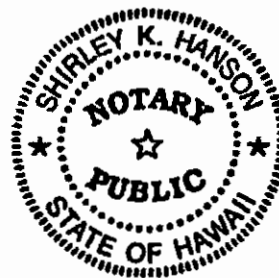
STATE OF HAWAII)

COUNTY OF KAUAI)

On this 27th day of JANUARY, 2000,

before me appeared Thomas G. Rice,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

Shirley K. Hanson
SHIRLEY K. HANSON
Notary Public, State of HAWAII
My Commission Expires: 10/30/2001



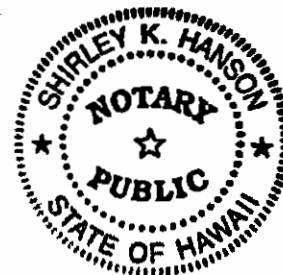
STATE OF HAWAII)

COUNTY OF KAUAI)

On this 4th day of FEBRUARY, 2000,

before me appeared DONNA E. Rice,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

Shirley K. Hanson
SHIRLEY K. HANSON
Notary Public, State of HAWAII
My Commission Expires: 10/30/2001



STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR
FARM DWELLING SITE(s): 18+19

FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

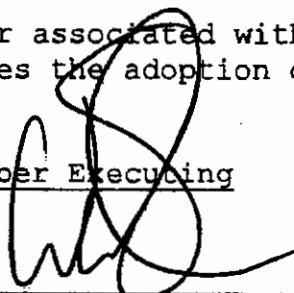
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

04-02-01

Member Executing



William Garrison

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 2 day of APRIL, 2001,

before me appeared WILLIAM Stevenson,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.

MARY L. WISAS
MARY L. WISAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR
FARM DWELLING SITE(s): 20

FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

July 2, 2001

Robert J. Campbell
Robert J. Campbell

July 2, 2001

Clarita S. Campbell
Clarita S. Campbell

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 2nd day of July, 2001,

before me appeared CLARITA S. CAMPBELL,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that SHE executed
the same as HER free will and act.



Ederlina O. Ortal
EDERLINA O. ORTAL
Notary Public, State of HAWAII
My Commission Expires: 2-06-04

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 2nd day of July, 2001,

before me appeared ROBERT J. CAMPBELL,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that HE executed
the same as HIS free will and act.



Ederlina O. Ortal
EDERLINA O. ORTAL
Notary Public, State of HAWAII
My Commission Expires: 2-06-04

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE: 22

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
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SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/30/00

Member Executing

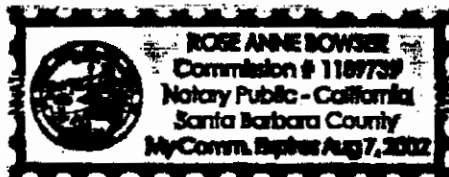
Walter L. Lewis
Walter Lewis

STATE OF California)

COUNTY OF Santa Barbara)

On this 1st day of February, 2000,

before me appeared Walter Lewis,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Rose Anne Bowser

Notary Public, State of California
My Commission Expires: 8-7-02

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 23 A+B

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

Member Executing

2-2-01

Elizabeth Freeman
Elizabeth Freeman

STATE OF Hawaii)

COUNTY OF Kauai)

On this 2nd day of February, 2001,

before me appeared Elizabeth Freeman -,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that she executed
the same as her free will and act.

C. KASHIWAGI is
Notary Public, State of Hawaii
My Commission Expires: 7-7-01

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 24

**FOR THE APPROVAL OF THE
FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF THE
SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY**

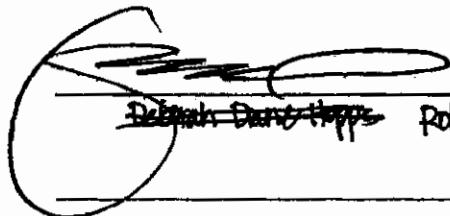
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

2/04/01

Member Executing


~~Deborah Davis Hays~~ John Boyd

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

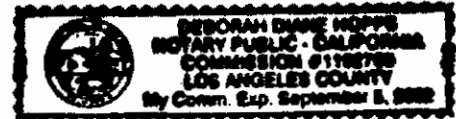
On 2/4/01 before me, DEBORAH DIANE HOPPS
(Name, Title of Officer)

personally appeared ROHN BOYD

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


(Signature of Notary Public)



(This area for notarial seal)

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 25-1

**FOR THE APPROVAL OF THE
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

1/23/01

Member Executing


Ileana Carrero

STATE OF HAWAII)

COUNTY OF KAUAI)

On this 23 day of January, 2001,

before me appeared Ileana Carreno,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that She executed
the same as her free will and act.

Mary L. Wisas
MARY L. WISAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

SIGNATURE PAGE FOR

FARM DWELLING SITE(s): 25-2

**FOR THE APPROVAL OF THE
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3. On behalf of the voting power associated with said Farm Dwelling Site, hereby approves the adoption of the Fourth Amendment.

Date Executed

5-8-02

Member Executing



STATE OF HAWAII)

COUNTY OF KAUAI)

On this 8 day of MAY, 2002,

before me appeared MAGDI LATIF,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he executed
the same as his free will and act.



Mary L. Wijas
MARY L. WIJAS
Notary Public, State of HAWAII
My Commission Expires: 3/14/03

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____,

before me appeared _____,
to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that _____ executed
the same as _____ free will and act.

Notary Public, State of _____
My Commission Expires: _____

From: Vega, Courtney A. <courtney.vega@dentons.com>
Sent: Monday, December 13, 2021 9:01 AM
To: Planning Department
Cc: Irons, Tim
Subject: Class IV Zoning Permit and Use Permit; Greens: Ltr from T. Irons to Kauai Planning Department dated December 13, 2021
Attachments: 2021-12-13 Ltr from TIIR to KCPD re Opp to Petition to Intervene.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Attached for your information and files:

- Letter from Timothy H. Irons to Kauai County Planning Department dated December 13, 2021

Thank you.



Courtney A. Vega
Legal Secretary

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courtney.vega@dentons.com
Website

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Dentons US LLP

Fernanda Lopes & Asociados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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December 13, 2021

VIA US Mail and Email

Kauai County Planning Department
4444 Rice Street, Suite A473
Lihue, HI 96766
E-Mail: planningdepartment@kauai.gov

Re: December 14, 2021 Planning Commission Hearing Items 1.a and M.1.: Special Management Area Use Permit (SMA(U)-2022-1, Class IV Zoning Permit (Z-IV-2022-1) and Use Permit (U-2022-1): Philip J. Green & Linda M. Green (Dwelling)

Dear Chair Apisa and Commissioners:

I. Introduction

Applicant Philip J. Green and Linda M. Green ("Applicant") submit this letter in opposition to Petitioner Nā Kia'i o Nihokū's ("Petitioner") Petition to Intervene ("Petition") and the various testimonies provided against Applicant's Special Management Area Use Permit (U)-2022-1, Use Permit No. U-2022-1 and Class IV Zoning Permit No. Z-IV-2022-1 for Seaclyff Plantation Lot 11-A ("Permit") for real property situated at TMK (4) 5-2-004:84 (CPR No. 0001) (the "Property"). This letter addresses the Planning Department's ("Planning") Supplemental #6 to Planning Director's Report, and proposed conditions, as well as Petitioner's December 10, 2021 submittal (by Native Hawaiian Legal Corporation) concerning the applicable building setback line for the Permit.

The Permit is for a single family farm dwelling ("Dwelling") that Applicant's intend to make their permanent residence. The Dwelling is consistent in size and scope with other homes in the Seaclyff Plantation subdivision. The Permit only concerns Unit 1 of the two-unit Condominium Property Regime ("CPR") on Lot 11-A, consisting of approximately eight (8) acres. Unit 2 is approximately four (4) acres and zoned for a home and a guest house. The Seaclyff Plantation subdivision has been in place for decades and Applicant purchased the Unit 1 for full value based on the reasonable expectation that it would accommodate a home within the existing setback lines and allowable density.

Applicant worked in good faith to inform the community of the proposed Dwelling and garnered the support of the Kilauea Neighborhood Association ("KNA"). Applicant also worked with representatives of Petitioner to understand and mitigate their concerns. Applicant initially offered to move the home sixty (60) feet lower than what the setback line required and forty (40) feet to the east of the open space easement line as well as reduce the size of the pool and overall footprint. Applicant agreed to work with Petitioner and the United States Fish & Wildlife Service ("USFWS") to explore access over the Property to adjacent lands for the group's events and gatherings. Over the course of the County process, Petitioner galvanize the community to oppose the Dwelling and made ever increasing demands upon Applicant. **Exhibit 1.** In a letter to the County, Applicant offered to lower the home one hundred and twenty (120) feet from the setback line, but to no avail. As a result of these good faith efforts, Planning (for the first

Fernanda Lopes & Asociados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

time ever) conducted its own *Ka Pa'akai* analysis, which recommends substantial additional conditions that render the proposed Dwelling infeasible.

Applicant requests that the Planning Commission take charge of this process to prevent it from spiraling even further out-of-control. The Petition should be denied and the Permit approved with standard conditions commensurate with the approval of a dwelling on a lot within an approved subdivision.

II. Petitioner Has Failed To Meet The Procedural Requirements for Intervention

The Petition is not timely. The Rule is clear that a petition to intervene must be filed at least seven (7) days prior to the date of the hearing advertised in the Public Hearing Notice ("Public Notice"). This project was noticed on August 13, 2021 for hearing on September 14, 2021. **Exhibit 2.** Any petition to intervene was due by 9:00 a.m. on September 14, 2021. No Petition was filed by the deadline and the Applicant did not agree to extend the deadline for intervention.

According to an email from Planning Director Hull, the Petition (oddly dated October 5, 2021) was filed on October 19, 2021. Director Hull did not state at what time it was filed and there is no file stamp on the Petition Planning provided. However, Applicant's counsel, Ian Jung, Esq., received the Petition via email at 2:04 p.m., less than seven (7) days prior to the continued hearing. Accordingly, the evidence in the record supports a finding that the Petition is untimely and should be denied; particularly here, where Petitioner was made aware of the Dwelling many months prior to the Public Notice and, in fact, submitted comments on the proposal during the Kilauea Neighborhood Association ("KNA") review back in June 2021. **Exhibit 3.**

III. Petitioner Has Failed To Meet The Substantive Requirements for Intervention and Party Status Should be Denied

As set forth in the Opposition to Petition to Intervene, filed October 26, 2021, Petitioner has not demonstrated that they will be so directly and immediately affected by the Dwelling that their interest is clearly distinguishable from the public. See Rules of Practice and Procedure, 1-4-2. *Planning's Ka Pa'akai* analysis, as contained in Supplemental #6 to Planning Director's Report, does not change the result. The analysis fails to identify any practices on the Property or establish that any Native Hawaiian ("NH") traditional and customary rights ("TCR") will be affected or impaired by the proposed Dwelling. Testimonials do raise generalized concerns about the historic loss of NH culture and practices (and a desire to restore what was lost), but they are unrelated to the Property and unaffected by the proposed Dwelling. As a result, Planning's preliminary recommendations are improper as they are unnecessary, infeasible and, in some cases, unconstitutional.

A. Legal Framework

Ka Pa'akai O Ka'aina v. Land Use Commission, 94 Hawai'i 31 (2000) ("*Ka Pa'akai*") involved a 1,000 acre land use reclassification from the conservation to the urban district to pave the way for the Kaupulehu Resort Expansion on the Big Island consisting of 530 single family homes, 500 low-rise multi-family units, a 36-hole golf course, an 11-acre commercial center, a 3-acre recreation club, a golf clubhouse, and

other amenities.¹ In analyzing the project, the Hawaii Supreme Court directed the State Land Use Commission to determine:

(1) the identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.²

Of note, the analysis was confined to the “petition area” and did not include analysis of the surrounding areas. Also, the Court noted that any action taken must be both feasible and reasonably necessary to protect native Hawaiian rights, if they are found to exist.

Ka Pa’akai relied upon the Court’s prior precedent, *Public Access Shoreline Hawai’i v. Hawai’i County Planning Commission*, 79 Hawai’i 425, 450 (1995) (“PASH”) to formulate this analytical framework. PASH, involving another large resort development, obligated agencies to protect TCR to the extent feasible on undeveloped land. The Hawaii Supreme Court did not define feasibility³ or what qualifies as undeveloped land. Pursuant to *State v. Hanapi*, 89 Hawai’i 177, 186-87, 970 P.2d 485, 494-95 (1998), however, “fully developed” property includes “lands zoned and used for residential purposes with existing dwellings, improvements, and infrastructure” and it is “always ‘inconsistent’ to permit the practice of traditional and customary native Hawaiian rights on such property.”

B. No TCR or Protectable Interests Have Been Established Within The Property

The Petition does not cite, reference or even allege any NH practices on the Property. And, the Petition does not provide any evidentiary foundation supporting the proposition that any of its members are NH with ancestral lineage to the Kilauea ahupua’a. Without historic familial ties to the area, Petitioner instead claims that there are resources on and around the mountain (primarily on the Kilauea Park National Wildlife Reserve (“KPNWR”)) and that the existence of resources proves the existence of a cultural practice. The Planning *Ka Pa’akai* analysis parrots this position.

This is not what PASH and its progeny stand for. An evidentiary foundation must be established to show that practices actually occurred on the Property prior to imposing development conditions. The mere existence of a resource (like birds and alaea—found all over Kauai), does not establish TCR. Similarly, inspiration, story-telling, star gazing and dancing are generalized practices taking place all over Hawaii.

¹ Needless to say, the current single family Dwelling under consideration is a far cry from the new resort community contemplated under *Ka Pa’akai*. Indeed, there is a question as to whether it is reasonable to even apply the analysis to an application for a single dwelling on a previously subdivided lot for which there is no identifiable history of NH traditional and customary practices.

² To claim TCR related to subsistence, culture and religion, the activities must be shown to have been practiced by NH in the area prior to November 25, 1892. *In State v. Zimring*, 58 Haw. 106, 115 n.11, 566 P.2d 725, 732 n.11 (1977).

³ For something to be “feasible” it must at least be capable of being carried out. If a condition renders the proposed Dwelling impractical or impossible, it is not a feasible condition.

Every geographic feature may have a story (or more likely many stories) but that doesn't establish a cultural practice or TCR.

Based on all the evidence gathered, including the County's four week long *Ka Pa'akai* analysis, it is clear that any traditional and customary practices in the area did not take place on the Property. Although absent from the Planning analysis, the fact is that the entire Kilauea ahupua'a was deeded to Charles Titcomb in 1863 and was subsequently developed into a plantation. The history of the land over the prior 150 years is one largely of private ownership and land development for agricultural purposes. The Property was primarily used for grazing. Indeed, when Gary Smith was interviewed he confirmed that he was not aware of any NH cultural practices on the Property. Mr. Smith would know, he has hunted and fished in the area since his youth and is not aware of any trails over the Property. He was also one of the foremost opponents of the original Seacliff Plantation subdivision application and is deeply interested in the history of Kilauea. If he were aware of any NH practices or trails on the Property he would have identified them.

Petitioner has not established that any of its members are NH and have ancestral lineage to the Kilauea ahupua'a. Mehana Vaughn's ancestors are not from Kilauea. Some interviewees whose testimonies are relied upon are not even NH. Mr. Ryan McCormack's opinion that "mo'olelo and mele confirm, Nihoku... have been areas of cultural and religious significance for centuries and continue to be so for Kanaka Maoli..." is not grounded on any evidence and entitled to no weight. Mr. McCormack's non-NH testimony is, at best, second-hand, opinion testimony. The Archeological Field Inspection performed by Nancy McMahon of Exploration Associates Ltd., found no evidence of cultural practices on the Property. **Exhibit 4.** Moreover, Ms. McMahon's critique of the County's *Ka Pa'akai* analysis confirms that the methods utilized were irregular⁴, the standards misapplied⁵ and the recommendations unnecessary and unworkable. **Exhibit 5.**

The TCR claimed include hunting (birds), fishing, kilo, olelo, and hula. Taking birds, their eggs or feathers is not a customary practice within the Property and it is illegal. In the ancient past, it may have been a practice on the USFWS land and cliffs overlooking the ocean, but many of the birds currently present were introduced by man to establish new breeding grounds. Fishing is not possible from the Property as it is separated from the ocean by the USFWS lands with its steep descending cliffs. Kilo is best practiced on the USFWS lands, which provide the highest point on the mountain and a dedicated viewing location.⁶ See **Exhibit 5.** Olelo and hula are not location specific. Nihokū can be honored from viewpoints on the USFWS lands or other vantage points around Kilauea. None of these practices are on the Property and, significantly, there are more suitable and available locations that currently exist.

⁴ Some interviews were conducted in a group. By combing the interviewees, it is not clear whose knowledge forms the basis of the opinions expressed. Where interviewees agree with one another, it is not clear whether they have any actual knowledge on the point or simply support what is being said. Moreover, much of the testimony relied upon is from Mehana Vaughn whose ancestors are admittedly not from Kilauea or Kauai.

⁵ Ms. McMahon notes that Planning's assumption that TCR are present anywhere resources exists is flawed and inconsistent with the required analysis.

⁶ Some testifiers claim the dwelling will "go straight through the piko of Nihoku" to impact "all the practices of that whole mountain" without providing any evidence (through traditions, stories, names or recorded material) that any practices actually occurred on the Property. Testifiers talk about walking dogs, riding bikes, and pushing baby strollers—activities that have little to do with Hawaiian customary and traditional practices. By expanding the definition of these practices, Petitioner and its members denigrate actual CTR.

C. *No TCR or Protectable Property Interests Will Be Impaired By The Proposed Dwelling*

Petitioner has not established, and the County analysis has not shown, that the proposed Dwelling will impact any TCR. The Permit is for a single-family farm dwelling and guest unit. The main house is three (3) bedrooms and three (3) baths and the guest house is five hundred (500) square feet—not the massive development Petitioner and many testifiers claim. The house is within the 1994 building setback put in place to protect the scenic view planes around Kilauea. A large section of the Property is subject to an open space easement granted in favor of USFWS. **Exhibit 6.** The open space easement is for the sole purpose of maintaining open space for wildlife. *Id.* USFWS is entitled to visit the property only four (4) times a year to confirm that the easement restrictions are being adhered to. *Id.* The open space easement is not meant to be used by people, it is for the Bird & Wildlife Sanctuary.

The easement and the building setback require the Dwelling to be well over half way down Crater Hill within a triangular shape that gets narrower the further the development is pushed down toward Makana Ano Place. Just above the proposed house site there is a stand of trees that blocks the view to the top of the Property and the adjacent USFWS land. Assuming for the sake of argument that TCR exist on the Property—which they do not—the construction of a single family dwelling will not in any way impact those rights. Dancing, story-telling, hat making, star gazing, wildlife viewing, collecting soil, taking birds (eating them, plucking their feathers and taking their eggs), hunting and fishing will not be impacted by the construction of the proposed dwelling, which is far removed from potential practices as a result of the Open Space Easement and setback line. Further restrictions require muted color schemes and downward facing lighting. The mere preference by some testifiers for open space within a duly subdivided lot is not a property interest or right that entitles Petitioner to intervene or the County to arbitrarily condition the development.

Any impacts to pre-western NH practices within Kilauea resulted from the fact that the ahupa'a was put into private hands over 160 years ago. Impacts from the sale of the land to Charles Titcomb in 1863, the development of the Kilauea plantation and, subsequently, the approval and development of the Seacliff Plantation subdivision are not valid bases for imposing unreasonable and infeasible conditions upon the Applicant in an effort to rectify a history of alleged wrongs.

D. *The Recommended Conditions Are Not Necessary, Infeasible and/or Constitute an Unconstitutional Taking Without Just Compensation*

As acknowledged by Planning, *Ka Pa'akai* requires a balancing of interests that, ultimately, weighs in favor of the land owner. Where no practices have been established on the Property, and the development will not materially impact the desired practices, there can be no reasonable or rationale conditioning of the land owners' use rights. Establishing trails and a cultural easement constitutes a taking of private property; bereft of any public benefit. And using the newly established cultural easement as grounds to shrink the developable footprint by nearly sixty percent (60%) and to force the development so far down the hill that the pool will end up on Makana Ano Place, is an unconstitutional taking.

1. The Recommended Conditions Are Unnecessary And Not Rationally Related to Any Governmental Interest

The conditioning under *Ka Pa'akai* is to feasibly and reasonably protect NH practices, if they exist. The analysis is not an open-ended opportunity to impose conditions that opponents of the proposed development desire or stand to benefit from. Here, the existence of TCR on the property has not been established. The imposition of any conditions based on TCR, therefore, is not warranted. Moreover, the Property is within a fully approved and developed subdivision. The fact that this particular parcel has not yet been developed does not mean that it is not "developed property" as defined by *State v. Hanapi*. The Property is zoned for a dwelling, the roads and related infrastructure have been built and the Applicant has expended a large amount of money based on the reasonable and rationale expectation of receiving a permit to build a dwelling. The time to have preserved NH TCR was when the subdivision was under review. Indeed, many of the benefits Petitioner now enjoys today, including access to the USFWS lands and preservation of various open spaces were a result of the conditioning of the Seacliff Plantation subdivision approval. **Exhibit 7**. Accordingly, none of the preliminary conditions proposed in the *Ka Pa'akai* analysis will likely withstand judicial scrutiny.

2. The Recommended Conditions Are Not Feasible

There are a number of conditions that are simply not feasible. A rendering of what the development would look like under the proposed one hundred and fifty (150) foot additional setback line condition is attached as **Exhibit 8**. The pool is nearly on top of Makana Ano Place. Unit 1 of the two unit CPR (the subject to this application) would be rendered undevelopable due to the narrowing caused by the exiting Open Space Easement. And, the developable area of the entire lot would be reduced by approximately sixty percent (60%). This massive impairment is apparently to address an impact that was already reviewed, analyzed and addressed by the 1994 setback line put in place as a condition of the amended subdivision approval.

A second condition is the ten (10) foot access through the Open Space Easement on the North of the property. As noted above, the existing Open Space Easement is for protection of the birds and strictly limits access to USFWS personnel to confirm the Open Space restriction is maintained. The alternative access recommended on the south side of the lot is within Unit 2, which is not part of this Application. No analysis was provided as to the feasibility of developing a ten (10) foot wide access along the south side of the lot, through dense trees and brush in order to access USFWS lands that may or may not be accessible.

3. The Recommended Conditions Are Unconstitutional

Each of the above conditions (the one hundred and fifty (150) foot additional setback line and the ten (10) foot wide access easements) as well as the proposal to dedicate a 2,500 square foot area on the Property for a cultural easement are unconstitutional.⁷ Similarly, the density reduction of fifteen (15)

⁷ Originally, Petitioner did not want to see the Dwelling while visiting the mountain. Under the proposed condition, it appears they will be given rights to gather directly above the home. This arbitrary and unreasonable access and use condition not only constitutes a taking but clearly violates due process and equal protection as no similar conditioning was applied to a nearby Crater Hill lot in the same subdivision, which was approved for development.

percent is arbitrary and unnecessary.⁸ “If a local government takes private property without paying for it, that government has violated the Fifth Amendment. *Knick v. Township of Scott, PA.*, 139 S. Ct. 2162, 2170 (2019). Under the Just Compensation Clause, where the government effects a temporary taking of property by a land-use regulation, the landowner may recover damages for the time before it is finally determined that the regulation constitutes a taking of his property. *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 319 (1987). The arbitrary and irrational application of land use laws to deny property interests violates due process. *Barancik v. County of Marin*, 872 F.2d 834, 836 (9th Cir. 1988), cert. denied, 493 U.S. 894, 107 L. Ed. 2d 192, 110 S. Ct. 242 (1989). And, equal protection is violated where a person is intentionally treated differently from others similarly situated and there is no rational basis for different treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

The recommended conditions benefit a small group of activists who seek to utilize the permitting process to extract personal benefits. Planning recommends that there be at least one Petitioner member in any visiting group and up to twenty four (24) strangers allowed on the Property for eight (8) hours once a month. The strangers need not be NH practitioners and the Applicant has no say over who can occupy the land or imposing basic conditions, e.g. insurance and liability waivers. The cultural and access easements deprive the Applicant of use of the easement areas and, significantly, deprive the Applicant of the fundamental property right to exclude others. *Kaiser Aetna v. United States*, 444 U.S. 164 (1979). The additional setback line renders Unit 1 unusable and eliminates the considerable value Applicant paid to purchase Unit 1 based on the reasonable expectation that a dwelling could be built within the existing setbacks. The proposed conditioning is not necessary to mitigate any harm and, in fact, will not address the alleged need to protect any CTR, which do not exist on the Property. Accordingly, the *Ka Pa’akai* conditions are unnecessary, infeasible and unconstitutional and should be rejected.

IV. The 1994 Setback Controls This Development

In a filing on December 10, 2021, Petitioner, through counsel, claims that there is a question as to the applicable existing building setback line for the Property. Petitioner asserts that the 1982 setback line⁹ established before the roads and infrastructure were put in place may still be applicable despite the fact that the line was modified in 1994 by Special Management Area Use Permit SMA (U)-94-14, Variance Permit V-94-16, Class IV Zoning Permit Z-IV-94-56 and Amendments to Conditions of Approval SMA (U)-82-2 (“1994 Amendments”). **Exhibit 9.** The 1994 Setback Line was established as part of a broad compromise that provided numerous community benefits. The applicability of the 1994 setback line was confirmed by the County in 2009. *Id.*

⁸ This condition is arguably to address visual quality and massing. A fifteen percent (15%) reduction, however, will do little to change the visual character of the development. It is not clear that any objective observer would even notice the difference. Because the condition does not affect the driveway, pool and non-structural development footprint, it will do little to impact the overall massing on the Property. The Dwelling is already well within the permitted density for this twelve (12) acre lot. Demanding an additional reduction is arbitrary and capricious because there is no offsetting public benefit and it requires the Applicant to significantly redesign the building plans and compromise the look and feel of the development. Further, the Applicant could have proposed the full density allowance (over 50,000 square feet) and a fifteen percent (15%) reduction would have resulted in a development (approximately 42,000 square feet) larger than what the Applicant is proposing.

⁹ To be clear, if the 1982 setback line were to control, the entire approximately twelve (12) acre lot and both CPR units would be undevelopable and lose all of their value.

Petitioner's reliance on an August 27, 2002 Staff Report by Planner George Kalisik regarding a distinct Seacliff Plantation lot is misplaced. **Exhibit 10.** In the letter, Planner Kalisik states that the conditions of approval of the 1994 Amendments have not been met and, therefore, the two year duration of the SMA Permit has expired and the original setback line remains in place. This conclusion is incorrect. The County SMA Rules and Regulations provide that the applicant must make substantial progress, as determined by the Director regarding the development or activity within two years. SMA Rules and Regulations, Section 10. There is nothing automatic about the expiration of an SMA Permit. Any amendment or revocation is to follow Chapter 12 of the Rules of Practice and Procedures of the Planning Commission related to revocation and modification of SMA permits. Therefore, without an express finding by the Director and a formal revocation by the Planning Commission, the 1994 Amendments and setback line remain in effect, as confirmed by the County in 2009. Exhibit 9.

V. Conclusion

Based on the above analysis and the record, the Planning Commission should deny the Petition to Intervene as procedurally and substantively deficient. Petitioner, and its members, are adequately served by existing access to resources within the USFWS lands and the Permit will not impair those uses. Any access through or use of the Applicant's Property, however, will create new adverse impacts on wildlife by increasing use of and interference with the KPNWR.

The Planning Commission should deny the proposed conditions set forth in Planning's *Ka Pa'akai* analysis as unnecessary, unreasonable and infeasible and unconstitutional. Any conditioning should be limited to standard conditions, protecting the existing wildlife and providing architectural finishes to blend into the hillside.

Sincerely,



Timothy H. Irons
Counsel

Attachments

Our group feels strongly that no structures should be built on either lot of the upper slopes of this sacred and ecologically significant wahi pana in order to maintain its sanctity, health, peace, views and flourishing bird populations for future generations. However, we recognize that you bought this land to build a home for you as a couple to grow old in together. The proposed siting and size of the main structure would irreparably damage the place. Significant community testimony has asked that the house be decreased in size and moved lower down the mountain. We continue to be grateful to work with you on conditions that would work for you and the place.

Our initial proposed conditions were:

- 1) Decrease the size of the house
- 2) Minimize excavation and grading into the hillside
- 3) Move the house down the mountain to the lower TMK
- 4) Lower the roof line
- 5) Combine the two CPR lots within the TMK so that it remains one large property with one house and owner and prevents later sale of the second lot and a possible additional house (which would require much more permitting and approvals but still is a possibility).
- 6) Perpetual protection for the land such as a conservation easement with HILT or donation to expand the refuge after their lifetime.
- 7) Access through the property for Nā Kia'i o Nihokū to reach the refuge and bring educational and cultural groups. This would not be a public access but one we could manage access to for the community and those going to work in and learn about the place.

We are encouraged that we have already reached agreement on some areas and progressed on others through our discussions. In the interest of compromise, we are adjusting to offer the following, more specific options.

OPTION 1:

- 1) Retain the current size, design and configuration of all structures including main house, garage, and guest house.
- 2) Proceed slowly and deliberately with all clearing, grading, building and development on property, so that any unforeseen problems with drainage, encountering burials or other cultural sites, impacts on bird habitat etc. can be identified and addressed. Hire knowledgeable local machine operator and other personell who will stop and check in frequently as work proceeds.
- 3) Situate all structures fully within lot 2
- 4) Lower roof pitch from 12", 12" to 12", 10"
- 5) Combine the CPR lots withint the TMK so that it returns to one large property.
- 6) Place perpetual conservation easement on all of lot 1 and above the building setback for lot 2. Within the conservation easement agriculutral activities and planting shall be permitted but no grading, grubbing, excavation, lights or construction of any structures.
- 7) Provide access easement for Native Hawaiian traditional and customary practices through lot 1, above the setback line, into the refuge
- 8) Deposit \$25,000 into fund for ongoing inspection and 3rd party enforcement of conditions.
- 9) Incorporate active bird protection throughout the subject TMK (turn down lights, red lights at night, no lights in house visible at night (blinds, drapes etc), active predator control, native outplantings)

EXHIBIT 1

OPTION 2:

If structures are situated on lot 1, the siting and design needs to change considerably to minimize impact. The size would have to be reduced and siting reconfigured, so that garage, and guest house are moved in front of the house, not situated on steep terrain requiring excavation high up and extensive driveway to reach them.

Details:

- 1) Decrease footprint by reducing the size of main structure and all surrounding components.
 - a. (Shrink great room, insert pantry into kitchen, cut out entry & powder room, half garage size)
 - b. 1a) Reduce roof size to be commensurate with living area (remove one lanai, reduce the other, and reduce port cochere)
- 2) Shorten driveway by $\frac{3}{4}$ in order to reduce run off, and drainage issues.
 - a. No rock walls or impervious surfaces.
 - b. No pool.
- 3) Main structure moved 140 feet down to the flat bench area and current common element, and closer to the road where land is flatter.
 - a. Resituate garage and guest house to unit 2 in front of the main structure, along roadway to reduce driveway area, grading, excavation and flattening.
- 4) (4-9) same as above



Other Considerations:

Native outplantings of naupaka, akoko, hala, a'ali'i, aweoweo, naio, loulou, milo, kou and any other plants growing in native kīpuka outplanting within refuge

Need to either decrease size and change configuration or to maintain current size and design of house, move the entire configuration to lot 2 and turn slightly.

Important Needs for Greens: Ability to plant and landscape, Hard work and commitment to agriculture on property, Situate home back from the road, Retain House size and design, 4th garage bay for woodshop. Privacy, Security, Buffer between them and the birds/conservation area.

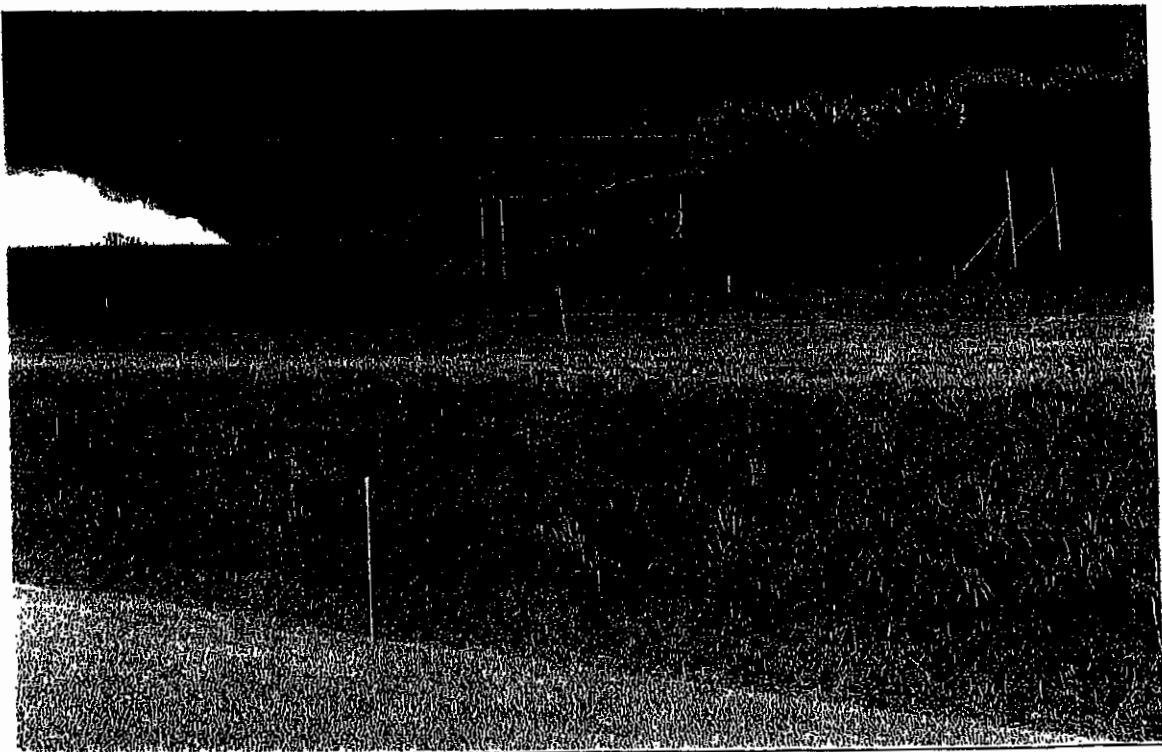
Potentially Agreed Upon:

Lower roof pitch

Reduce size of garage (1 bay less) and pool (20 feet less)



- **The Kilauea Neighborhood Association (KNA)** submitted a letter to the Planning Department in June 2021 supporting the proposed SMA permit application. However, the letter noted that some Kilaueans have legitimate concerns regarding the development, which the KNA Board urged be addressed "in a manner that satisfies all Kilaueans and allows us to thrive and move forward into the future as one unified community."
- **Many Kilauea community members are still learning about the proposed house development and permit.**
- **Nā Kia'i o Nihokū and other Kilaueans have articulated proposed conditions** to mitigate impacts of the home and have been meeting with the homeowners to discuss them.
 - 1) Decrease the size of the house
 - 2) Minimize excavation and grading into the hillside
 - 3) Move the house down the mountain to the lower 4.3 acre CPR unit, further from the refuge
 - 4) Lower the roof line
 - 5) Combine the two CPR lots within the TMK so that it remains one large property with one house and owner, preventing subsequent sale of the second lot and possible further development.
 - 6) Perpetual protection for the land such as a conservation easement with the Hawai'i Land Trust or donation to expand the refuge



COUNTY OF KAUAI PLANNING COMMISSION - 4444 Rice Street, Suite A473, Lihue, Kauai, Hawaii, 96766, tel: (808) 241-4050, fax: (808) 241-6699, email: planningdepartment@kauai.gov. Pursuant to the provisions of State Land Use Commission Rules and Regulations, Special Management Area Use Rules, Kauai County Code, Chapter 8, as amended, Hawaii Revised Statutes Chapter 91, and the Rules of Practice and Procedure of the County of Kauai Planning Commission, notice is hereby given that the County of Kauai Planning Commission ("Commission") will hold an **agency hearing with a public hearing and an opportunity for public testimony at the Lihu'e Civic Center, Moikeha Building, Meeting Rooms 2A and 2B, 4444 Rice Street, Lihu'e, Kaua'i on Tuesday, September 14, 2021 at 9:00 a.m.** to hear testimony and comments from all interested persons regarding the following:

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT (Z-IV-2022-1), and USE PERMIT (U-2022-1) for the construction of a farm dwelling unit, guest house, garage and associated site improvements within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,000 feet west of the Pali Moana Place/Makana'ano Place intersection, further identified as Tax Map Key:(4) 5-2-004:084 (Unit 1) affecting a portion of a larger parcel approximately 12.305 acres in size.

All persons may present testimony for or against any application as public witnesses. Such testimony should be made in writing and presented to the Department prior to the hearing. Late written testimony may be submitted up to seven days after the close of the hearing in cases where the Commission does not take action on the same day as the hearing. Any party may be represented by counsel if he or she so desires. Also, individuals may appear on their own behalf, a member of a partnership may represent the partnership, and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association. Petitions for intervenor status must be submitted to the Commission and the applicant at least seven days prior to the date of the hearing advertised herein and shall be in conformance with Chapter 4 of the Rules of Practice and Procedure of the Planning Commission. A copy of the proposal will be emailed to any interested person who requests a copy. Please submit your request to the Planning Department. KAUAI PLANNING COMMISSION, Donna Apisa, Chairperson, By Kaaina S. Hull, Clerk of the Commission.

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS AND COMMISSIONS AT (808) 241-4917 OR 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 ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

Publication Date: August 13, 2021



KILAUEA NEIGHBORHOOD ASSOCIATION

COUNTY OF KAUAI

'21 JUL -8 P1:29

PLANNING DEPT.

President June 5, 2021

Yoshito L'Hote

Ms. Donna Apisa, Chair
Kaua'i Planning Commission
Kaua'i Planning Department
4444 Rice St., Suite A473
Lihu'e, HI 96766

Vice President

Beryl Blach

Secretary

Jeremy Burns

RE: SMA Permit for TMK 4-5-2-004-084-0001. (Phil and Linda Green)

Dear Planning Chair Apisa and Members of the Planning Commission:

Treasurer

Gary Pacheco

Phil and Linda Green have requested a letter of support from the Kilauea Neighborhood Association for their proposed new residence in the SeaCliff Estates.

Sergeant-at-Arms

Bill Chase

Ian Jung, the Greens attorney, gave a presentation at the December 2020 KNA Board Meeting. Subsequent to this meeting, story poles were erected so that the community could see what kind of a visual impact the proposed residence would have.

PTSA Rep

Sonrisa Stepath

The Greens also invited any and all members of the community for a personal tour of their site. In addition, Mr. Green said that every effort would be made to ensure that the house would be sensitive to its surroundings, and that any stormwater runoff be minimized.

Directors

Stephanie Brown

Thomas Daubert

Emily Dunn

Mike Latif

Mike Lyons

Charlie Martin

Don McConnell

Ron Paul

Sonrisa Stepath

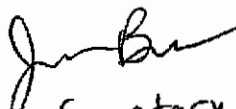
Mr. Green attended the May, 2021 KNA Meeting, where he answered more questions from the Board and members of the larger community. The KNA Board voted unanimously to approve the forthcoming SMA Permit application.

At the June 2021 KNA meeting, the Kilauea organization Nā Kia'i o Nihokū gave a presentation outlining their concerns about the current proposed Green House. They also included recommendations that would help mitigate some of their concerns. They looked at the proposed house from a uniquely Hawaiian cultural perspective.

While the KNA remains committed to support the Green's SMA Permit application, we also hope that the Greens be open and sensitive to the concerns raised by Nā Kia'i o Nihokū and think about adjusting their plans in a manner that satisfies all Kilaueans and allows us to thrive and move forward into the future as one unified community.

With aloha,

Yoshito L'Hote
President


Secretary, KNA

PO Box 283, Kilauea, Kauai, Hawaii 96754
www.kna-kauai.org | joekilauea@gmail.com
Like us on Facebook: Facebook.com/kna.kauai

F.2.9.1.

SEP 14 2021

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CELL: (808) 639-6695: Email: explorationassociates@outlook.com

**Archaeological Field Inspection for
Owners: Philip and Linda Green
Kīlauea Ahupua'a, Ko'olau District, Island of Kaua'i
TMK (4) 5-2-004: 084**

Nancy McMahon, M.A., M.S.

October 2021

At the request of the landowners Philip, and Linda Green, Exploration Associates Ltd.'s (EAL) Nancy McMahon, M.A., M.S., Principal Investigator completed the field inspection under Hawai'i State Historic Preservation Division/Department of Land and Natural Resources (SHPD/DLNR) permit number 21-12 per Hawai'i Administrative Rules (HAR) Chapter 13-13-282 for by Kauai Tax Map Key No. (4) 5-2-004:084 (Figures 1, 2 and 3). The field inspection was for the entire 12.305 acres.

Philip and Linda Green are proposing to construct a single-family dwelling unit, guest house, garage, pool, rock retaining walls, site grading, agricultural and landscape plan, driveway, fencing, outside shower, and associated utilities on Lot 11-A Makana'ano Place of the Seacliff Planation Subdivision. The property is described as Lot 11-A of the Seacliff Plantation Subdivision, located in Kīlauea, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 5-2-004:084 (CPR No. 0001). The existing building setback contains approximately 7.934 acres, provided, the entire Lot 11-A consists of 12.305 acres. The Greens also own the adjacent CPR Unit No. 2 within Lot 11-A Makana'ano Place. Figure 4 is the topographic survey of the existing building setback line area. Figure 5 is the house site plan. Figure 6 is an overlay of the house plan on a google aerial.

The parcel is north of Kīlauea Town the Seacliff Plantation Subdivision. The Seacliff Planation Subdivision is a planned community located between the town of the Kīlauea and the Kīlauea Lighthouse. The parcel slopes upward from approximately 360 feet above mean sea level ("msl") at its south (mauka) end to sea level to about 420 feet above mean sea level at the north (makai) boundary. The parcel is adjacent to lots owned by the 203-acre Kīlauea National Wildlife Refuge along the north (makai) and east.

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) conducted a soil survey of the project site (Figure). Most of the parcel is composed of soils categorized as LhD (Lihue silty clay, 15 to 25 percent slopes) (8.9 acres) (NRCS 2021). The remaining area is made up of LhE2 (Lihue silty clay, 25 to 40 percent slopes) (2.9 acres) and LhC (Lihue Silty clay, 8 to 15 percent slopes) (1.6 acres) (NRCS 2021) (Figure 7).

The parcel is indicated to receive approximately 60 inches of annual rainfall, with increased rainfall at higher elevations (Giambelluca et al. 1986). There are no natural waterways, such as streams,

Applicant's Name: **Owners: Philip and Linda Green**
Project: **Field Inspection for SMA Use, Use and Zoning Permit**
Makana'ano Pl., Kīlauea

within the project site. The Pacific Ocean is 600 feet from the parcel at the base of steep cliffs of the USFWS the Kīlauea Point National Wildlife Refuge lands.

Most of the parcel is in pasture grasses with the upland mid-section in fruit tree. Pasture grasslands dominated by introduced species (e.g., saltgrass (*Distichlis spicata*), Kikuyu grass (*Cenchrus clandestinus*), open-understory shrublands non-native species (e.g., lantana (*Lantana camara*), koa haole (*Leucaena leucocephala*), Guinea grass (*Megathyrsus maximus*), Ironwood (*Cassuarina equisetifolia*), Christmasberry (*Schinus terebinthifolius*), and Java plum (*Syzygium cumini*). Existing conditions around the project site involve noticeable runoff and erosion after major rain events at the top slopes of the mid-section of the property.

During the field inspection Nēnē were walking around in the pasture grass. In partnership with the State Department of Land and Natural Resources (DLNR) and USFWS Ecological Services, 38 nēnē were reintroduced to Crater Hill on the Refuge between 1991 and 1994. By 2002, the population was estimated to be 238 birds (USFWS 2004). In 2011, the population estimate for Hanalei, Princeville, and Kīlauea Point was 791-811 birds. The author does not know the current population estimates. No other wildlife was seen that day.

TRADITIONAL AND HISTORICAL BACKGROUND

The Land of Kīlauea

The parcel lies on the *makai* (seaward) portion of the traditional Hawaiian land division of Kīlauea Ahupua'a. The name "Kīlauea" is understood as meaning "spewing, much spreading" (Pukui et al. 1974:111). In the case of the best known "Kīlauea" at Ka'u District, Hawai'i Island (Hawaii Volcanoes National Park), the name is typically understood as referring to volcanic steam clouds or aerial fountains of volcanic eruptions. Wichman (1998:102) explains the name as referring to "spewing many vapors" and traces it rather generically to the streams of Kīlauea that flow between the Makaleha Mountains and the Kamo'okoa Ridge. The name may have originally been in reference to Kīlauea Falls itself. The relatively large volume of water flowing over a relatively wide and high drop against the prevailing trade winds (blowing approximately straight up the lower stretch of the valley) can create a large volume of diffuse mist that may have inspired the name of the land. We see some support for this theory in that the portion of Kīlauea Stream that lies within Kahili Ahupua'a (which does not include Kīlauea Falls) was evidently universally called Kahili Stream by Hawaiian residents in that area. The name could however be in reference to the sea spray at Kīlauea Point and the Crater Hill cliff—or it could be in reference to all the above.

Mythological and Traditional Accounts

An exhaustive search of Hawaiian legends and myths in print produced only four mythological references.

Dole (1892) relates a somewhat vague account that at Kīlauea there were the remains of three long, ancient, and parallel irrigation ditches attributed by the Hawaiians to the claw marks of a *mo'o* (lizard, reptile). "The lizard had been ordered by [the famous ruling chief] Mano-ka-lani-po to open Kīlauea's upper regions for agriculture" (Wichman 1998:102). In context, the *mo'o* is associated with the "brave lizard" Ka-mo'o-koa, after whom a ridge of the Makaleha Mountains is named.

Wichman (1998:102) relates an account (which may have originated in a 1939 story contest—Juliette Ferreira's "Pele the Goddess of Fire"—for the Martha W. Beckwith Prize, Kamehameha School for Girls) that near the top of a volcanic cone open to the ocean:

Once stood three huge stones that have since been moved, with great difficulty, to make room for sugarcane. These three stone sisters of great beauty, were a warning that Pele, the volcano goddess, was not to be trifled with. . . . Pele [seeking to establish a home for herself and her Kaua'i lover Lohiau] caused an eruption here, but it was soon extinguished when the sea goddess [Na-maka-o-kaha'i] broke down the walls of the crater, drowning the fire with the ocean. The laughter of the three beautiful sisters enraged Pele. They had seen Pele defeated and shamed. Their scorn was not to be endured. "What are your names?" Pele asked. And one replied "I am Kalama, this is Pua, and this is Lahela." Pele repeated their names, touching them with her staff as she did so, turning them to stone. They were a mute and visible warning not to laugh at or ridicule Pele. [Wichman 1998:103]

In a slight variant of the story, Pele is motivated by jealousy of the three girls' beauty and by fear that they will make Lohiau fall in love with them, and thus she turns them to stone to protect her love interest.

A third mythological account of Kīlauea related by Rice (1923; see also Wichman 1998:104) concerns the creation of a swath of boulders between the islet of Moku'ae'ae and Kīlauea crater:

Traveling on the Menehune moved a big stone to Kahili, below Kīlauea, which they used to dive from. At Moku'ae'ae, the island off the present Kīlauea lighthouse, they began to fill in the channel between the island and the mainland. They were just able to touch the bottom with a paddle when morning dawned, and their task was left unfinished. [Rice 1923:38]

The Story of Lonomakahiki is a passing reference to the ruling chief Lonoikamakahiki traveling with a companion at Kīlauea and Kalihi (Kalihiwai, Kalihikai), Kaua'i. The account makes reference to "days of hunger," in which their hunger was appeased by eating the ripe flowers (or possibly fruit) of pandanus trees ("*hele aku a ai i ka pua pala o ka hala, hala ia la poloi o ka ua ilaila, e ka hoa, he hoa i ka nāhele lauhala loloa, mai Kīlauea a Kalihi la*"). The account emphasizes the great *lauhala* tracts and "the heavy and wind-blown rain, the ceaseless and general rain" (Fornander 1917:358-359). The "ae-kai" is said to be the name of a wind specific to the vicinity of Moku'ae'ae Island

and “the Wai-mio is the wind of Kīlauea” (Aikin 1988:7). The wind name for the Ko‘olau District of Kaua‘i between Moloa‘a and Kalihikai was the “Kiukainui” (Nakuina 1990:54).

Mahele Records

In the great land division, or Mahele, of 1848, Kīlauea Ahupua‘a was retained as Government Lands. In the records for Land Commission Awards, there are no entries for commoner land claims associated with Kīlauea Ahupua‘a.

While no commoner Land Commission Awards (LCAs) are listed in Kīlauea Ahupua‘a, eleven awards are clustered along the south side of Kīlauea Stream in adjacent Kahili Ahupua‘a. Most of these commoner Land Commission Awards lie in a low, wide terrace next to the stream, evidently well-watered and well suited for maintenance of taro *lo‘i*.

It is unknown why there were no commoner *kuleana* land holdings within Kīlauea Ahupua‘a at the time of the Mahele (1848) and the following Kuleana Act. There was, however, a pattern at the time of the division of lands in which the land overseers (*konohiki*) often tried to present their overlord *ali‘i* with undivided tracts of land, believing that to be in the best interests of their masters. Therefore, it could be that there was a systematic pattern to discourage commoner land claims in Kīlauea Ahupua‘a. It certainly seems odd that there was not a single claim in what should have been a well-populated *ahupua‘a*.

The land claims just south across Kīlauea Stream (universally referred to as “Kahili Stream” in the land records of claims within Kahili Ahupua‘a). While these are all outside the parcel (indeed outside of Kīlauea Ahupua‘a), they offer insight into such Hawaiian occupation as may have existed within Kīlauea Ahupua‘a and yet gone unrecorded in the Mahele-era land documents. Virtually all claims involve a house lot (understood as a permanent residence) and a few irrigated pond fields for taro cultivation (*lo‘i*). Several claims mention “*kula*,” which in this context probably refers both to pasturage and areas of dry land cultivation (with *wauke* specifically mentioned as a *kula* crop). Other specific cultigens mentioned are the bark-cloth plant *wauke*, *noni*, and orange trees.

Late 1800s

The History of Kīlauea Plantation

In January 1863, a former American whaler named Charles Titcomb purchased the entire *ahupua‘a* of Kīlauea amounting to approximately 3,016 acres from Kamehameha IV for \$2,500 (Grant 2896) (Figure 8). This land grant included the present parcel. By this time, Charles Titcomb was already a veteran of several enterprises at Koloa, Hanalei, and Kīlauea, Kaua‘i, including efforts to cultivate silkworms, coffee, tobacco, sugarcane, and cattle. He expanded his holdings to the west through further purchases within the next couple of years. The Kīlauea Plantation, begun in 1863 by Mr. Titcomb, became a sugar estate in 1877 when Captain John Ross and E. P. Adams, in partnership with Titcomb, purchased much of the land and leased another substantial tract (Aikin 1988:19). Titcomb and his family continued to be involved in the plantation. He, his Hawaiian wife, and two of his eight children are buried in a family plot near his former home behind the Kīlauea Elementary School.

The Kīlauea Plantation “was one of the smallest plantations in the Hawaiian Islands operating its own sugar mill” (Condé and Best 1973:159). In 1881, a railway was begun, and Princess Lydia Kamakaeha (Lili'uokalani) drove in the first spikes for the railroad bed. The plantation infrastructure grew over the next twenty years. An article from the San Francisco Chronicle describes the system:

Transportation system consists of 12 and a half miles of permanent track, five miles of portable track, 200 cane cars, six sugar cars and four locomotives. Kilauea is situated three miles from the landing at Kahili, with which it is connected by the railway system. Sugar is delivered to the steamers by means of a cable device at the rate of from 600 to 800 bags an hour. Mr. J. R. Meyers was the plantation manager. [*San Francisco Chronicle*, July 18, 1910, in Condé and Best 1973:152]

The plantation employed Chinese and Portuguese workers. In the 1880s, Kīlauea Sugar Company began major modification of water resources in the uplands with dams, reservoirs, ditches, and flumes (Joesting 1984). This may have had a major damaging effect on *lo'i kalo* downstream and possibly signaled the end of large-scale native agricultural practices in Kīlauea and vicinity. The Kīlauea Plantation Company started to be managed by C. Brewer and Company in 1910, and C. Brewer took over the controlling interest in 1948. The Kīlauea Plantation Company continued to operate until 1971.

The Monsarrat map of “Kaua'i Between the Kalihikai and Moloaa Streams” (1892) shows the plantation infrastructure in place at that time. Overlays indicate that the “Government Road” lies at approximately the same elevation as the older “Hanalei Road” and the present Kuhio Highway—well *mauka* of the parcel. The railroad, begun in 1881, and the Ko'olau Ditch are shown running from the mill at Kīlauea as far as the east side of East Waiakalua, terminating near the Government Road well *mauka* of the present parcel.

Part of this Kīlauea Plantation Company rail system passed by Kahili Quarry on the way to an off-loading station at Mokolea Point, where raw sugar was cabled down to transport ships (Site # 50-30-04-1811). Kahili Quarry was located on Kīlauea Bay at the mouth of Kīlauea Stream, about 500 m southeast of the parcel. Rock from the quarry was hauled by rail car and later by truck through the plantation fields, where it was used to reinforce the field roads (Fredericksen and Fredericksen 1989:8). The road to the landing (“Quarry Road”) ran approximately 400 m east of the present parcel in 1892.

In 1938, trucks were employed to transport harvested cane, and by 1942, the rail system was abandoned entirely (Condé and Best 1974). Sugar continued as a crop until 1971, when Kīlauea Sugar Co. was terminated (Custodial Chronology of the Sandy Saemann Property, Kīlauea, Kaua'i 1989).

A 1910 U.S. Geological Survey Map, Kīlauea Quadrangle shows the plantation infrastructure and other development in the vicinity of the parcel at that time. The road out to Mokolea Point ran along the south side of the parcel.

A 1930 map (Figure 9) of the Kīlauea Plantation (Condé and Best 1973:159) shows the plantation's sugar cane fields and associated infrastructure. The map indicates that sugar was not cultivated within the parcel, (sugar fields are labeled by number). The map also shows the plantation rail line heading from Kīlauea Town to the landing at Mokolea Point east of the present parcel.

According to the State Department of Health Environmental Health Environmental Geographic Information System Historic Sugarland Map View, no cane was ever grown on this property. It was well below Makana'ano Place (Figure 10).

Rice Production at Kīlauea Stream

Concurrent with the sugar plantation was the introduction of the first train. By the 1890s, much of the old *kalo*-growing areas of this portion of Kaua'i were now producing rice, farmed by Chinese immigrants. There were 55 acres of land in rice production in the Kīlauea-Kahili area in 1892 and eventually a rice mill on Kīlauea Stream (Char and Char 1979). While it is understood that this rice mill was begun by Chinese, it clearly went into Japanese management. The mill is known to have been on the stream terrace east of Kīlauea Stream. Rice and vegetable cultivation is also indicated along the banks of Kīlauea Stream circa 1925.

PREVIOUS ARCHAEOLOGICAL RESEARCH

Few archaeological studies of land near the boundaries of the subject property have been completed. Archaeological studies within and in the vicinity of the parcel are summarized in below. More detailed discussion of some of the more pertinent studies is included.

Thrum (1906) Heiau Study

Thomas Thrum compiled the first systematic listing of Kaua'i Island archaeological sites in his study of "Heiaus and Heiau Sites Throughout the Hawai'i Islands" (Thrum 1906:36-44). In the vicinity, he briefly described four *heiau*: Pailio at central Kīlauea, Kapinao and Kapuohau'e at Waiakalua, and Kipapa at Kahili, as follows:

- Pailio—Central Kīlauea: a round heiau of about 100 ft diameter; class unknown; site covered in cane field
- Kapinao—Waiakalua-east: a large heiau of about 200 by 400 ft, high walled and stone paved; still in existence; of po'okanaka class
- Kapuohau'e—Waiakalua-uka: a small, round heiau, paved, with high walls; of husbandry class; still standing
- Kipapa—Kahili: a large heiau of some 300 by over 100 ft in size, paved, with walls five feet high; standing in cane field in partial ruin

Bennett (1931) Survey

During his 1928/1929 landmark survey of the island of Kaua'i, Wendell Clark Bennett identified five sites (Sites 129 to 133) within the Ko'olau District of Kaua'i between Pila'a to the east and Kalihiwai to the west including: Site 129, Kapinao Heiau, in Waiakalua Valley; Site 130, taro terraces, in East Waiakalua and West Waiakalua valleys; and Site 131, house sites, in East Waiakalua and West Waiakalua Valleys and on the ridge between. Also, in Kīlauea, Bennett described two *heiau* sites: Site 132, Kipapa Heiau and Site 133, Pailio Heiau. Bennett described Site 132, Kipapa Heiau, as follows:

Site 132. Kipapa heiau, on the end of the first bluff east of Kīlauea River in Kahili section. Described by Thrum as "A large heiau of some 300 by over 100 feet in size, paved, walls five feet high, standing in cane field in partial ruins." Since that time the stones have been removed. [Bennett 1931:133]

U.S. Geological Survey maps indicate Kipapa Heiau as located on the east side of the mouth of Kīlauea Stream, just 200 m or so northeast (outside) of the parcel. Shideler et al. (2008:39) reports that a brief effort was expended in the course of that fieldwork to find any evidence of Kipapa Heiau, but no trace was found.

Bennett described Site 133, Pailio Heiau as follows:

Site 133. Pailio heiau, in the canefields shoreward of Kīlauea. The site does not have a view of the river valley. Thrum says that it was, "A round heiau of about 100 feet diameter: class unknown. Site covered in cane field." Nothing remains of the heiau to-day. [Bennett 1931:133]

The location is uncertain (Bennett didn't find any trace), but the description suggests Pailio Heiau was not close to the present parcel.

Handy and Handy (1972) Native Planter Observations

Handy and Handy (1972) carried out a summary study of traditional Hawaiian agriculture and the life, lore, and environment of native planters throughout the Hawaiian Islands and noted the following at Kīlauea and Kahili:

Kīlauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping kula lands above Kīlauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kīlauea and those on the south side to the small ahupua'a named Kahili. A mile upstream is a small terraced area, but beyond this there were no terraces, for the main stream flows in a narrow gulch, and so do other side streams which flow into the Kīlauea River. Hawaiians evidently never developed lo'i here because the neighboring kula land is too high above the streams for irrigation. This kula would have been excellent sweet-potato land. On

the whole, Kīlauea, despite a sizable river flowing through it, was a relatively small producer of taro because of the nature of its hinterland.

Kahili is, as indicated above, part of the complex that includes Kalihiwai, Kalihikai and Kīlauea. The three streams empty into the Kīlauea River, which forms the boundary between Kīlauea and Kalihi below the falls of the river. There are terraces on the south side of Kīlauea River watered by two of Kahili's streams. This is doubtless why this area was part of Kahili rather than of Kīlauea. Only one stream had terraces back from the river. Here to the kula land was good for sweet-potato planting. [Handy and Handy 1972:421]

At least two archaeological surveys have been conducted in and adjacent to areas proposed as extensions to the Kīlauea Point National Wildlife Refuge.

Kikuchi (1987) Kīlauea Point National Wildlife Refuge Survey

In 1987, William K. Kikuchi surveyed the grounds of the Kīlauea Point National Wildlife Refuge and areas of proposed extension. Considering the significance to native Hawaiians of seabird nesting colonies found within the refuge, Kikuchi extended the limits of his survey to search for associated cultural features or material. Surface remains of historic structures associated with Kīlauea Lighthouse are described, and limited subsurface testing was performed, but Kikuchi found no evidence of remains related to native Hawaiian culture.

Fredericksen and Fredericksen (1989) Kīlauea Point National Wildlife Refuge Survey

Xamanek Researches (Fredericksen and Fredericksen 1989) surveyed extensions to the wildlife refuge, including Crater Hill and Mokolea Point (parcel 19 of approximately 38 acres). Land use and history of tenure is documented well, followed by detailed descriptions of historic structural remains related to the transport and loading of sugar at Mokolea Point, a World War II-era radar installation on Crater Hill, and Kīlauea Lighthouse. Although archaeological evidence of native Hawaiian exploitation of seabird colonies was one object of the survey, no such remains were observed. The findings of this study that included the present parcel are discussed in greater detail below.

In 1988, Xamanek undertook an archaeological and historical survey of two TMK parcels: TMK 5-2-004:009, the Crater Hill 96-acre parcel and TMK 5-2-005:019, the 38-acre Mokolea Point parcel.

The ruins of a sugar-loading complex (SIHP # 50-30-4-1861) on Mokolea point are described:

Mokolea point provided immediate, visible features of historic and archaeological interest in the form of the ruins of the sugar-loading complex. Foundation stones remain in situ, outlining the perimeters of the complex, and oxidized iron and steel remnants of the cable-loading equipment are apparent throughout the site area. One of the foundation structures was made of brick some of which were

imprinted with the letters "CALAEN." The track bed for the narrow gauge railroad engine and hauling cars is visible. It was strewn with what appears to be anthracite coal. Numerous pieces of pulley wheels, sling cable, levers, bolts and nuts, a boiler box, a wire-loading carriage, intermixed with recent human litter are scattered over the site area. While considerably oxidized, the boiler box and a wire-loading carriage are preservable and restorable. The cliff-side concrete base for one of the support stanchions guiding the cable to off-shore-lying vessels is also still present and in good condition. According to Ranger Moriarty, at least one of the mooring anchors is still in place on the bottom of Kilauea Bay. . . .

These off-shore moorings usually consisted of 4 anchors placed in a pattern forming a rectangle. . . . Mokolea Point with its sugar-loading complex ruins presents an historically and archaeologically unique site in the State of Hawaii on U.S. Government protected land. [Fredericksen and Fredericksen 1989:16-17]

A "World War II secret radar installation" (SIHP # 50-30-4-1810) is also described:

This site represents an impressive complex to the observer. Two ventilation shafts terminate near the summit of Crater Hill ridge. The present building which houses radio equipment is built on the original foundation used during World War II. Some 50 or more feet below the vent structures lies the entrance to a tunnel which was part of the radar complex. The tunnel is approximately 130 feet in length, running back into the hillside at about 55 degrees magnetic. The chamber below the vent is about 15 to 20 feet wide and 45 feet long, and the "chimney" under the vent is about 30 to 35 feet high. A considerable quantity of material in the form of cast-off items appears to have been thrown down the vent, and has collected on the chamber floor below. . . . The tunnel was used as a storage area for explosives by Kilauea Plantation after the war. The entry tunnel measures about 8 feet wide and 8 feet high. It had originally been shored up with wooden beams, and the wall surface had been plastered. Originally, the entryway had been secured by a metal door which presently lies to one side of the tunnel. At some time in the past, a fire was built in the entry way which burned out many of the wooden beams near the entrance. . . .

About 20 feet to the west of the tunnel entrance lie the remains of the former radar complex generator enclosure. The chamber measures about 8 by 12 feet, with the remnants of two mounting platforms for generators still identifiable. At the rear of the enclosure (the north wall) there are two ventilation shafts, or perhaps, more appropriately, exhaust shafts. Both are rectangular in shape and measure ca. 2 feet square. Presently, both of them are filled with detritus and seem to be totally sealed-off from their outlet near the summit of the ridge. Whether or not this is the second tunnel spoken of by Mr. Sarkis is unclear. [Fredericksen and Fredericksen 1989: 19]

The 1988 Xamanek study identified “no Hawaiian artifacts from either the historic or prehistoric periods . . . nor were there any indications of features or structures from these eras” (Fredericksen and Fredericksen 1989:19).

Toenjes and Hammatt (1990) Study of 94 Acres at Kīlauea

Cultural Surveys Hawai‘i, Inc. (CSH) conducted a survey for the development of the expansion of the town. Two locations suggesting previous traditional Hawaiian activity were found and tested for subsurface deposits. Located in the southwest corner of the 94-acre parcel and was under papaya cultivation where a water-rounded cobble and a small fragment of coral, an examination was made of the soil between every other row of trees in the grove. Indications of archaeological deposits were sparse and included two pieces of coral, one fragment of unidentified marine shell, and several possible basalt flakes dispersed through the grove. The area of the papaya grove and scatter covered approximately 3,800 m² (41,000 ft²).

The other location was in the central portion of the 94-acre parcel in an extensive former sugar cane field, then lying fallow. Much of the ground surface was clearly visible, with scattered indications of recent mechanized disturbance. The only suggestion of previous cultural activity consisted of sparsely scattered coral across an area of about 7,500 square meters (80,700 square ft.) No bone or shell material was observed in association or anywhere else in the project area. Several possible flakes of basalt and one basalt core or possible adze blank were observed dispersed across the surface of the field apart from the coral scatter.

Subsurface testing at both locations, as well as in the area from which a basalt core was collected was conducted. Excavation exposed no culturally modified lithics. The presence of coral and coral sand in cane fields was noted as common, having been historically imported for the purpose of “liming” the soil. Lacking other archaeological components of Hawaiian culture, e.g. bone and shell midden, lithic debris or modified coral, the significance of these scatters was regarded as minimal. Examination of all other fields of the property indicated no archaeological remains of informational significance were present.

Shideler et al. (2007) and (2008), and Hammatt and Shideler (2010) Studies for Kīlauea Falls Ranch

CSH carried out two studies for Kīlauea Falls Ranch on the west side of Kīlauea Stream (also known as Kahili Stream). A total of 62 features were identified within a total of five sites in a proposed agro-forestry area. Four of these five sites (SIHP # 50-30-04-579, -580, -582 and -583) are primarily or exclusively agricultural terraces. The only exception at these four sites is SIHP # 50-30-04-580, Features L and MM, which are interpreted as temporary habitation features related to the agricultural terraces. One site (SIHP # 50-30-04-581) was understood as primarily post-Contact and either a permanent habitation or work area. SIHP # 50-30-04-580, which consisted of a dense cluster of 55 archaeological features including 53 soil-retaining terraces and two possible habitation areas was one of the largest sites found in the Ranch property.

The inventory survey (Shideler et al. 2008:69) concluded that the approximately 1,500–1,800 mm (60–70 in) of annual rainfall within that project area made cultivation possible without irrigation. While it was concluded that there may well have been pre-Contact ponded field (*lo'i*) taro cultivation along the Kīlauea Stream flood plain, it was suggested that the vagaries of hurricane, tsunami, and flood may have made such planting down by the stream precarious. It was suggested that cultivation up on the steep slope may have been more secure.

The evidence from the Mahele records indicates that there was little or no pre-Contact permanent habitation within the Kīlauea Falls Ranch project area per se, although there was a community on the southeast side of the stream mouth from the 1840s well into the twentieth century.

Sroat et al. (2012) Study for the 75-Acre Kīlauea Agricultural Park Project

CSH completed an archaeological inventory survey for the Kīlauea Agricultural Park Project, located at the juncture of Kīlauea Lighthouse Road and Quarry Road. A total of four historic properties were identified within the project area. SIHP # 50-30-04-2123 consisted of a stacked cobble and boulder terrace (one to four courses) comprised of stone construction on two corners connected by a linear ledge of soil. It appears to have functioned as a historic habitation terrace. SIHP # -2124 likely is a plantation-era structure that consists of two concrete wall structures, including one linear form and one U-shaped form with concrete flooring. SIHP # -2125 is a stacked cobble and boulder agricultural terrace (one to four courses), and SIHP # -2126 is a remnant drainage ditch.

All four historic properties were located within the tributary gulch of the Kīlauea Stream Valley in the southeastern portion of the project area. No sites were identified within the level tablelands previously utilized for sugarcane cultivation.

Hammatt and Shidler (2014) Study of USFWS Fencing Project

At the request of Pacific Rim Conservation, CSH conducted an archaeological assessment for the Kīlauea Point National Wildlife Refuge Fencing Project, Kīlauea Ahupua'a, Hanalei District, Island of Kaua'i, TMK: (4) 5-2-004: 103 por. The Kīlauea Point National Wildlife Refuge is located at the northernmost tip of the Island of Kaua'i between Kīlauea Point and Mokolea Point. The fencing project area is just south of Makapili Rock, approximately 1.5 km northeast of Kīlauea Town and 200 m east of Crater Hill. The project area consists of a 6.67 acre parcel of sloping land between 140 and 250 ft AMSL, abutting precipitous cs on the northeastern end.

Proposed development within the project area consists of the installation of a fence to protect the habitat of ground nesting birds within the National Wildlife Refuge. For the fence construction, ground disturbing activities will include removing all vegetation within a 4 m-wide path along the fence line and smoothing that area with minor grading. To secure the fence, 30 cm-wide post holes will be augured in 1 meter deep every 3 to 4 meters. After fence construction,

the refuge staff removed the non-native vegetation within the fenced area (the majority is non-native), which involved minimal ground disturbance.

Due to the steep terrain and dense vegetation, portions of the project area were not accessible. Despite these constraints, CSH archaeologists were able to inspect the majority of the 6.67-acre project area for surface cultural resources. No surface cultural resources were observed during the systematic survey

McMahon (2019) Study for Barker Residence, Kīlauea, Seacliff Plantation

EAL conducted a field inspection for Paul Barker for his single-family residence grading permit. This parcel is also located at Makana'ano Place (lot 15) at the opposite end of the street toward Kīlauea River. The parcel also abutted the Kīlauea Wildlife Refuge on the backside. It was also mowed in pasture grass. The project area comprises a 0.9949-acre portion of the 5.110-acre property. A 100% field inspection of the parcel was conducted no historic properties were found during this field inspection.

FIELD INSPECTION

Fieldwork involved systematic pedestrian survey of the entire parcel in general sweeps by archaeologist N. McMahon. All aspects of field work were photographed with a digital camera and copies of these photographs have been archived on the EAL computer network. There are two densely vegetated portions of the parcel (Figure). Only one of these two areas were not surveyed due to dense vegetation of densely covered with exotic grasses, ironwood (*Cassuarina equisetifolia*), Christmasberry (*Schinus terebinthifolius*), koa haole (*Leucaena leucocephala*), lantana (*Lantana camara*), and Java plum (*Syzygium cumini*). So approximately 90% of the property was pedestrian surveyed. There is about 10% of the land that will not be cleared nor build on that was not surveyed. Figure 11 shows the locations that were not pedestrian surveyed due to dense vegetation mostly and some steep and eroded terrain. The owner indicating these densely vegetated areas were not within the existing building setback area anyway and they would probably leave them as is.

The archaeological field inspection was conducted on Saturday, September 25, 2021. Archaeologist McMahon met with the owners to go over their building plans and where they would be allowed to build and not built. The owners wanted one of the densely vegetated area to be inspected because that was partially in the existing building setback line. This area is shown the topo map (Figure 4, 5, and 11). There are already existing utilities to all the lots in the Seacliff Plantation subdivision including entrance driveway, water, electric and drainage. The owners did state that there would be a new driveway entrance built for their house across the drainage culvert fronting the property (Figure 5 shows this new entrance).

Many of the lots in Seacliff Plantation have been already built on. The area to be developed with in the parcel has been cleared of most tree vegetation for some time and has guinea grass which was shredded recently. The parcel has a fence along the US Fish and Wildlife Service property

side (east). Visibility of the surface was good to excellent. During the field inspection a plow line was noticed along the allowed existing building setback line. In some of the aerial photos in this report that line can be seen. It appears to be modernly made and very coincidental that it kind of matches the existing building setback line.

Within the existing building setback line is part of the dense vegetation. It means in a V-shape within this area. The north side of this dense vegetation is appeared to be cut in the terrain where is level in many places ironwood lined. The width and flatness made this appear to be a road which looks like it led to the WWII radar station and tunnels up Crater Hill (Nihoku). Near the top of this property on this north road there is a huge erosion crater that wiped out the road.

Walking around the western side of the dense vegetation area was a old, dumped motor on the remnant flats of what also appears to be a road. Walking on this area about halfway in the road splits in two and appears to have many erosion issues even though the grade for these two roads is less steep that the northern road. The owners knew about these features and were told many ditches not roads but no one could confirm this. All the maps and research indicate that this area was not in cultivation (Figure 10), and it seems more likely these are remnant road for either the construction of the WWII structures or to bring supplies and manpower. Unfortunately, if they were built around 1946, there is nothing significant about their design, in fact maybe the reason there are a few roads is there were being eroded out by heavy rains and heavy winds. New routes had to be made. Figure 12 shows the location of the remnant roads and the plow mound. The pedestrian survey of the parcel confirmed that there are no surface archaeological cultural resources within the existing building setback area.

The WWII structure (SIHP 50-30-04-1810) is located on the U.S. Fish and Wildlife Service lands is not visible from this parcel.

Based on traditional and historic accounts, the project area is located within a portion of Kīlauea Ahupua'a that is not well documented. In the Mahele of 1848, Kīlauea Ahupua'a was retained as Government Lands and there were no entries for commoner land claims. Eleven of the LCA awards in adjacent Kahili, however, provide a picture of what settlement near the parcel might have been like at the time. These 11 LCA awards in Kahili are clustered along the south side of Kīlauea Stream, lying in a low, wide terrace next to the stream, which is evidently well watered and well suited for maintenance of taro *lo'i*. Virtually all claims involve a house lot, a few include *lo'i*, and several claims mention "*kula*" (pasture) with *wauke* (paper mulberry), *noni* (Indian mulberry), and orange trees being cultivated.

Lands adjacent to the project area were cultivated with sugar cane in historic times by the Kīlauea Sugar Company. The sugar company modified water resources in the uplands with dams, reservoirs, ditches, and flumes (Joesting 1984), which may have damaged and ended large-scale native agricultural practices in Kīlauea and its vicinity. The Kīlauea Sugar Company ended its operations in 1971. According to background research and historic maps, the parcel might have been utilized as pastureland during the twentieth century. It is possible that any remnant cultural resources were either removed or destroyed by the Kīlauea Sugar Company and/or livestock.

No cultural resources nor historic properties were observed or identified within the survey area for this field inspection. Therefore, EAL recommends no further archaeological work for the proposed project. Based on background research and the current study, it is unlikely that surface cultural resources associated with pre- and post-Contact land use are present within the parcel. In the unlikely event that previously unidentified cultural resources are encountered by project construction, the project proponents should immediately stop work in the vicinity and contact SHPD/DLNR. There were no historic properties identified on the parcel. There will be no impact to nearby historic properties. Recommendation: "No historic properties affected."

Figure 13 shows the aerial of the parcel and the photo location map indicating the photo numbers. Photos with directional information follow.

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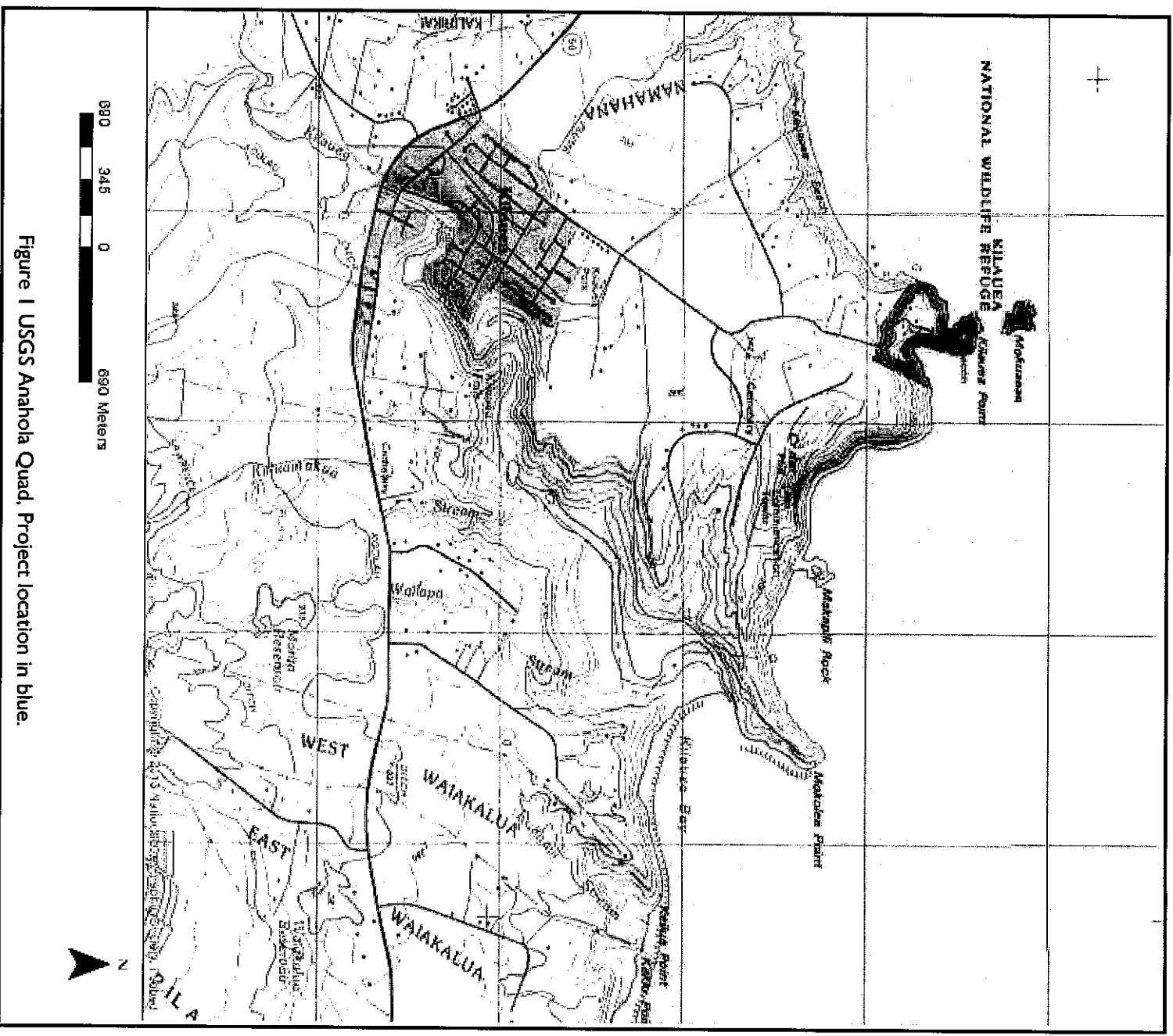
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Makana'ano Pl., Kīlauea



Logo of the National Society for the Prevention of Blindness.

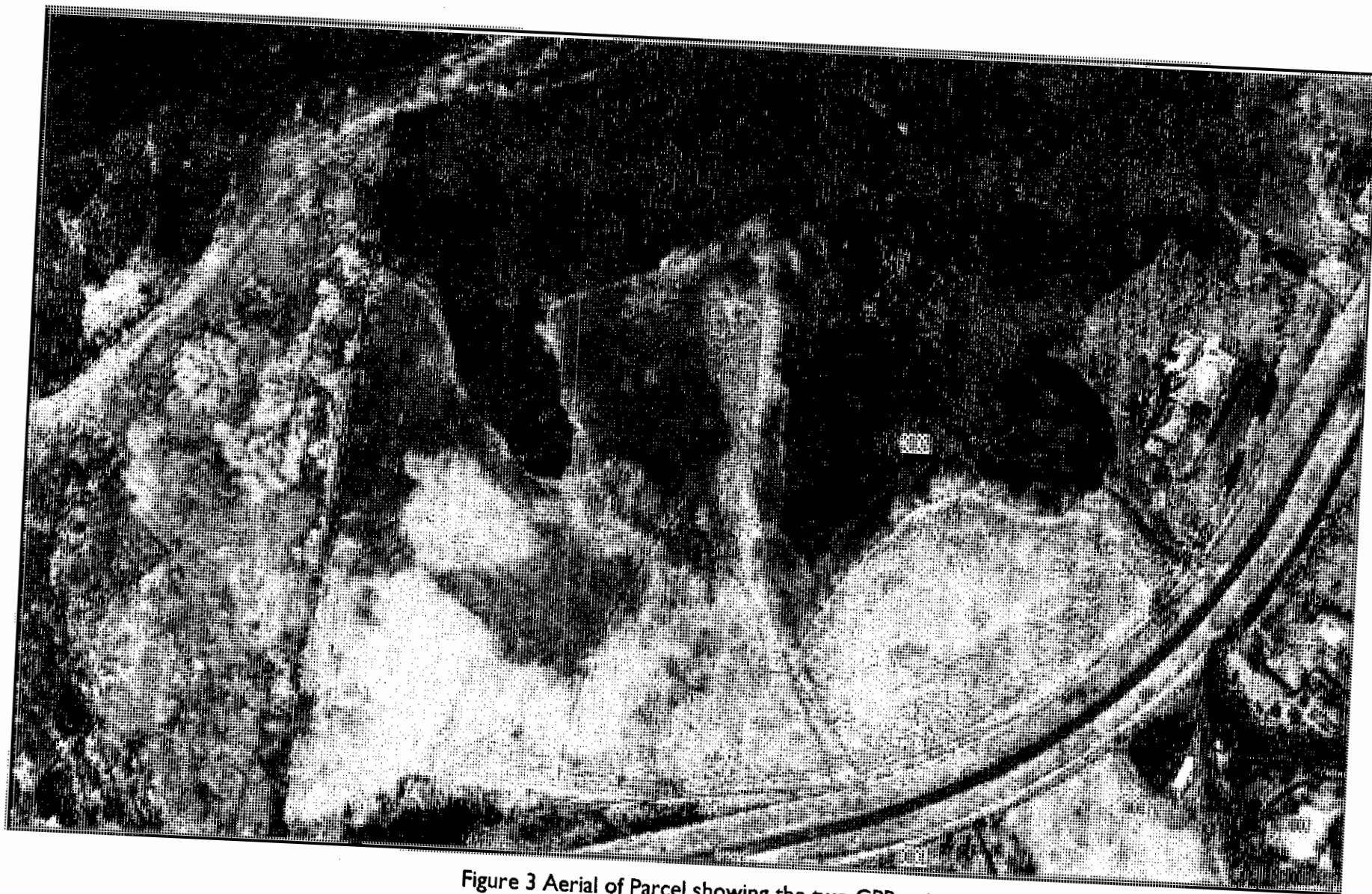


Figure 3 Aerial of Parcel showing the two CPR units

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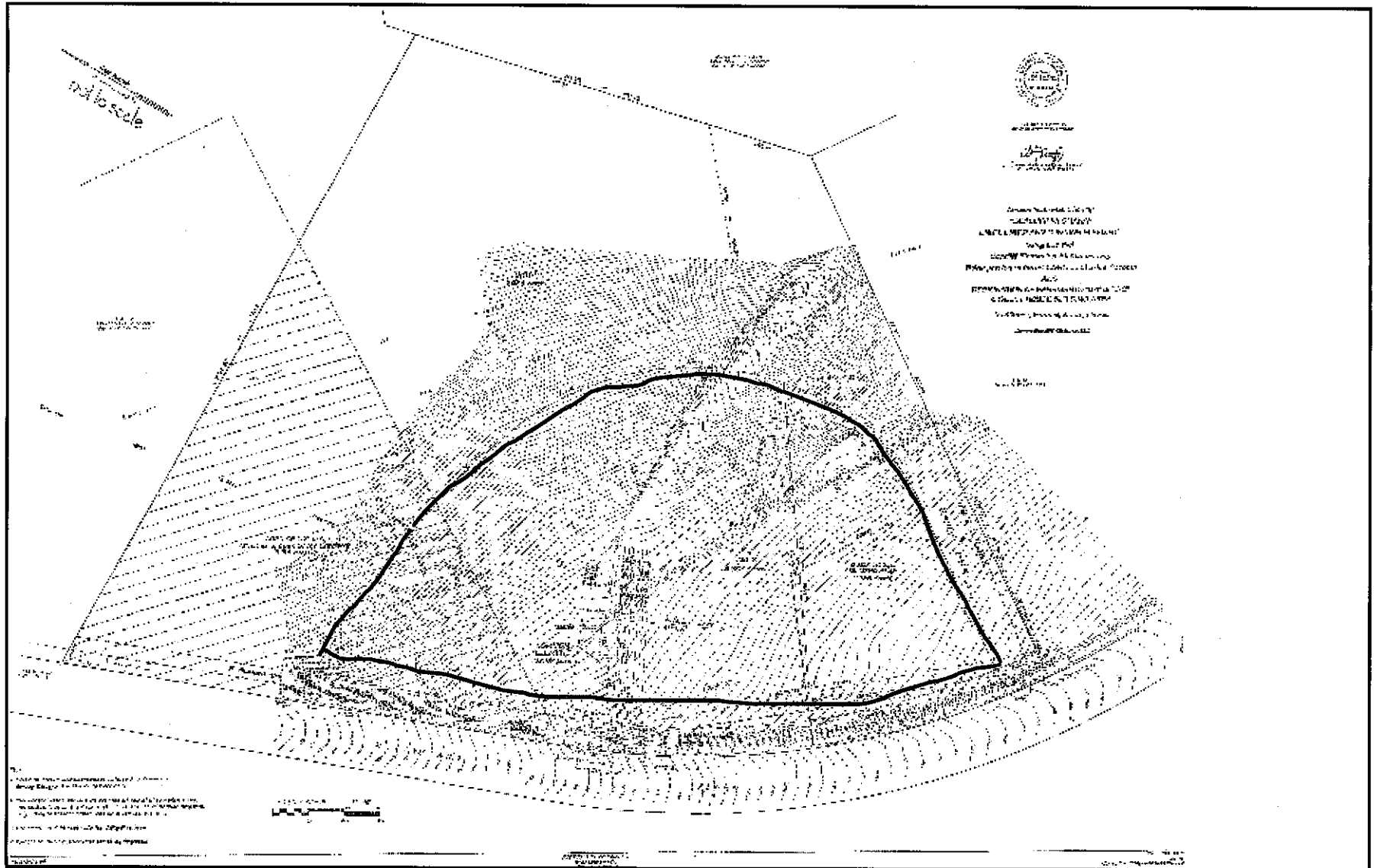


Figure 4 Topo Showing Existing Building Setback line within the Red Outlined Area

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Makana'ano Pl., Kilauea

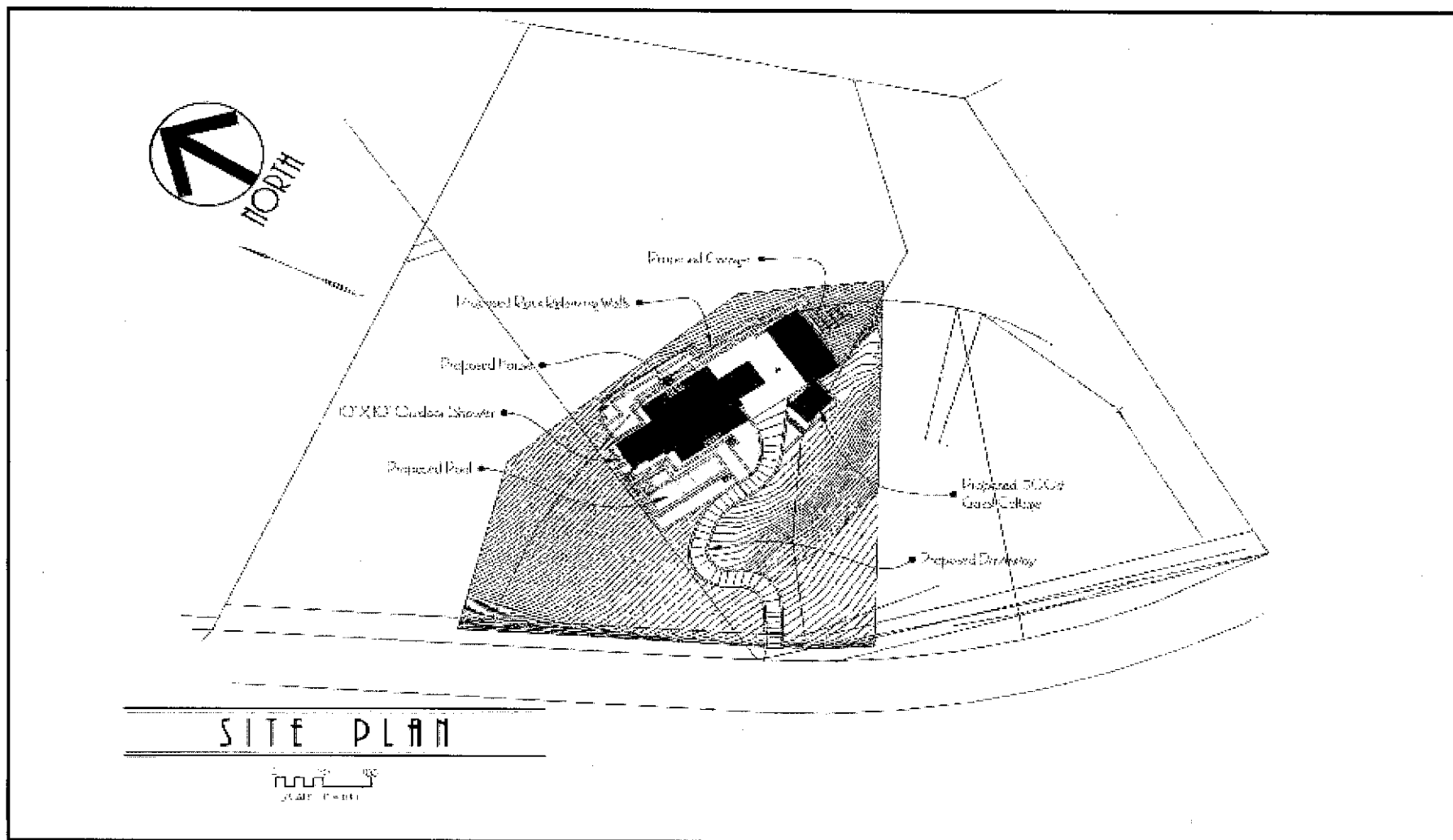


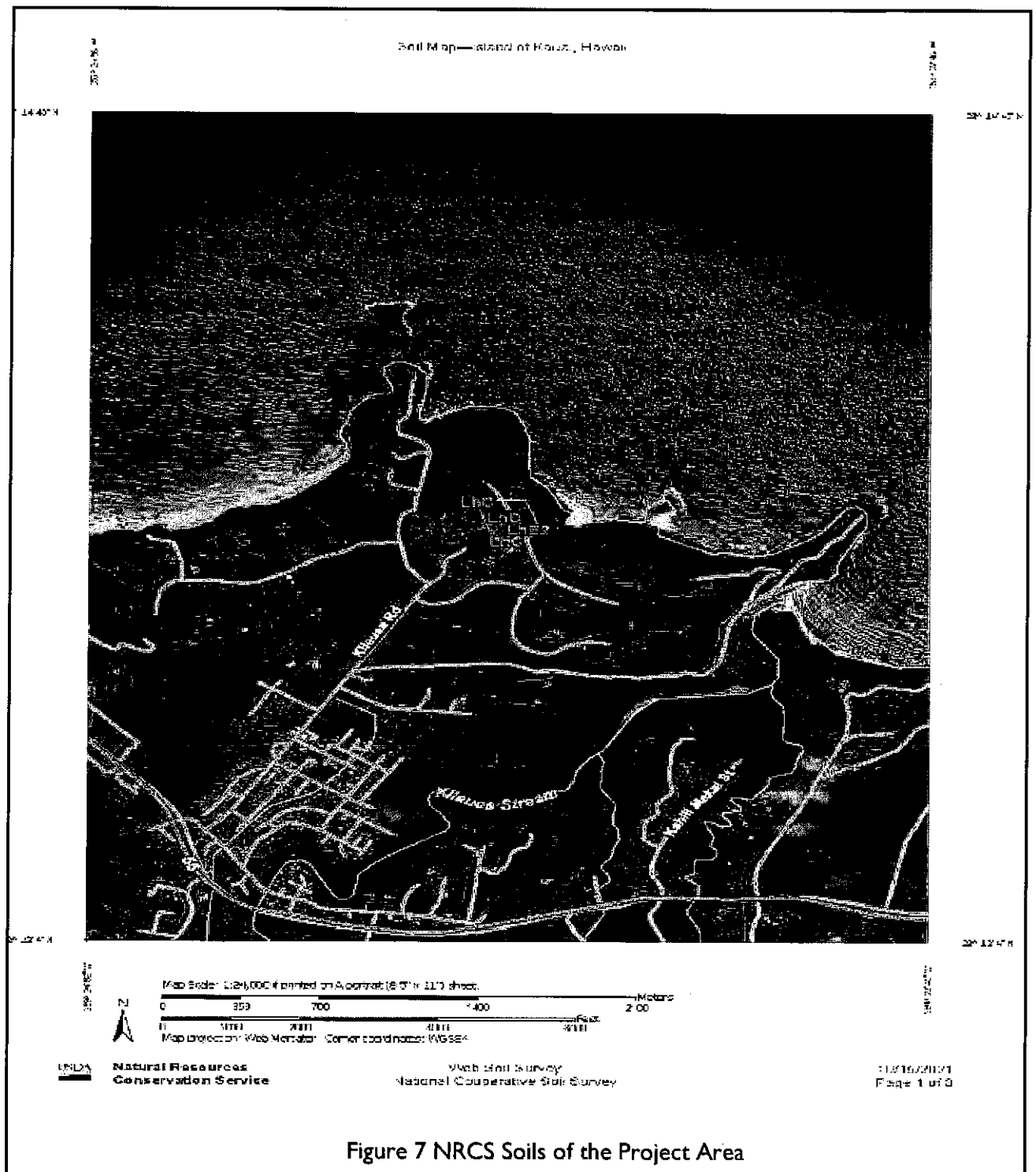
Figure 5 Site Plan of possible location of Single-Family Residence

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Figure 6 Proposed Location of Development

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Makana'ano Pl.,



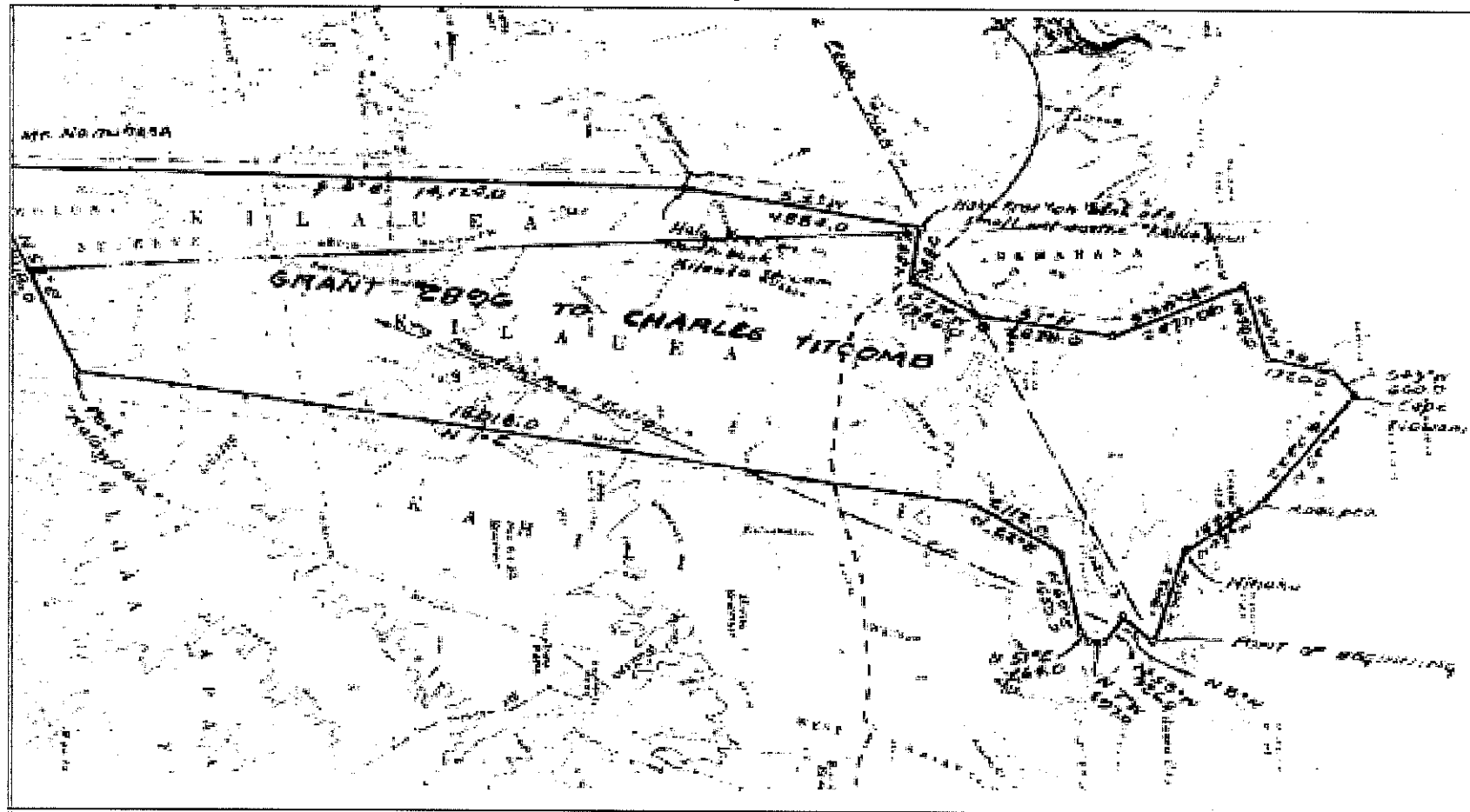


Figure 8 Map of Grant 2896 Kilauea Ahupuaa Sold to Charles Titcomb from Aikin 1988:18.

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Makana'ano Pl., Kilauea

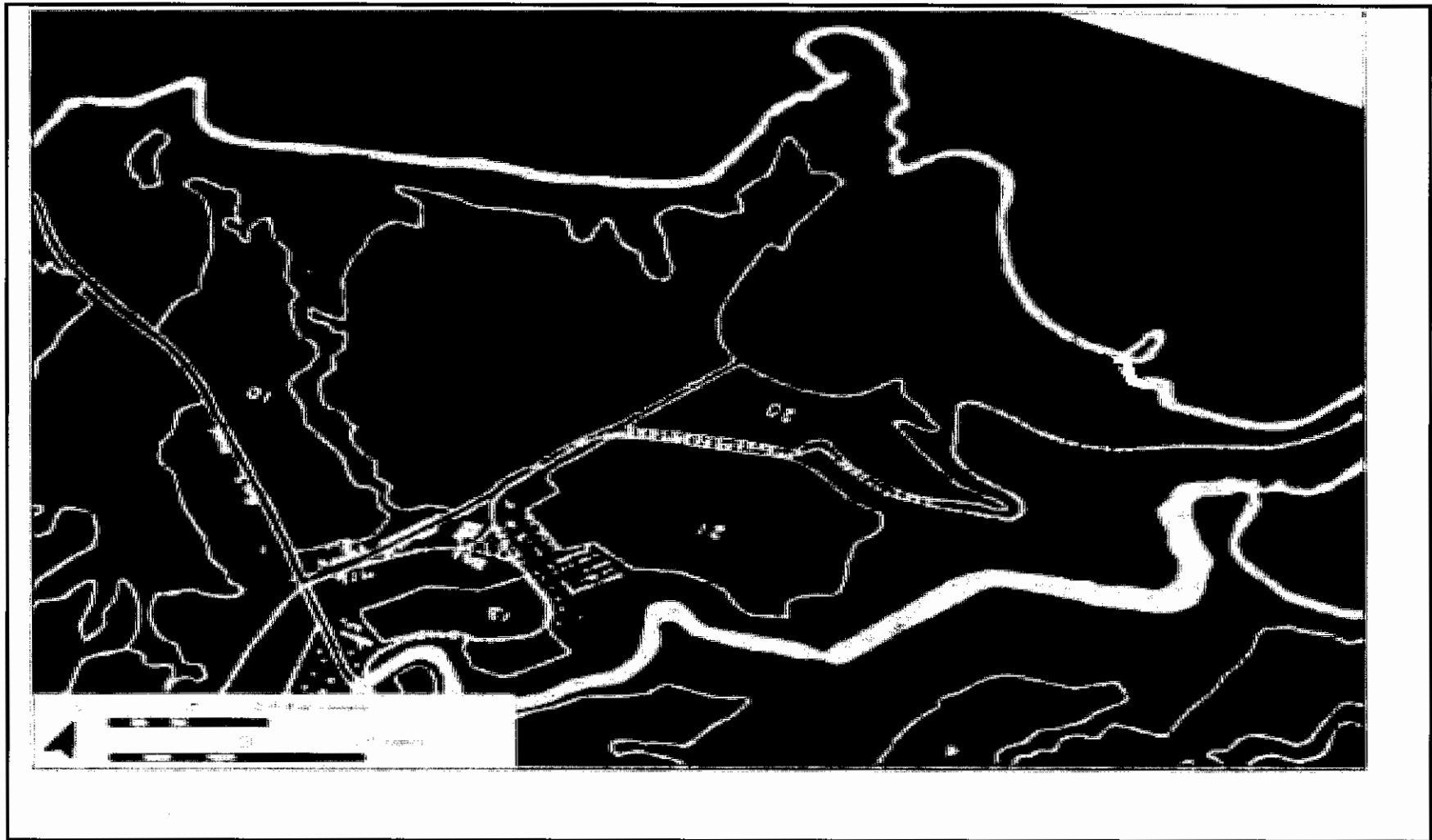


Figure 9 1930 Map of Kilauea Sugar Company. Note railraod down to Mokolea Point but otherwise no infrastruture in or near the project area from Condé and Best 1973:159.

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 Makana and P.I., Kilauea

Figure 10 Historic Sugarland Map View from the State Department of Health, Environmental GIS showing former cane lands.

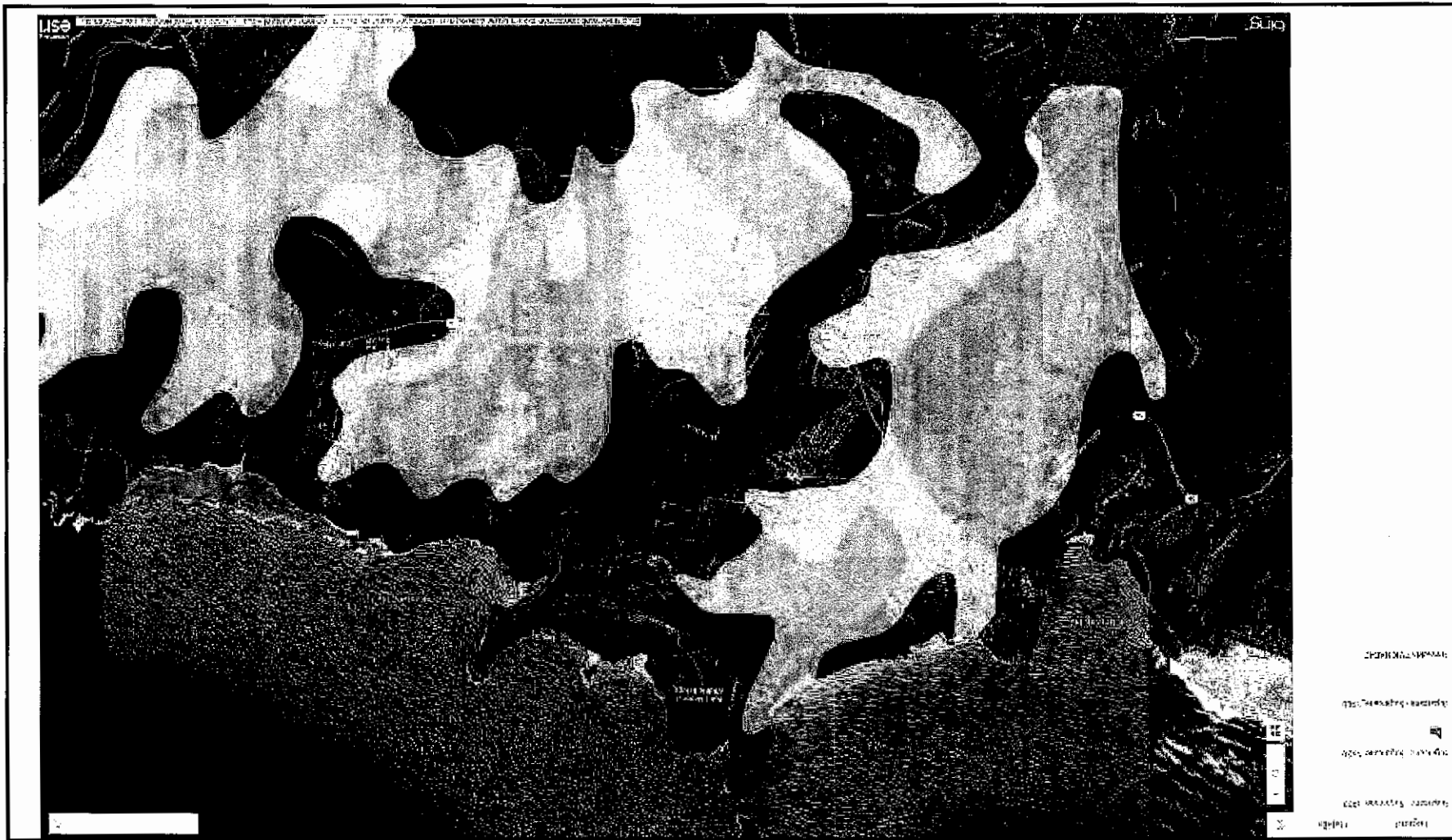




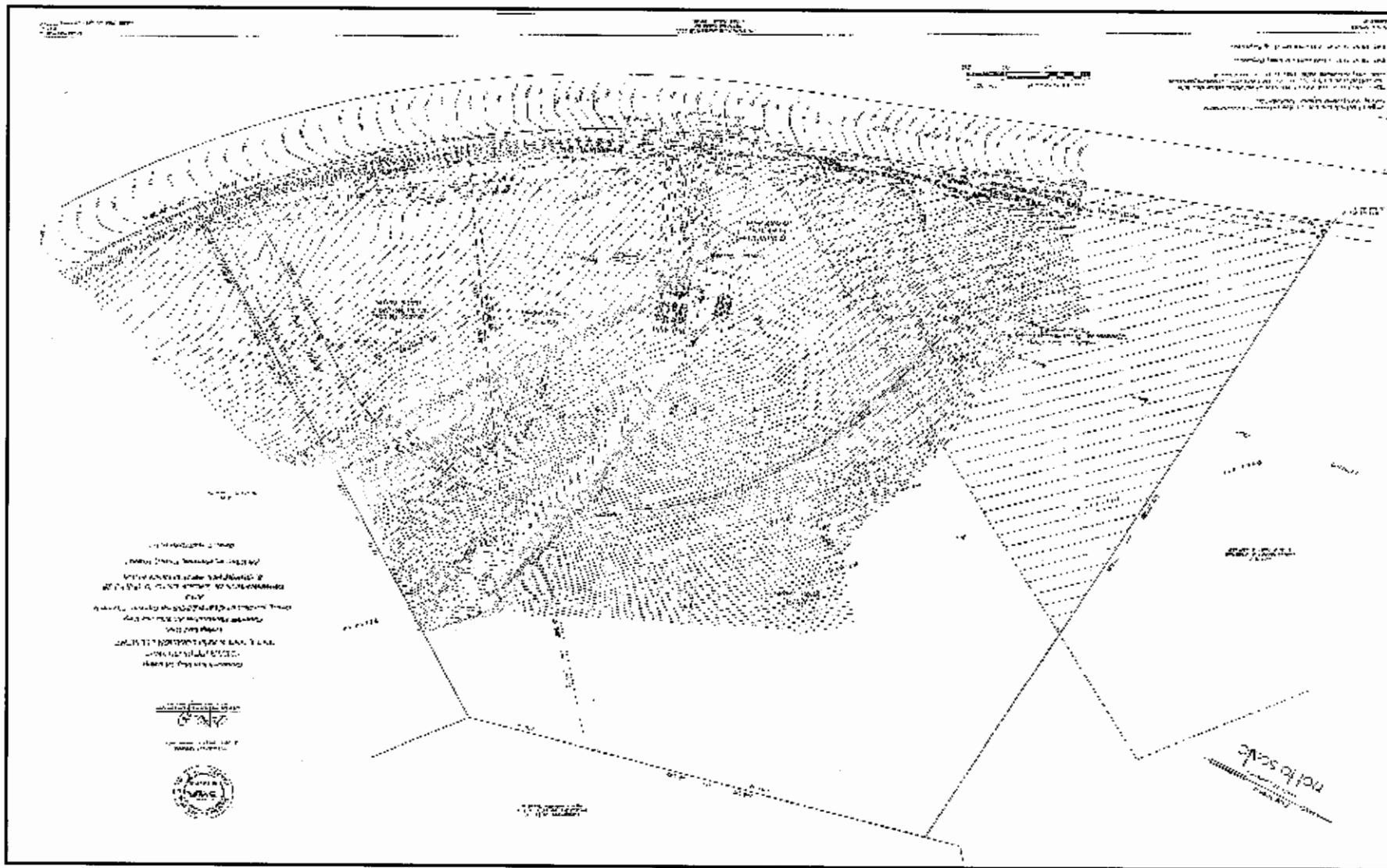
Figure 1 | Location of unsurveyed areas in rainbow lines. No development will be in these areas.

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 Makana'ano PL, Kilauea



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Figure 12 Location of remnant dirt road that eroded out [yellow] plow mound which matches the existing building setback line.



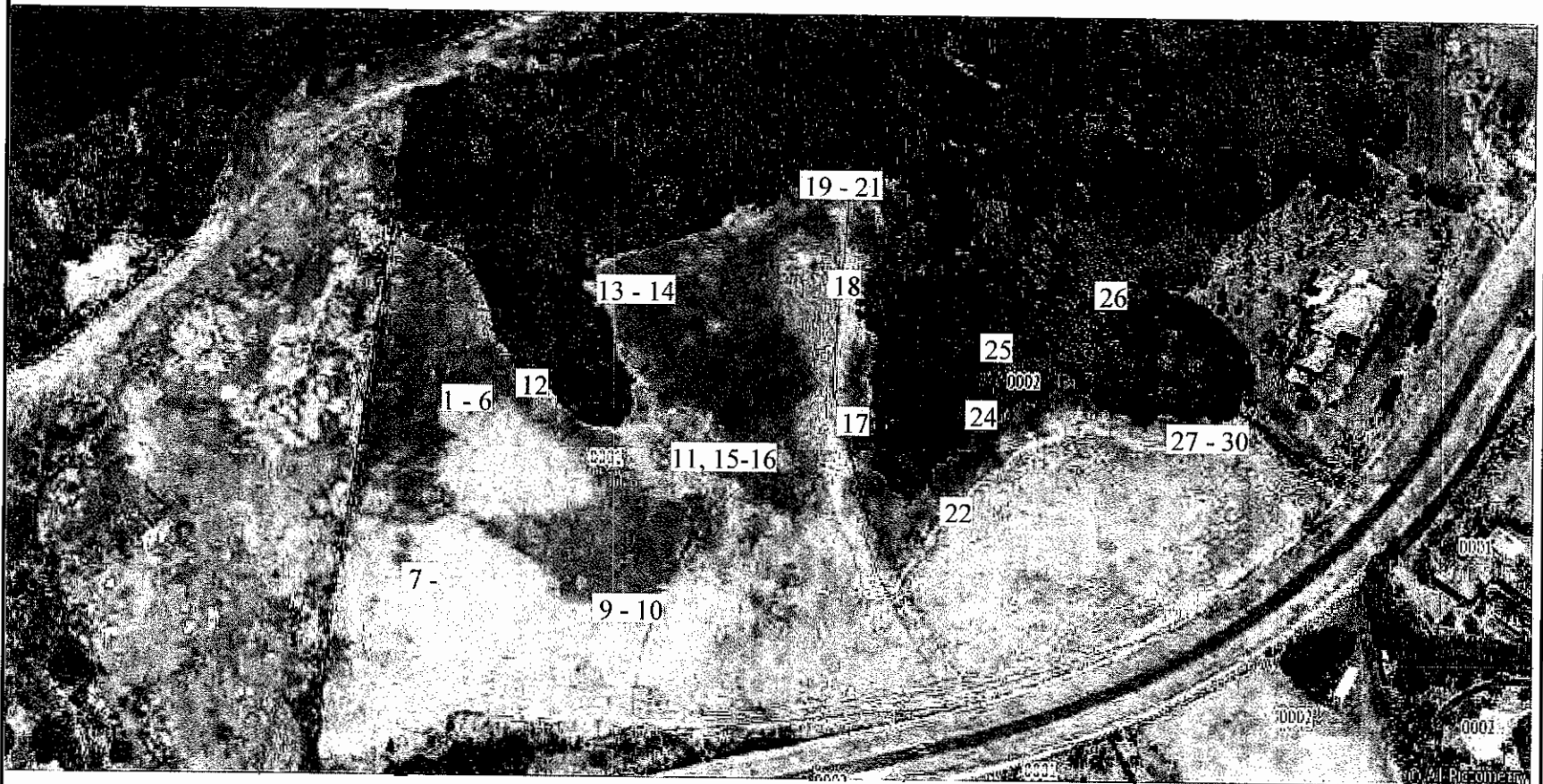


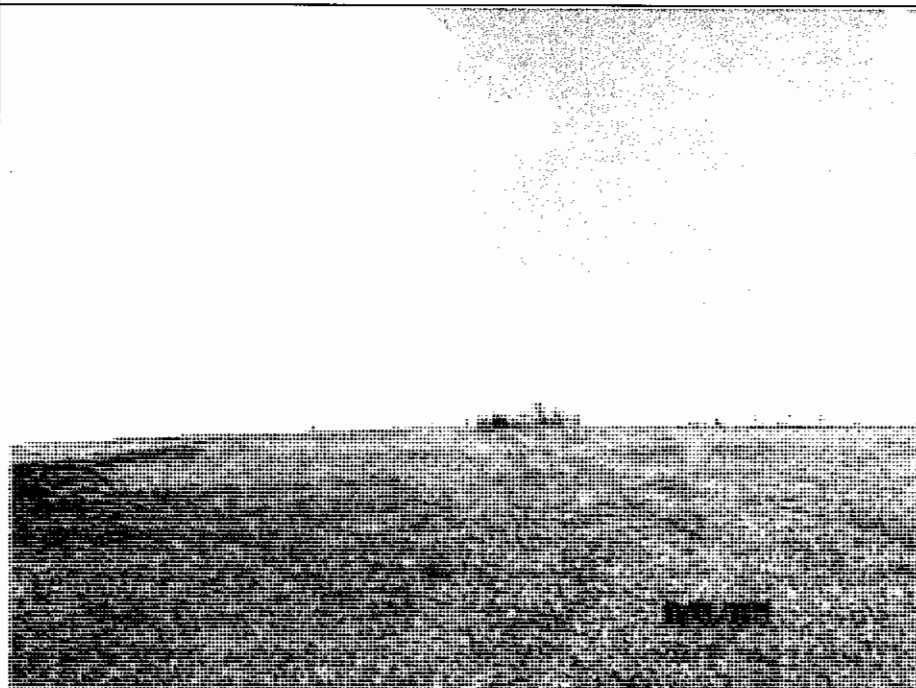
Figure 13 Aerial Photo Location Map

Arrow indicates the approximate location in which the photograph were taken

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1. Subject Property looking northeast. Fence is the Refuge boundary and to the right [red arrow] is the thick vegetation.



2. Looking north at Refuge boundary.

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Makana'ano Pl.,





3. Looking northwest toward Haena. Refuge property to the right.

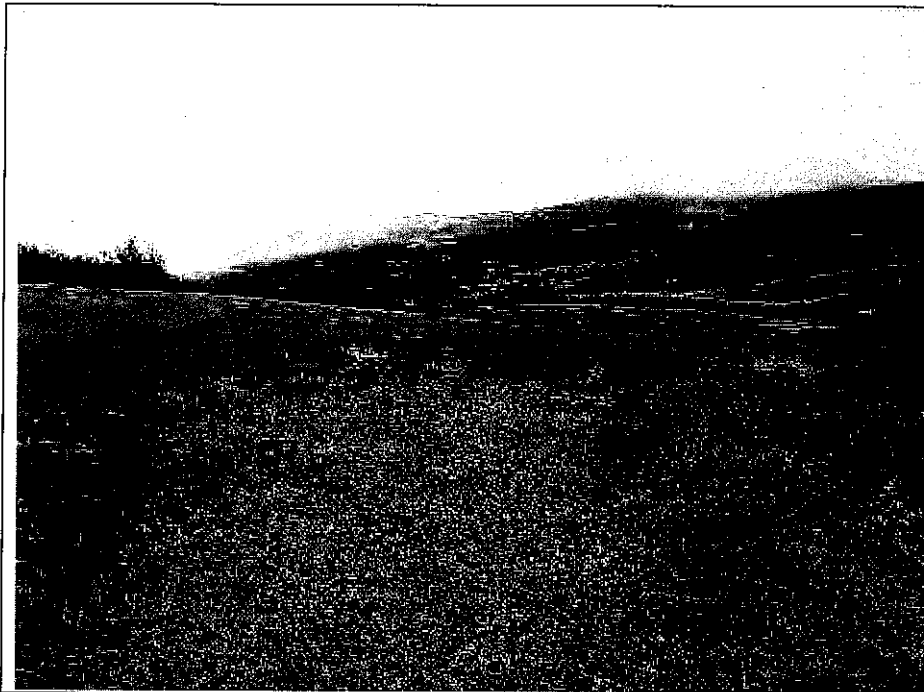


4. Looking east
Refuge fence and thick vegetated area ahead.

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	<p>5. Looking west from top of property to Makana'ano Place.</p>
	<p>6. Looking northwest toward the bottom of the property</p>

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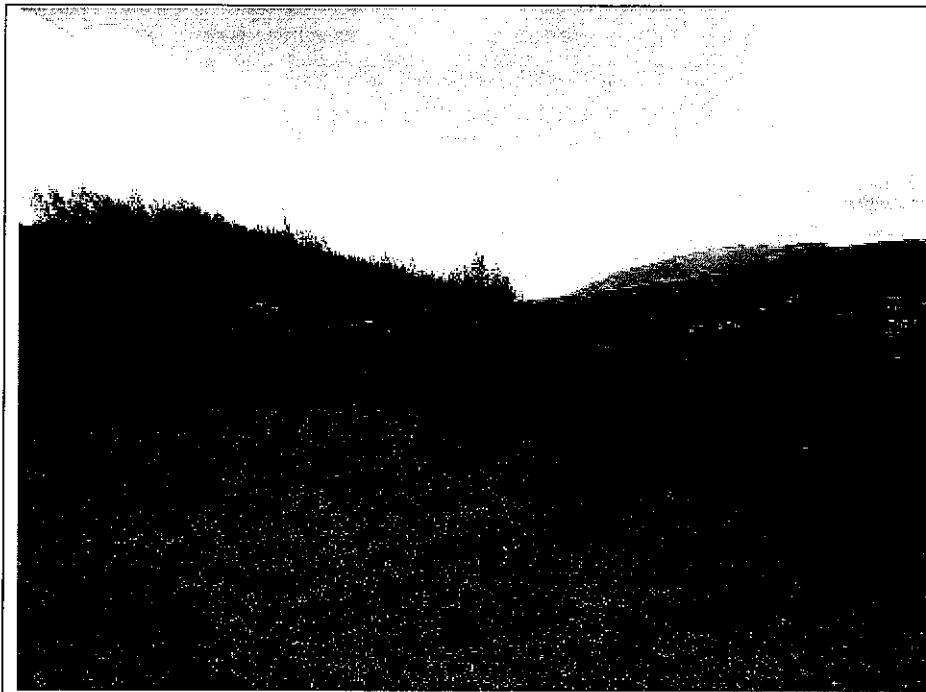


7. Looking south along the edge of the property. Red arrow is Makana'ano Place. Drainage is adjacent to the road.



8. Looking southwest near the road and the drainage culvert.

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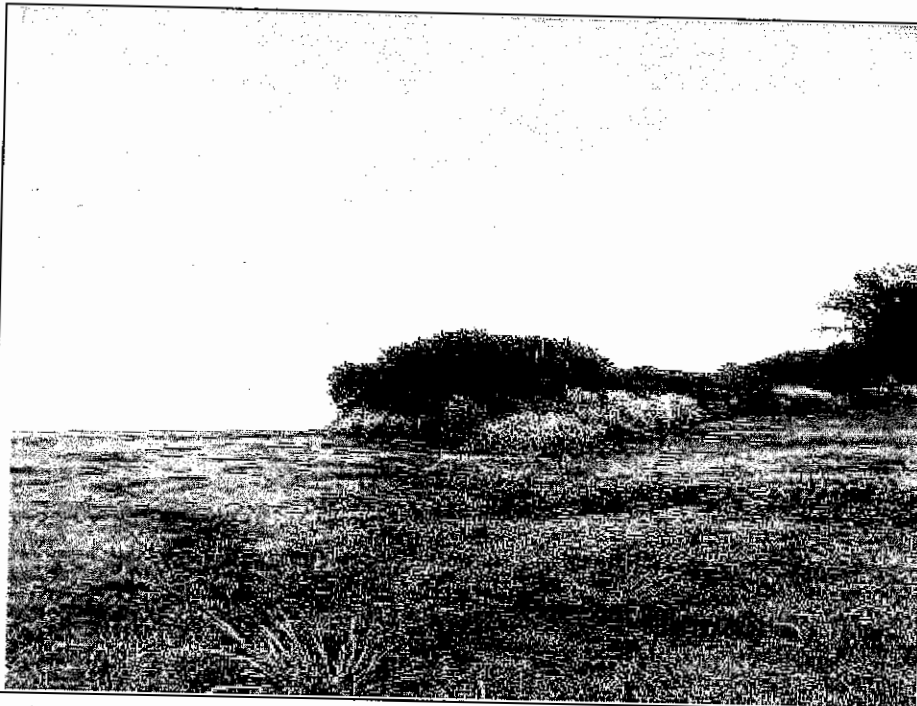


9. Looking at south at across the property.



10. Looking southeast at the tree orchard, and part of the proposed house location.

Applicant's Name: Owners: Philip and Linda Green
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Makana'ano PL.



11. Looking north at the thick vegetation area and some of the plowed land in the proposed house location.



12. Looking in the northside of the property thick vegetation area.

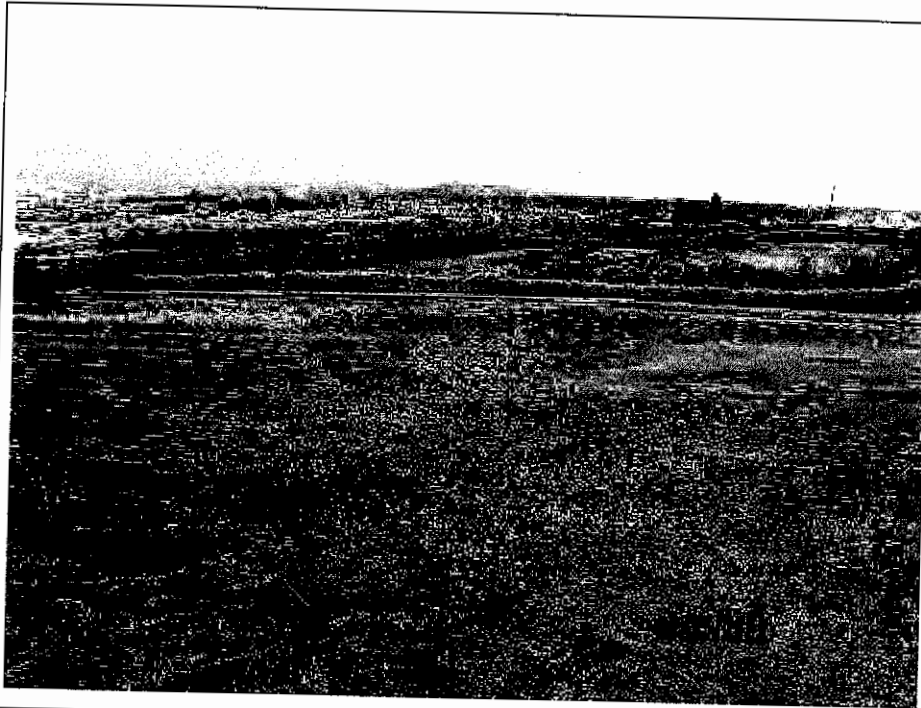


13. Looking into the thick vegetation area.

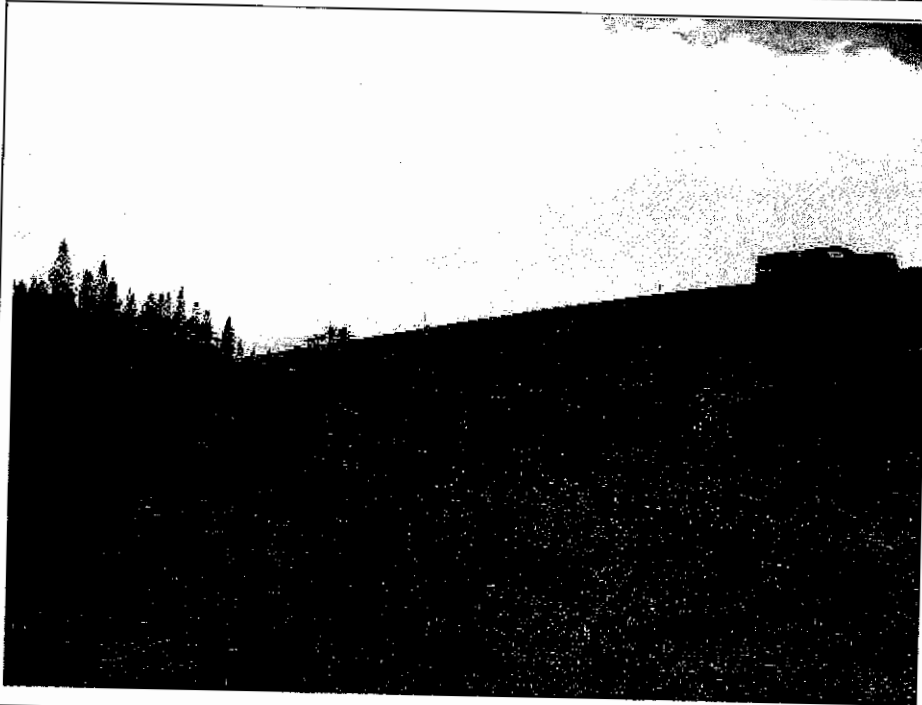


14. Looking west adjacent to the thick vegetation area and near the tree orchard.

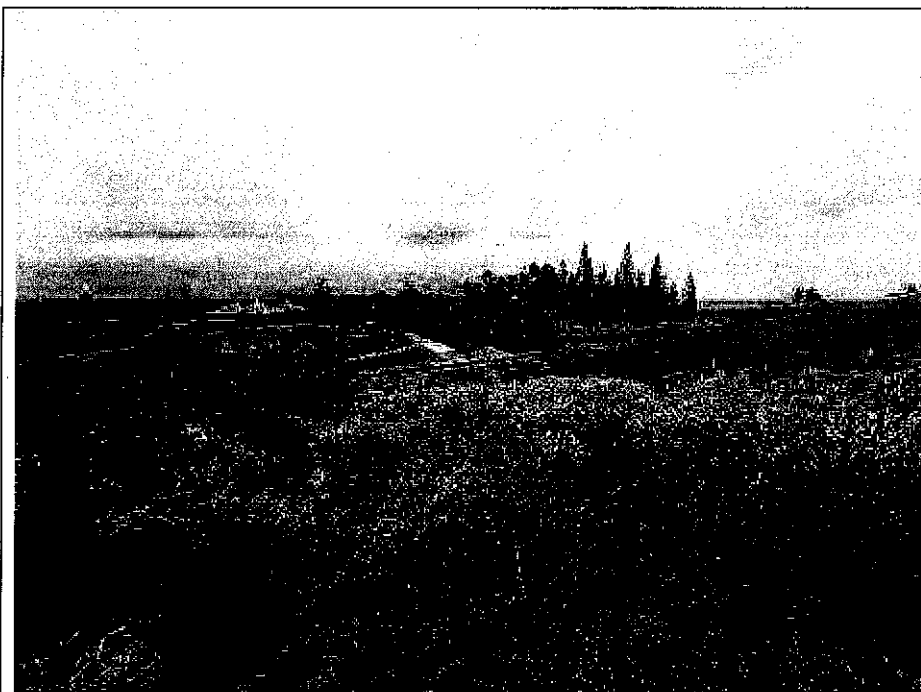
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15. Looking west and in the proposed house location which there is a plow mound.



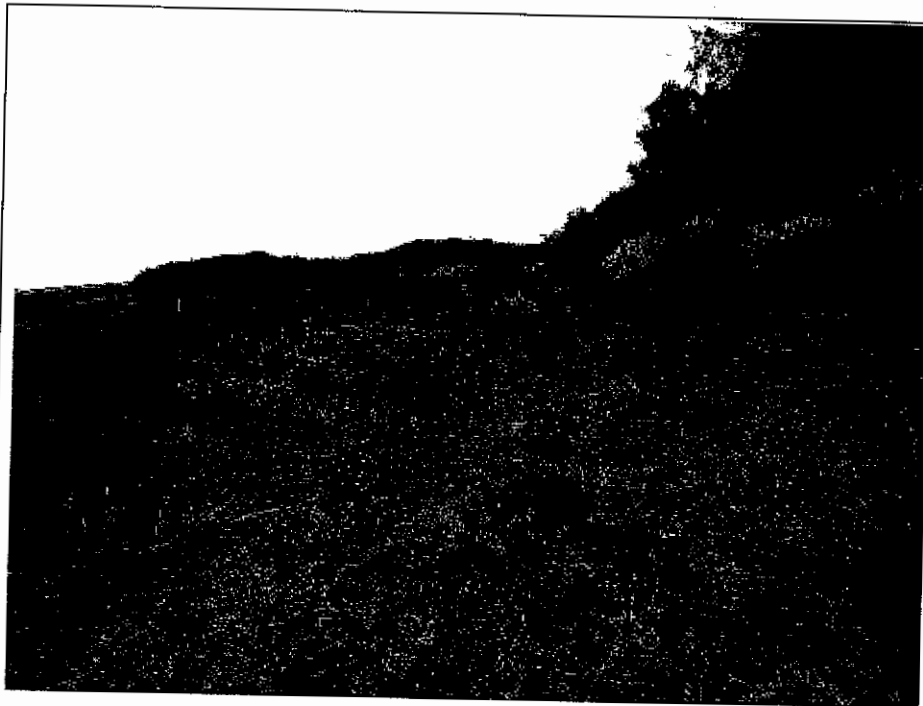
16. Looking north as some plow line [uneven terrain].



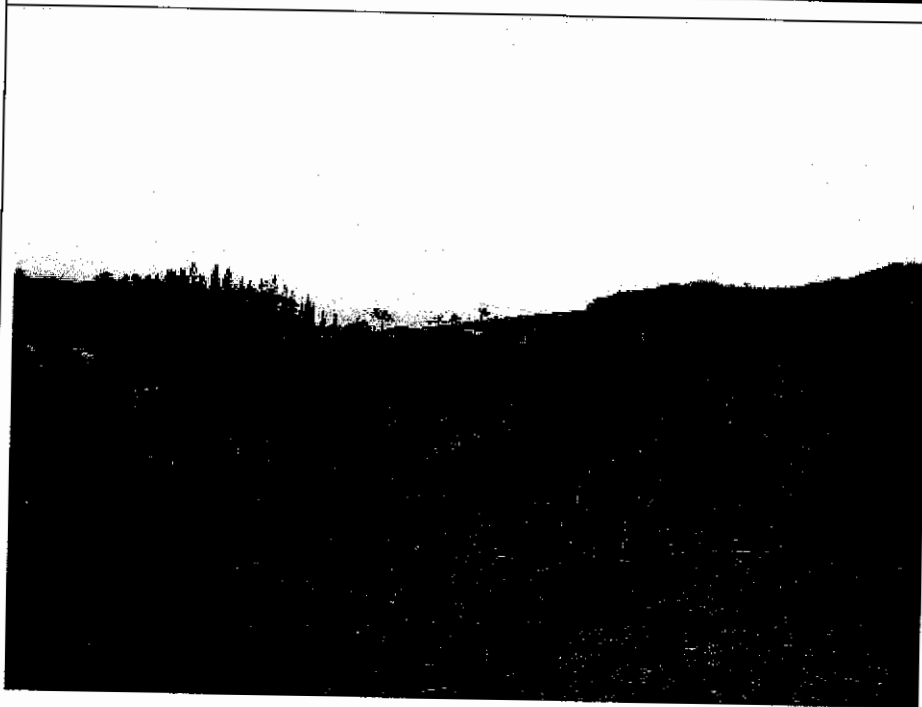
17. Looking northwest at the second area where vegetation is thick and the landscape drops slightly. Proposed house location will be in this area.



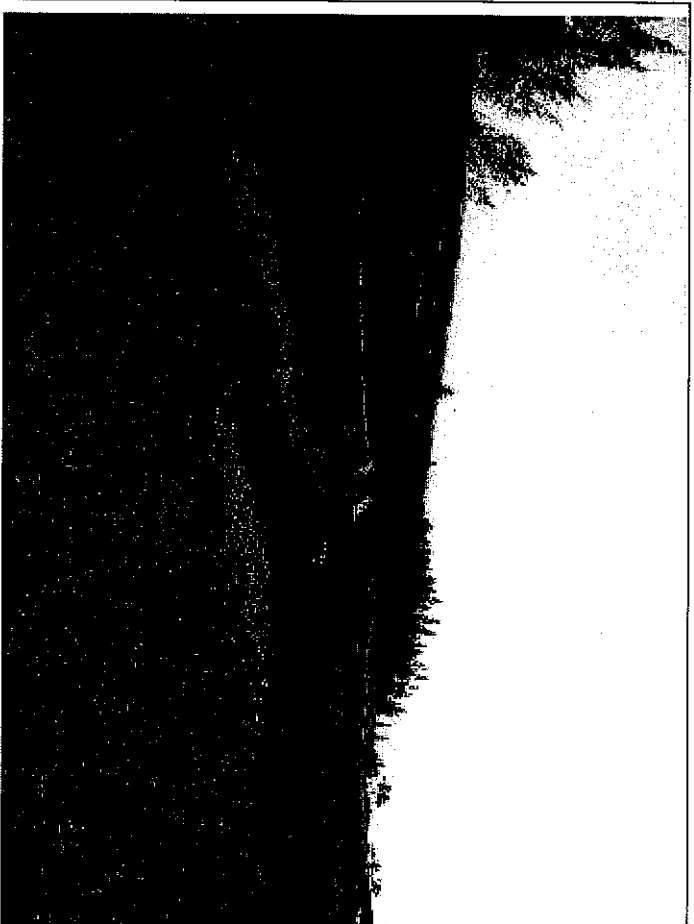
18. Looking north in the proposed house location.



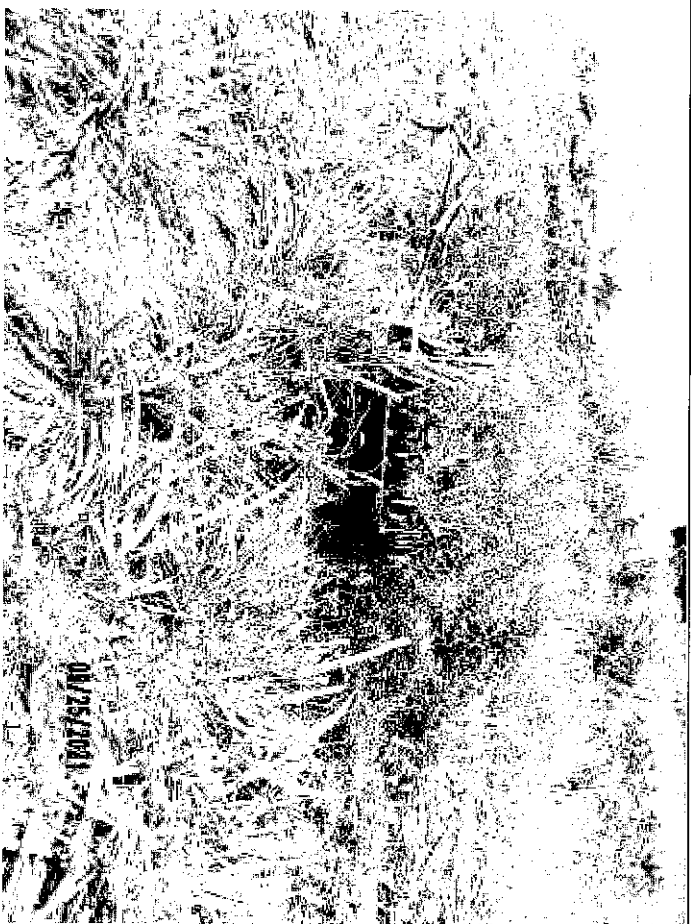
19. At the top of the property where the tree orchard is. To the right is the thick vegetation and Refuge land.



20. Near the top of the property looking slightly northwest where the tree orchard is.



21. Looking north west, where the proposed house location is. To the left is an old road and thick vegetation area.



22. Old motor that was dumped.



23. Looking north from the second thick vegetation area edge.



24. Looking south at the dense vegetation which was survey because it is in the existing building setback line and appears to be an old road.



25. Proposed edge of existing building setback line for house.



26. Remnant Road fairly flat and most places eroded.

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Makana'ano Pl.,



27. Property boundary.



28. Looking west to Makana'ano Place and the property boundary to the south.

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Makana'ano PL.



29. From the lower thick area looking north west toward Makana'ano Place.



30. Looking west in the proposed house location.

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Makana'ano PL.

Traditional and Customary Practices Review of Supplement #6 to the Planning Director's Report encapsulates the Planning Department's analysis of the traditional and customary Native Hawaiian rights for Class IV Zoning Permit Z-IV-2022-1, Use Permit U-2022-1, Special Management Area Use Permit SMA(U)-2022-1

Exploration Associates, Ltd.

Dated: December 12, 2021

Per the *Ka Pa'akai* standard, the County assesses whether traditional and customary cultural practices exist on the subject property, analyzes potential impacts from the proposed development and recommends feasible action to reasonably protect Native Hawaiian rights, if they are found to exist. In this case, the County of Kauai Planning Department decided to conduct its own analysis for this matter forming the basis for their findings (Supplement #6). The Planning Department (PD) conducted interviews with fourteen (14) informants, six (6) of these individuals twice. In addition, two other individuals relied upon either wrote an email or sent in a letter.¹

The PD attempted to contact 44 informants who initially provided testimony at previous Planning Commission hearings on the proposed development at Sea Cliff Plantation. Most the informants do not have direct genealogical ties to the ahupua'a of Kilauea. In fact, only two are from Kilauea (Kahanu Keawe and Kapua Chandler (who has more ties with Haena, Wainiha and Kahili)) and another thought they might be from Kilauea. Several informants do reside or work in Kilauea today with their families. Most of the fourteen informants interviewed are Native Hawaiians, with the exception of Kahanu Keawe. It does not appear that any of the informants are Native Hawaiian with pre-contact lineage to Kilauea. Many of the testifiers clearly misunderstood the project and thought the Applicants' were building directly on top of Nihokū and building a much larger dwelling than is actually called out in the application.

Through the interviews, there was a lot of mana'o that was shared on the reverence of Nihokū, the mauna. Many informants indicated support for Mehana Vaughn without identifying any specific traditional practices or customary rights connected with the property. When something has evolved into a cultural practice, a litmus test is to look at the 'ohana, or the family unit, while understanding that traditionally, the 'ohana is central to the life of the land. Few testimonies talk about their families and their traditional practices in Kilauea. Mehana Vaughn and Kau'i Fu suggested that during the subdivision process kuleana(s)(land commission awards) were relocated. However, in the Sea Cliff Plantation,

¹ While courts may look to kama'āina expert testimony as the foundation for authenticating Hawaiian custom and usage, this is based on an evidentiary foundation for such testimony. This is discussed in *Application of Ashford* (Ashford, 50 Haw. 314, 440 P.2d 76 (1968)), which relied on "reputation evidence" of a kama'āina over a shoreline boundary dispute rather than accept the conclusions of a certified land surveyor.

original parcel 9 (some 400 acres), there were no land commission awards (LCA). This strongly suggests that no 'ohana would have direct ties to the property.

Legal Framework: The PD summarizes the legal sources for the *Ka Pa'akai* framework and traditional cultural rights (TCR) that they rely upon to make their findings. While this report is not intended to question the PD's legal analysis, as a consultant who has prepared numerous such analyses, I have never taken the position, as the PD does, that the mere existence of a resource establishes a Native Hawaiian right. This, in my view, is a critical flaw in the PD analysis.

There has been an historic evolution in Native Hawaiian rights over the years. The Hawaii Supreme Court (HSC) interprets these rights in the context of the State Constitution and statutory law. *Kalipi* (1982) claims are based on Haw. Rev. Stat. (HRS) section 7-1, which enumerates items that can be gathered within an ahupua'a by a native tenant: firewood, house timber, aho cord, thatch or ti-leaf. HSC has held that a native tenant asserting a right to gather under section 7-1 must meet a three-point test: (1) the native tenant must reside within the relevant ahupua'a; (2) the right to gather must be exercised upon undeveloped lands; and (3) the right must be exercised in order to practice Hawaiian customs and traditions. HSR concluded that as with the rights preserved by HRS sections 7-1 or 1-1, traditional gathering rights do not accrue to persons who are not residents of the ahupua'a in which the rights are sought to be asserted. In an important note, HSC stated that the rights under section 7-1 are rights of access and collection: They do not include any inherent interest in the natural objects themselves until they are reduced to the gatherer's possession. As such those asserting the rights cannot prevent the diminution or destruction of those things they seek. The rights therefore do not prevent owners from developing lands. Ten years later *Pele* (1992 and 2002), HRC acknowledged *Kalipi's* mandate that a reviewing body determine the "precise nature and scope" of rights on a case-by-case basis, which is still true today. *PASH* (1995) also highlighted several nuances in traditional and customary rights. *PASH* further stressed that "the precise nature and scope of the rights retained by HRS 1-1 ... depends upon the particular circumstances of each case. HRC distinguished the doctrine of custom in Hawai'i in several ways. First contrary to the "time immemorial" standard used by English and American common law, traditional and customary practices in Hawai'i must be established in practice by 25 November 1892. Second, continuous exercise of the right is not required, although the custom may become more difficult to prove.

Methods: The PD does not provide a section on the interview methods. The transcripts are not in the public report. And it is unclear why some informants were interviewed twice or why excerpts are quoted from Ryan McCormack, who was not interviewed and does not appear to be Native Hawaiian² or have any direct connection to Kilauea but is likely from Puna, Hawaii. Although there are no set methodological standards to do the *Ka Pa'akai*

² He appears to be of Okinawan and Irish ancestry.

analysis, it is unusual to interview in groups (e.g., Na Kia'i O Nihokū). Interviews are generally done individually. Although there have been various methodical approaches documented in cultural impacts and *Ka Pa 'akai* analyses where consultation techniques such as focus groups, interviews and public meetings with stakeholders including community members (indigenous and non-indigenous) and government, interviews with persons knowledgeable about the region, area, or parcel are generally one-on-one.

While basic questions were asked using the *Ka Pa 'akai* framework, the informants were not given or shown maps, aerials, and conceptual plans about the project, as is common, to enable them to point out the exact location of the resources or practices. Mapping of cultural activities (previous and current) is key in this situation and necessary to determine where access might be appropriate. One informant gave information about a sweet spot- kilo, which was 20 degrees above the horizon. But in reading this information, it was a general discussion on where he believed the sweet spot would be located, not a reflection of any actual past or present practice. That informant did visit the property. He stated that "a sweet spot is finding the best spot-on an elevated plane to have the clearest view of the sky and see the most you can see in the sky in its entirety..." This likely would be higher up on the mauna, above the subject property. Only seven people including members of Na Kia'i O Nihokū have been to the Applicant's property and three of those seven were government representatives.

None of the Native Hawaiian informants claimed to be subsistence hunters, gatherers, lā'au lapa'au (Hawaiian medicine) practitioners, lei makers, lawai'a (fishermen), mahiai (farmers), kūpuna, and other 'ike (traditional knowledge) holders. Only one identified herself as a traditional artist who weaves lauhala but there is no information as to a customary and traditional practice on the property in particular or the mountain in general. Under a customary analysis, detailed backgrounds of testifiers would be gathered to verify their knowledge.

Background: As noted, the PD analysis does not include any background information. This background would include verifying the legends, oli, mele, mo'olelo, mo'okū'auhau, etc. A critical examination of historical and cultural source materials with respect to biases of the authors, any opposing views, and any other relevant constraints, limitations or biases is recommended (Office of Environmental Quality Control, State of Hawai'i 2012).

This analysis lacked one of the foremost and primary sources of cultural information that lends to an understanding of history, heritage, and cultural identity, i.e. is in Hawaiian place names that have been recorded and preserved throughout time. Hawaiian names commonly include inoa ho'omana'o (names of remembrance), inoa pō (names from the realm of ancestral knowledge beyond our own human cognition), and inoa hō'ailona (names derived from a distinct occurrence of an event or pattern that reveals itself as sign or distinguished mark). Place names are culturally important because they:

- Imbue life and existence to a place
- Create ancestral presence and identity

- Establish an ancestral connection between past, present, and future
- Provide a foundational underpinning that defines the unique and inherent characteristics,
- Record phenomena, or cyclic and repetitive events in the natural and spiritual words in a specific geographic place.

In traditional times, named localities served a variety of functions, telling people about:

- (1) places where the gods walked the earth and changed the lives of people for good or worse.
- (2) heiau or other features of ceremonial importance.
- (3) triangulation points such as ko'a (ceremonial markers) for fishing grounds and fishing sites.
- (4) residences and burial sites.
- (5) areas of planting.
- (6) water sources.
- (7) trails and trail side resting place (o'ioi'na) as a rock shelter or tree shaded spot.
- (8) the sources of particular natural resources/resource collections areas, or any number of other features; or
- (9) notable events (in the traditional and historic periods) which occurred at a given area.

Through place names, knowledge of the past and places of significance was handed down across countless generations.

An investigation of place names will reveal the reasons for those names and the relationship of the area with Native Hawaiians, their philosophy of life, and between kanaka-‘āina-akua. Further, place names are important cultural signatures etched into the Hawaiian landscape and are embedded with traditional histories, transforming once-empty geographic spaces into cultural places enriched with meaning and significance.

Completing a review of various sources of ‘ike (knowledge) that describe known traditional and contemporary cultural practices, beliefs, or values associated with these lands and spatial relationships within and external to the region would have been helpful in making recommendations for findings and conditions. The PD analysis does not attempt to verify any of the information provided.

Resources: The PD analysis focuses on natural resources and cultural practices that might be associated with those resources such as: the manu (birds), ‘alalea, other resource trees – lauhala and habitat for pueo. The PD makes the unsupported claim that where there currently are resources there must be practices, without actually documenting any customary and traditional practices on this parcel. In general, the case law about TCR has been focused on subsistence practices and access to resources. In this situation, there are no specific resources on this parcel that cannot be found in adjacent lands where there is

already access for Kanaka 'Ōiwi. With regard to the manu, they are there but also in the surrounding and adjacent lands and many of the manu have been introduced to the area as part of an active program to create safe nesting habitat for 'A'o (Newell's Shearwaters) and 'Ua'u (Hawaiian Petrels). Manu are protected on the USFWS lands.

Initially testimony about soils concerned the importance of the land on this parcel for cultivation and sustainability. Additional testimony from interviews lead to specific concern about dirt as a source for 'alalea. No evidence has been presented establishing that this practice took place on the property. 'Alalea exists on the adjacent property in the eroded crater and is accessible already.

There is no evidence of lauhala trees on the property. Those trees are on the USFWS lands. The informant who mentioned weaving has not been to the property. Regarding the claim that pueo are nesting in trees on the property, this is based on one informant's statement that they saw a pueo fly overhead during their visit to the property. But this does not mean they are nesting in the trees on this property. There have been visits to the property by USFWS wildlife biologist and the Refuge Manager and they did not raise concerns of habitat on the property needing protection or that a fauna study or habitat study was necessary.

There is no fishing occurring on the property. This parcel is bounded by other properties and not near enough to the ocean. There is no known knowledge of fishing or hunting on this property (Interview with Gary Smith). And, fishing access occurred on the cliffs or the USFWS lands or from Quarry Road.

Customs: The PD analyzed hula and oli, kilo, hunting, fishing, and trails but rather than identify specific customs and practices, the analysis focused on the mountain itself as a resource for those practices. The testifiers generally state that Nihokū in general (not the subject property) is a wahi pana. "Pana" means to pulsate, throb, like that of a heartbeat. Combined with the term "wahi," it refers to a legendary place or more precisely, places that live through our memory. It is not clear where the name Nihokū came from or when it was established, as the area has historically been referred to as Crater Hill. Whether Nihokū is a wahi pana is not clear. Presuming it is wahi pana, the boundaries of the mauna are difficult to identify and agree on. The mauna might start at the base below the sea or at the widest part—the grade before the landscape rises. However, the most sacred part of the mauna is generally its highest point. In fact, Na Kia'i O Nihokū has been revitalizing hula, oli and other cultural practices within the USFWS land above the property. Therefore, they already have access to the most sacred part of the mauna.

In general, there seems to be some misperception that this property is at the top of the crater. It is actually on the mauka side of Crater Hill and one cannot even see the highest point of Nihokū from the property. Due to thick vegetation on both this property and USFWS's adjacent lands, the property and proposed dwelling is blocked from the USFWS directly above, including the viewing platform that currently exists on USFWS lands. In fact, from the property, you cannot see Kilauea River or Quarry Road. The property does have views looking mauka toward Haena and to Anahola. If the vegetation were cleared on both

properties (Applicant and USFWS), on higher grounds the views would be 360 degrees. But this is not the case. Areas for kilo that currently exist and are available to Native Hawaiian practitioners are on the USFWS property.

With regard to Nihokū's piko, informants gave various information on where that location is. The general concept is that is the center of the resource. William Kinney said:

"[I]ts wehewehe, this is the important parts of the mountain, usually its precipice. Where can stand. Where clouds gather on the mountain. Nihokū is a crater, which would be its important feature of the mountain. An important spot may be the viewing platform."

Mehana Vaughn said it was right where the house is to be located. Perception of the mauna and its center is very subjective. According to Kinney, it is likely near the summit, well away from the property.

The hunting testimony focuses on manu and pigs but this cultural practice could happen on many properties in the area, if it were legal. The Sea Cliff Plantation CCRs prohibit hunting and the taking of feathers, eggs and endangered or threatened birds is a violation of federal law. Gary Smith, a hunter, was interviewed, and could not confirm that hunting took place on this parcel. Gary Smith is also a fisherman and he testified that he was not aware of any trails crossing the property. There are other accesses closer to the ocean for fisherman.

With regard to protection of access and trails, which is a TCR, the PD quoted *Bremer v. Weeks* (2004):

"[T]he HSC recognized access rights over private property even where no evidence of actual use of the trail was presented. The HSC inferred that a trail that was clearly marked on a 1908 survey map: 1) existed for at least 90 years; 2) was well defined running along the norther boundary of the kuleana; and 3) must have been frequently traversed prior to 1908 because it was clearly marked on the 1908 survey map."

In *Bremer v. Weeks*, there was a record which showed that there was a trail on a map from 1908. The issue in the case was whether the trail on the 1908 survey map was in prior use making it an "ancient" or "historic" right of way under HRS Section 7-1, an issue that was not decided by HSC. On the Applicant property no records (i.e. maps) have been found that there are any trails on this property. There are two eroded roads that lead to the WWI radar tower and tunnels. Plantation records from the State Office of Planning show that no cane cultivation fields existed in this area. Therefore, it is highly unlikely that those road remnants are plantation roads. These roads were cut by the military who installed the radar tower and tunnels, after the bombing of Pearl Harbor. Kauai was the first to sight the Japanese bombers heading to Pearl Harbor. After the attack the military decided it would be a good idea to have a radar tower on Nihokū which might be still in use.

The *PASH* case is instructive for determining whether a particular practice qualifies as a Hawaiian custom. The criteria for proof of custom is that it be *consistent, certain, and reasonable*. The Hawai'i Supreme Court defines these terms as follows:

- (1) "consistency" is properly measured against other customs, not the spirit of the present laws;
- (2) a particular custom is "certain" if it is objectively defined and applied; certainty is not subjectively determined; and
- (3) "reasonableness" concerns the manner in which an otherwise valid customary right is exercised—in other words, even if an acceptable rationale cannot be assigned, the custom is still recognized as long as there is no "good legal reason" against it.

In this case this three-point test needs to be followed more closely. The generalized testimony of resources in and around Nihokū does not establish any customary practices particularly in light of the fact that the entire area was part of a plantation for over 150 years and there is no testimony of any traditional and customary practices on the property.

Recommendations: The PD believes they have gathered sufficient information to establish TCRs on the property. The evidenced suggests the contrary. While the claimed TCR potentially exist on adjacent lands (including USFWS land) there is no testimonial evidence that customary and traditional practices have actually taken place on the property.

The Applicant's property is a very small portion of Nihokū. Na Kia'i O Nihokū have been able to work with the USFWS to establish TCR on USFWS lands, which are the same TCR that they are seeking to establish on the Applicant's property. Without any clear evidence that TCR exist on the property, the Applicant's property rights should prevail.

As to the suggested conditions, they do not appear to address any impact that the Applicant's development will have on TCR. For example, the PD recommends an access right through the property³ despite no evidence of prior trails or practices on the property or any necessity for such access to resources within the USFWS lands.

³ Provide a 10-foot-wide access easement for Native Hawaiian traditional and customary practices to access the USFWS refuge (with USFWS approval) and cultural easement.

- Access will be provided above the "Existing Building Setback Line," along the fence line on the northern boundary of the property to the north-western corner of the property; or
- Access will be provided along the southern boundary of the property and connected to the western boundary of the property to the northwestern corner of the property.

The proposals are arbitrary locations for access that are not grounded on any historical use. There is already an existing easement on the northside of the property and there is a access gate to the USFWS land on the northside of the property adjacent to the Applicant's property. And, no traditional trail is 10 ft wide.

Another recommendation is the concept of a kīpuka, a cultural or spiritual oasis, creating a space to establish TCR. The PD is recommending:

For the use and exercise of Native Hawaiian traditional and customary practices, provide an easement that encompasses a 50 foot by 50-foot area that is located at the north-western corner of the property, entirely above the setback line.

This is a very arbitrary recommendation that is not tied to any historical use or tradition. This condition does not protect Native Hawaiian rights but seeks to establish brand new rights at the Applicants' expense. This is going beyond an agency's role and responsibility under the Ka Pa'akai analysis and balancing of interests.

Another recommendation concerns the view plane. The PD recommendations are:

- Relocate the development down the hill an additional 150 feet from the Existing Building Setback Line that created a semi-circle area as the building envelop.
- Reduce the total square footage of the enclosed roofed areas including the house, portico, lanais, garage, and guest house (excluding driveway and pool) by 15 percent.

It is unclear what view the PD seeks to protect by this condition. The subdivision has already placed a building setback on the parcel and the two CPR units to address the very same thing; the view plane looking up the mauna. The existing setback protects the views around Kilauea. If the effort is to protect the view from the top of Nihokū looking down, then it is ineffective as there are trees blocking the view and the slope of the mountain cuts off the lower portions of Crater Hill.

These conditions offer little benefit to the claimed TCR but impose an unreasonable burden on the Applicant. The setback condition would place the main dwelling nearly 190 feet below the Existing Building Setback Line. This preliminary recommendation/ condition takes a large part of the home, the garage and the guest house, dramatically reducing the developable area.

Suggestions: In terms of understanding Native Hawaiian traditional and customary rights, it is vital to understand that access and usage privileges are balanced by the responsibility to mālama. There are rights for access and usage, but there is also a kuleana, or responsibility to take care of resources that already exist. Nothing is mentioned in any of the recommendations regarding this.

The PD is supposed to balance TCR and the landowners rights. In citing the HRS and Constitution the PD provides:

5. The interests of the property owner and occupants of an ahupua'a must be balanced; and
6. The balance weighs in favor of the property owner against occupants of an ahupua'a who exercise otherwise valid customary rights in an unreasonable manner.

Initially, the landowner and petitioner got together to discuss the wants and needs of the group, but this broke down as the public process hardened positions and created unreasonable expectations.

The PD should apply the implications of what Hawaiians mean by laulima (working together), mālama (stewardship), and pono (doing things the right way, even when it is more difficult at the outset). The PD analysis and recommendations do not consider a proper balance of rights and responsibilities; particularly where the claimed rights are not established on the property and the burdens on the landowner render the development infeasible. A private forum striking a fair balance between the petitioner and the applicant and allow the "non-confrontational aspects of traditional Hawaiian culture" (the Aloha spirit) relied on by the HSC in PASH to safeguard common understandings of property rights.

12 TEN 137260
RECORDATION REQUESTED BY:

88- 32058

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED FOR RECORD

AFTER RECORDATION, RETURN TO:

1988 MAR -8 PM 2: 48

21704 43

Charles
REGISTRAR

RETURN BY: MAIL () PICK-UP ()

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

DEED OF OPEN SPACE EASEMENT

THIS DEED OF OPEN SPACE EASEMENT is made this 29th day of February 1988, between THE PALI MOANA COMPANY, a New Mexico general partnership authorized to do business in the State of Hawaii (hereinafter referred to as "Grantor") and the UNITED STATES OF AMERICA, whose place of business and post office address is Department of the Interior, Fish and Wildlife Service, Lloyd 500 Building, Suite 1892, 500 N.E. Multnomah Street, Portland, Oregon 97232 (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, Grantor is the sole owner in fee simple of certain real property in the County of Kauai, State of Hawaii, more particularly described in Exhibit A which exhibit is attached hereto and by this reference incorporated herein (hereinafter referred to as the "Open Space Property"), which Open Space Property is adjacent to certain property, more fully described on Exhibit B attached hereto and by this reference incorporated herein, which property shall be donated by Grantor to The Trust for Public Land, a nonprofit California public benefit corporation ("TPL") and, concurrently therewith, donated by TPL to Grantee concurrently herewith to be used as a bird and wildlife sanctuary and for conservation and educational purposes in connection therewith (hereinafter referred to as the "Bird & Wildlife Sanctuary");

WHEREAS, the Open Space Property, in the opinion of Grantee, currently exists in a substantially undisturbed natural state and has significant aesthetic and open space values in and of itself and in relation to and for the benefit of the Bird & Wildlife Sanctuary (hereinafter referred to as the "Open Space Values");

WHEREAS, the Open Space Values are inadequately protected and are of great importance to Grantee, the County of Kauai and the general public and are worthy of protection and preservation;

WHEREAS, Grantor, as the owner in fee simple of the Open Space Property, has the opportunity and right to preserve the Open Space Values of the Open Space Property;

1 of 11

WHEREAS, Grantor desires and intends to transfer these rights to Grantee in perpetuity; and

WHEREAS, Grantee is a "public body" within the meaning of Chapter 198-3 of the Hawaii Revised Statutes.

NOW, THEREFORE, pursuant to Chapter 198 of the Hawaii Revised Statutes, Grantor does hereby donate and grant to Grantee a perpetual and exclusive open space easement (the "Easement") consisting of the rights and restrictions hereinafter enumerated over and across the Open Space Property.

1. Open Space Purposes and Prohibited Uses. Grantor and Grantee expressly acknowledge and agree that the purpose for which the Easement is granted is to restrict the use of the Open Space Property in perpetuity to open space uses, prohibiting the construction of any buildings or other structures on the Open Space Property as well as any other activities which would interfere with the use, maintenance and operation of the Bird & Wildlife Sanctuary.

2. Perpetual and Affirmative Rights Granted to Grantee. In furtherance of the open space purposes and objectives of the Easement, Grantee shall have the right to enter the Open Space Property every three months to inspect the Open Space Property to determine if there is compliance with the terms of the Easement, to protect the Easement and to enforce the rights herein granted. Grantee shall notify Grantor at least twenty-four (24) hours in advance of any such inspection. Notwithstanding the foregoing, Grantee shall have the right to enter the Open Space Property at any time upon 24 hours written notice if it has reason to believe there is non-compliance with the terms of the Easement.

3. Reserved Rights of Grantor. Grantor reserves unto itself the right to construct roads below the 425 foot contour line as shown on Exhibit C attached hereto and incorporated herein by this reference, and further reserves all other rights in the Open Space Property not otherwise prohibited or limited herein, provided, however, that Grantor shall exercise such reserved rights in a manner not inconsistent with or destructive of the purposes of the Easement and so as to prevent damage to the Open Space Values of the Open Space Property.

4. Enforcement. In the event of a violation of any term, condition, covenant or restriction contained in the Easement, after thirty (30) days notice of violation thereof, Grantor and Grantee shall have all enforcement rights provided pursuant to Chapter 198-5 of the Hawaii Revised Statutes and any other remedies in law or equity; provided, however that any failure to so act by Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition covenant or purpose of the Easement in the future.

5. Restoration. Grantor further intends that should any prohibited activity be undertaken on the Open Space Property, Grantee, except in the case of emergencies requiring immediate action, shall after 30 days of written notification of such violation have the right to cause the restoration of that portion of the Open Space Property affected by such activity to the condition that existed prior to the undertaking of such

prohibited activity. In such case, the cost of such restoration shall be borne by Grantor, its successors or assigns. Nothing contained herein shall be construed to preclude Grantor from exhausting its legal remedies in determining whether the proposed activity to which Grantee has objected is consistent with the Easement.

6. Costs and Taxes. Grantor, its successors and assigns, agrees to bear all costs of operation, upkeep, and maintenance of the Open Space Property (but not the cost of Grantee's inspections) and does hereby indemnify Grantee therefrom. In addition, Grantor, its successors and assigns, agrees to pay any and all real property taxes and assessments levied by competent authority on the Open Space Property or on the Easement.

7. Successors and Assigns. The terms and provisions of the Easement shall be binding upon and inure to the benefit of the successors and assigns of Grantor and Grantee. All agreements, covenants and conditions herein set forth shall run with the Open Space Property in perpetuity, pursuant to Chapter 198-5 of the Hawaii Revised Statutes.

8. Transfers and Assignments. Grantee shall have the right to transfer or assign the Easement to any qualified holder, within the meaning of Chapter 198-3 of the Hawaii Revised Statutes, provided that, (1) Grantee requires, as a condition of such transfer or assignment, that the purposes of the Easement be carried out by the transferee or assignee. Notwithstanding the foregoing, if a later unexpected change in the conditions surrounding the Open Space Property make impossible or impractical the continued use of the Open Space Property for the above-stated conservation purposes, the requirements of this paragraph 8 will be satisfied if the Easement is sold or exchanged and any proceeds of such sale or exchange are used by Grantee in a manner consistent with the purposes of the Easement.

9. Waiver. The waiver by Grantor or Grantee of the breach of any covenant contained herein shall not be construed as a waiver of a subsequent breach of the same or any other covenant.

10. Recordation. The Easement shall be recorded in the Bureau of Conveyances of the State of Hawaii as soon as practicable after the execution hereof.

11. Attorneys' Fees. The party prevailing in any cause of action brought before a court of law or equity to enforce the covenants and agreements herein contained shall be entitled to collect, as a part of the judgment or decision entered in its favor, all of its costs and expenses incurred in connection with such action, including, without limiting the generality of the foregoing, reasonable attorneys' fees.

12. Definition. The terms "Grantor" and "Grantee" when used herein, shall include each parties' respective employees, agents,

representatives, tenants, licensees, invitees, successors and permitted assigns.

13. Invalidity. If any provision of the Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Easement, and the application of such provisions to persons or circumstances other than those to which are found to be invalid, shall not be affected thereby.

14. Integration and Amendment. This Deed of Open Space Easement is a complete integration of every agreement and representation made by or on behalf of Grantor and Grantee with respect to the subject matter hereof, and no prior oral or written agreement shall be held to vary the provisions hereof, any law or custom to the contrary notwithstanding. No amendment, waiver, or modification of this Deed of Open Space Easement or any term hereof shall be effective unless incorporated in a written instrument executed by Grantor and Grantee.

15. Notice. Any notice that either party desires or is required to give to the other party or any other personal shall be in writing and either served personally or sent by registered or certified mail. Any notice that Grantor desires or is required to give to Grantee shall be addressed to Grantee at the Department of the Interior, Fish and Wildlife Service, Lloyd 500 Building, Suite 1892, 500 N.E. Multnomah Street, Portland, Oregon 97232, attention: Jim Shaw, Regional Supervisor, Division of Realty and any notice that Grantee desires or is required to give to Grantor shall be addressed to Grantor at P.O. Box 4265, Malibu, California, attention: Dorn L. Schmidt.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Open Space Easement this 29th day of February, 1988.

1 Cor. 111
19 88K *[Signature]* GRANTOR *[Signature]*

THE PALI MOANA COMPANY, a New Mexico general partnership

By: ROBERSON CONSTRUCTION CO.,
a New Mexico corporation
Managing General Partner *[Signature]* PM

By: *[Signature]*
CODA ROBERSON
Its: President

By: *[Signature]*
DORN L. SCHMIDT
Its: General Partner

By: *[Signature]*
DAVID G. LIVINGSTON
Its: General Partner

21704 47

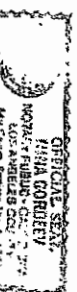
State of New Mexico
County of Bernalillo) ss.

On this the 15 th day of April, 1988, before me, the undersigned Notary Public, personally appeared GODA C. ROBERSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president of Roberson Construction Co., Inc., the corporation that executed the within instrument on behalf of The Pali Moore Company, the partnership that executed the within instrument and acknowledged to me that such corporation executed the same as such partner and that the partnership executed the same.

Pali Moore Pali Moore
Notary Public for said County and
State
MY COMMISSION EXPIRES ON 12/18/89

State of California
County of Los Angeles) ss.

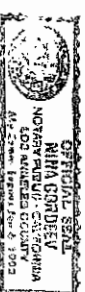
On this the 3rd day of April, 1988, before me, the undersigned Notary Public, personally appeared DORR L. SCHWITT, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as one of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.



Rina Cordery
Notary Public for said County and
State

State of California
County of Los Angeles) ss.

On this the 3rd day of April, 1988, before me, the undersigned Notary Public, personally appeared DAVID G. LIVINGSTON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as one of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.



Nina Cordery
Notary Public for said County and
State

EXHIBIT A

21704 48

DESCRIPTION

REMAINDER OF LOT 9
(PORTION B)

SEACLIFF PLANTATION AT KILAUEA BAY

All that parcel of land being a portion of the Subdivision of Lot 9, portion of Grant 2896 to Charles Titcomb, situated approximately 2,300 feet in a northeasterly direction from KILAUEA LIGHTHOUSE ROAD and NIWI ROAD Junction, at Kilauea, Hanalei, Kauai, Hawaii and more fully described as follows:

Beginning at the southernmost corner of this parcel of land, which is also the west corner of Lot 11, SEACLIFF PLANTATION AT KILAUEA BAY, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILAUEA" being 21.10 feet South and 1,202.63 feet West, thence running by azimuths measured clockwise from True South:

1. 159°10'00" 891.19 feet along the easterly side of Lot 28 (Roadway Lot), Seacliff Plantation at Kilauea Bay;

Thence along same on a curve to the left having a radius of 630.00 feet, the chord azimuth and distance being:

2. 151°00'00" 193.19 feet;
3. 195°55'11.53" 98.30 feet along the Remainder of Lot 9 (Portion A);
4. 260°00'00" 330.73 feet along same;
5. 272°59'00" 161.00 feet along same;
6. 289°10'00" 43.00 feet along same;
7. 3°36'00" 120.00 feet along same;
8. 321°52'00" 153.60 feet along same;

EXHIBIT A (cont.)

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9. 306°42'00" 204.81 feet along same;
10. 31°09'00" 763.61 feet along same to the point of
beginning and containing an area of
9.771 ACRES.

EXHIBIT B

DESCRIPTION 21704 50

REMAINDER OF LOT 9
(PORTION A)

SEACLIFF PLANTATION AT KILAUEA BAY

All that parcel of land being a portion of the Subdivision of Lot 9, portion of Grant 2896 to Charles Titcomb, situated approximately 2,300 feet in a northeasterly direction from KILAUEA LIGHTHOUSE ROAD and NIHI ROAD Junction, at Kilauea, Hanalei, Kauai, Hawaii and more fully described as follows:

Beginning at the southeast corner of this parcel of land, being also the northeast corner of Lot 16, SEACLIFF PLANTATION AT KILAUEA BAY, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILAUEA" being 889.75 feet South and 2,472.42 feet East, thence running by azimuths measured clockwise from True South:

- | | | |
|-----|--------------|-----------------------------------------------------------------------------|
| 1. | 91°45' | 95.76 feet along Lot 16, Seaciff Plantation at Kilauea Bay; |
| 2. | 86°46' | 415.56 feet along same; |
| 3. | 32°38' | 128.93 feet along same; |
| 4. | 57°32' | 180.61 feet along same; |
| 5. | 103°09' | 285.37 feet along same; |
| 6. | 100°24'36.4" | 274.57 feet along same; |
| 7. | 153°54' | 275.00 feet along Lot 15, Seaciff Plantation at Kilauea Bay; |
| 8. | 100°07' | 482.49 feet along same; |
| 9. | 105°40' | 275.26 feet along same and along Lot 14, Seaciff Plantation at Kilauea Bay; |
| 10. | 134°10' | 300.00 feet along same; |
| 11. | 118°40' | 212.28 feet along Lot 13, Seaciff Plantation at Kilauea Bay; |

EXHIBIT B (cont.) 21704 51

- | | | |
|---------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------|
| 12. | 126°00' | 558.67 feet along same and along Lot 12.
Seacliff Plantation at Kilauea Bay; |
| 13. | 166°22' | 498.06 feet along Lot 11, Seacliff Plantation
at Kilauea Bay; |
| 14. | 232°17' | 65.61 feet along same; |
| 15. | 142°30' | 136.05 feet along same; |
| 16. | 90°00'30" | 110.17 feet along same; |
| 17. | 31°09' | 51.23 feet along same; |
| 18. | 126°42'00" | 204.81 feet along the Remainder of Lot 9
(Portion B); |
| 19. | 141°52'00" | 153.60 feet along same; |
| 20. | 163°36'00" | 120.00 feet along same; |
| 21. | 109°10'00" | 43.00 feet along same; |
| 22. | 92°59'00" | 161.00 feet along same; |
| 23. | 100°00'00" | 330.73 feet along same; |
| 24. | 15°56'11.53" | 98.30 feet along same; |
| 25. | 142°50' | 91.65 feet along Roadway Lot 28, Seacliff
Plantation at Kilauea Bay; |
| Thence along same on a curve to the left having a radius of
60.00 feet, the chord azimuth and
distance being: | | |
| 26. | 120°19'53" | 45.92 feet; |
| 27. | 139°00' | 202.42 feet along Lot 1, Seacliff Plantation
at Kilauea Bay; |
| 28. | 154°10' | 302.35 feet along same; |
| 29. | 293°08'40" | 27.34 feet along Parcel 17, U.S.A. Department
of Treasury (Kilauea Lighthouse Lot); |
| 30. | 205°00' | 1,065.00 feet along same; |

Thence boundary follows along highwater mark at seashore--
base of cliff (Survey by R. M. Towill
Corporation). for the next four (4)
courses, the direct azimuths and
distances between points at said
highwater mark being:

EXHIBIT B (cont.)

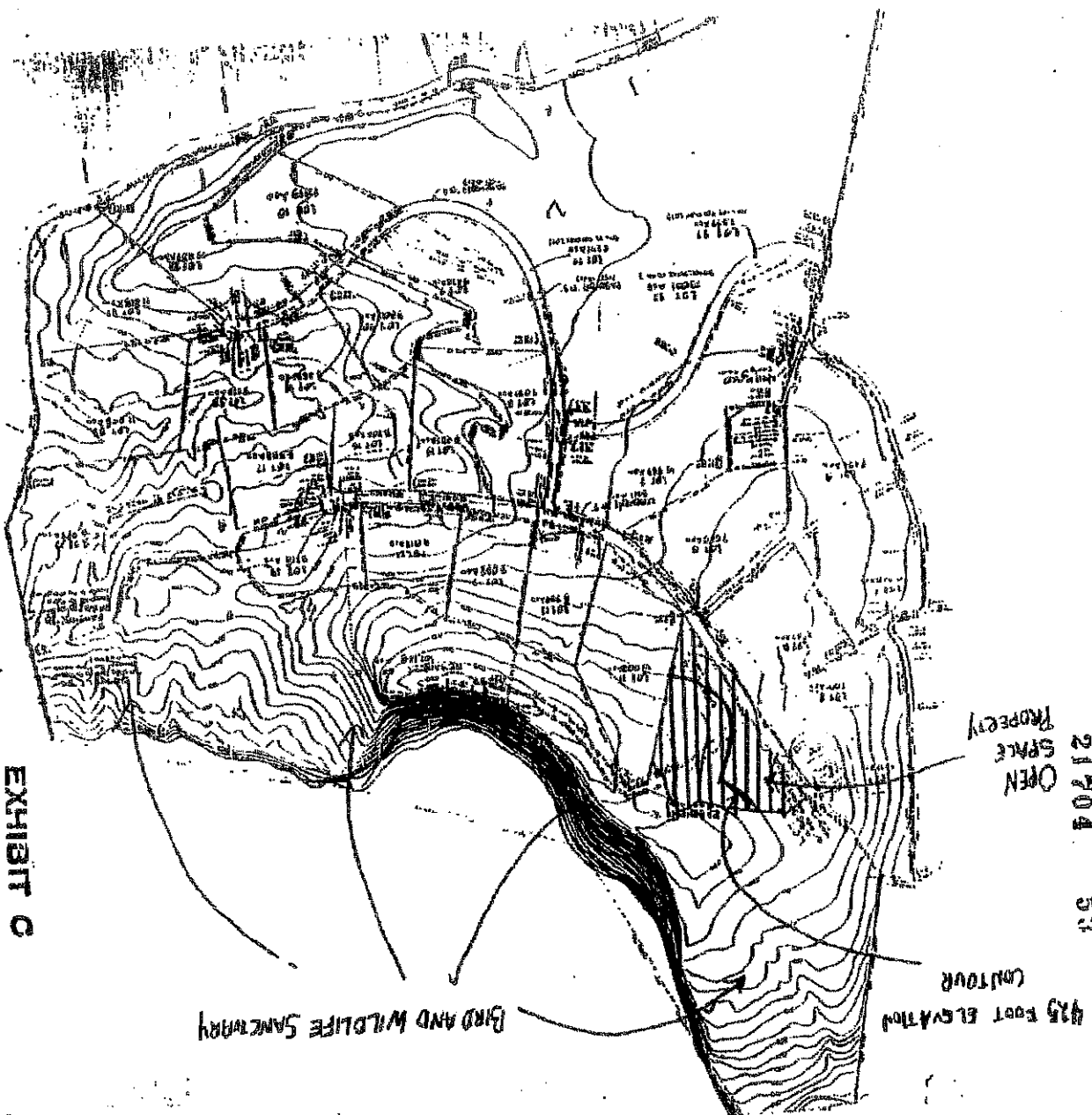
21704 52

31.	280°53'20"	648.26 feet;
32.	339°33'	1,539.00 feet;
33.	297°42'	1,309.93 feet;
34.	293°42'	1,795.43 feet;
35.	1°45'	429.28 feet along Lot 19, Oceanic Vistas Consortium (Owners), to the point of beginning and containing an area of 91.377 ACRES.

RECORDING'S MEMO: Legibility of Writing, Typing, or Printing UNSATISFACTORY
in this document when received.

11 of 11

EXHIBIT C

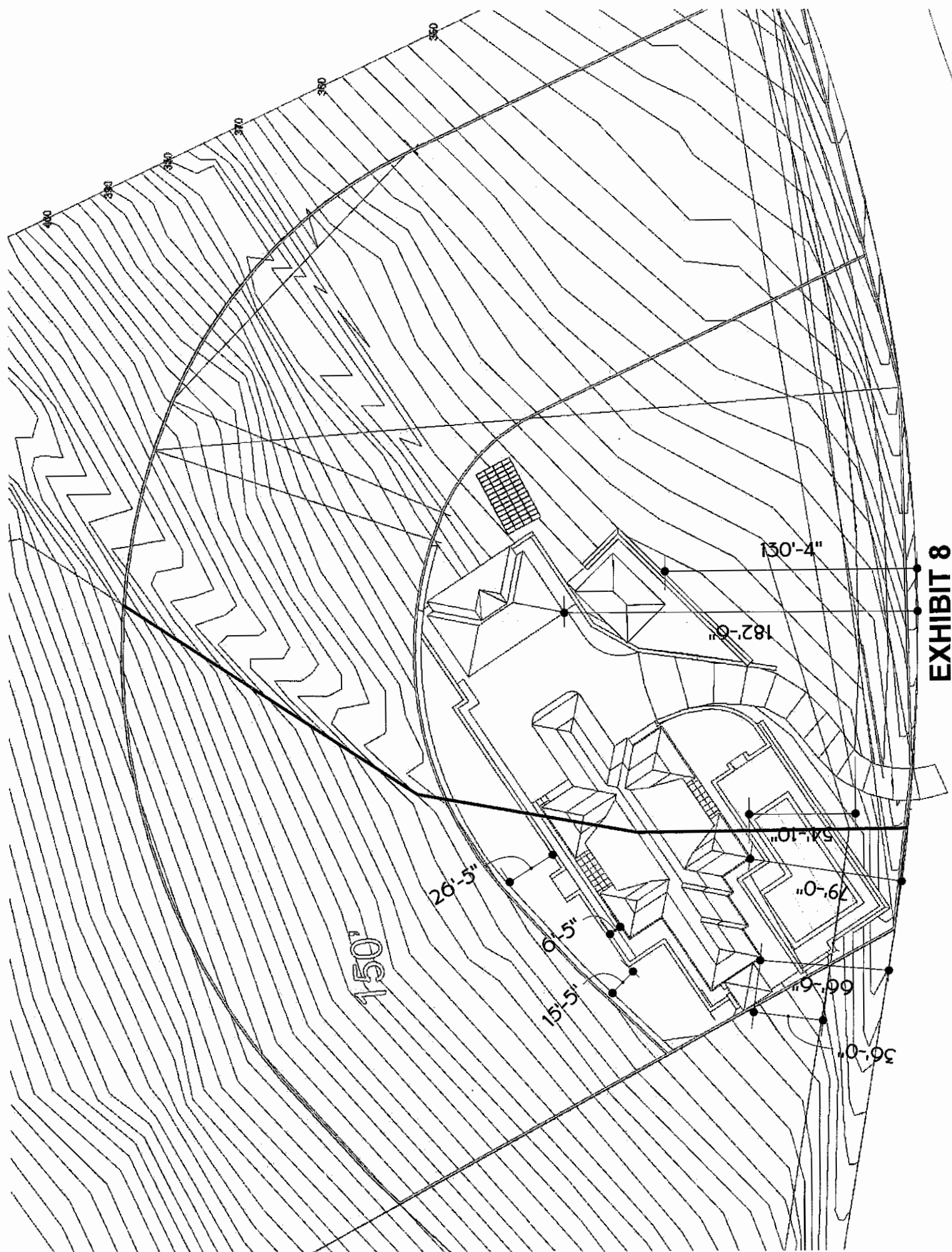


- **Nā Kia'i o Nihokū (NKOK)**, a group of cultural practitioners from the Kīlauea area founded in 2016, holds a **cultural use permit with the USFWS to escort groups to Nihokū for cultural, educational and ecological restoration purposes**. These groups are subject to strict size limitations and access requirements due to the ecological sensitivity of the refuge.
- In their first four years (prior to the coronavirus epidemic), NKOK held 40 events, escorting **over 800 individuals** to Nihokū including Kaua'i school children, hula hālau and other cultural practitioners along with groups like Leadership Kaua'i and Kaua'i Community College Classes. Over half of those attending had never been to Nihokū.
- **Removal of invasive species by NKOK's volunteer members and groups** is crucial to annual preparation of kīpuka of native plantings on Nihokū for **annual bird nesting** seasons.
- The **Kīlauea community** has also **worked to preserve neighboring Kāhili beach and estuary**, where Kīlauea River meets the sea, at the foot of Nihokū. Beach cleanups, begun in the 1990s, continue monthly, along with restoration of native dune habitat.
- Kīlauea community members worked with property owners of the dunes at Kāhili beach, also once slated for a luxury home, to instead gift that land to the Hawai'i Land Trust (formerly Hawai'i Islands Land Trust). **Hawai'i Land Trust works with the Kīlauea community and USFWS to steward Kāhili along with multiple area conservation easements.**

SUMMARY:

The Kīlauea community has worked steadily for over fifty years to secure and implement protection of Nihokū and to care for the vital Kīlauea landmark. Community members have continually accessed the mountain as part of their way of life and 'ohana experiences. Nihoku rises above the former plantation town and recent agricultural subdivisions sprawling across the former sugar lands providing a place of refuge for the community to learn about Kīlauea, spend time together, reconnect, and replenish. The subject parcel is the most sensitive and potentially impactful of all the building sites within the Sea Cliff plantation, and possibly in all of Kīlauea, because it is the highest and closest to areas of Nihokū still easily and regularly accessed by community members.





SHIRAMIZU LOO & NAKAMURA

A LIMITED LIABILITY LAW PARTNERSHIP

4357 RICE STREET, SUITE 201

LIHUE, KAUAI, HAWAII 96766

CURTIS H. SHIRAMIZU

LAUREL LOO

GALEN T. NAKAMURA

TELEPHONE (808) 632-2267

FACSIMILE (808) 440-0399

November 25, 2009

Ian Costa, Director
County of Kauai Planning Department
4444 Rice Street, Suite A 473
Lihue, HI 96766

Attention: Mike Laureta

Re: Special Management Area Use Permit SMA (U)-94-14
Variance Permit V-94-16
Class IV Zoning Permit Z-IV-94-56
Amendment to Conditions of Approval SMA (U)-82-2

Dear Mr. Costa:

We represent Jim Fields, owner of lots 11A and 12 at Seacliff Plantation,
Tax Map Key Numbers (4) 5-2-4:84, lots 11A and 12.

I have reviewed the Class IV files in your office. They include the November 30, 1994 approval letter, the December 1, 1994 staff recommendation, and four maps, all of which are enclosed here for your reference.

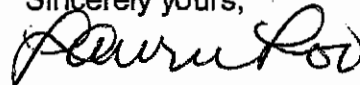
One purpose of the Applicant in seeking the SMA amendments was to mitigate the earlier, small setback line for lots located above Makanaano Place on Crater Hill. As you can see from the map attached to the above-referenced documents in your file, the increased setback lines were approved to allow a larger building area, subject to Planning Department Review.

We seek your concurrence that the current setback lines on lots 11A and 12 are as reflected in yellow highlighting on the last page of these attachments, so the owner can begin developing building plans based on those increased setback lines.

Thank you for your attention. Please do not hesitate to call if you have any questions.

Page Two
Ian Costa
November 24, 2009


Sincerely yours,



LAUREL LOO

Enclosure

Concurrence:



Mike Laureta
Player

11/25/09

JOANN A. YUKIMURA
MAYOR



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 471
LILUI, KAUAI, HAWAII 96766

DEE M. CROWELL
PLANNING DIRECTOR

NEIL L. AALAND
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 241-6677
FAX (808) 241-6699

November 30, 1994

COPY

The O'Connor Corp., et al.
Pali Moana Co. & Pangolin Corp.
c/o Walton D. Y. Hong, Esq.
3135-A Akahi Street
Lihue, HI 96766

Subject: Special Management Area Use Permit SMA(U)-94-14
Variance Permit V-94-16
Class IV Zoning Permit Z-IV-94-56
Amendment to Conditions of Approval SMA(U)-82-2

The Planning Commission at its meeting held on November 10, 1994, approved the subject permits and amendment request for subdivision of three agricultural lots into market lots, ag lots, a community park lot, a school site, and a botanical garden lot, with the development of related infrastructure, and amendment to a setback line condition. Approval is subject to the following conditions:

AG SUBDIVISION AND INFRASTRUCTURE

1. **SETBACK LINE MITIGATION** - As represented and agreed to by the developers, to offset the impacts on the scenic and ecological resources resulting from modifications to the previously required building setback line on lots located above Makanaano Place on Crater Hill, Pali Moana Company and Pangolin Corporation shall remit \$125,000 to KPLT to be used for infrastructure and improvements as described in condition #2 below. The developers shall remit said fee prior to Final Subdivision approval.
2. **REVENUES AND IMPROVEMENTS** - As represented and agreed to by the developers, the revenues derived from the sale of the ag lots and school site, and the remittance by Pali Moana Company and the Pangolin Corporation shall be used only for infrastructure and improvements associated with the ag lots, community park and other community benefits including

construction of the irrigation system, minor road improvements, community park amenities, and a \$25,000 administration fee for the KPLT. Costs associated with improvements required in connection with residential development of the market lots including domestic water system improvements, on-site roadway construction and the provision of on-site utilities shall be borne by the respective property owners who will benefit from the developments. The breakdown of costs for improvements required for the market lots verses those required for the ag lots, park and additional community benefits shall be determined during the subdivision approval process, and the matter shall be resolved prior to Final Subdivision approval.

If the cost of the irrigation system improvements, community park improvements, KPLT administrative costs, and ag lot infrastructure are not met through the sale of the ag lots and school site, and the remittance by Pali Moana Company and the Pangolin Corporation, the developers shall be responsible for insuring the improvements are completed.

Pursuant to Section 9-3.6 of the County Subdivision Ordinance, prior to Final Subdivision approval the developer shall either construct the above identified infrastructure and other improvements, or file a subdivision agreement and bond or security with the Planning Commission in a form approved by the County Attorney. In addition to infrastructure, improvements constructed or bonded shall include but not be limited to construction of the irrigation system, and community park as described below.

3. IRRIGATION SYSTEM -Prior to Final Subdivision approval, the developer shall obtain and provide for the review and approval of the Planning Director in consultation with the KPLT, a written agreement with Kilauea Irrigation Company (C. Brewer Inc.) for the maintenance of the irrigation system and distribution of agriculture water to service the agricultural farm lots resulting from the developer's proposal.
4. AG COMMISSION - As represented and agreed to by the developers, there shall be established a committee called the Kilauea Ag Park Commission (Ag Commission) that shall select qualified farmers to purchase ag lots, develop restrictions on the ag lots for inclusion in deeds as

restrictive covenants and farmer agreements, and oversee the ag lots and agricultural operations. The Commission shall be established by the KPLT, and as represented by the applicant, shall be composed of approximately seven members including a member from the Kilauea community, a member of the KPLT Board, and representatives of the County, the State Department of Agriculture, private business, the financial community, and agribusiness.

5. QUALIFIED FARMER SELECTION - The Ag Commission shall determine the criteria to be used in selecting qualified farmers to purchase the ag lots. The criteria shall include special preference for qualified farmers who are residents of the Kilauea area.
6. TIMING FOR INFRASTRUCTURE - Qualified farmers shall be selected prior to the design of the ag lot infrastructure improvements in order that the future ag lot owners can provide comments regarding their farming needs and requirements.
7. SALE OF AG AND MARKET LOTS - As represented and agreed to by the developers, no ag lots shall be sold until irrigation water is supplied to those ag lots. No market lots shall be sold until the ag lots are made available for purchase by qualified farmers. The mechanism for implementation of this condition shall be resolved prior to Final Subdivision approval.

COMMUNITY BENEFITS

8. COMMUNITY PARK - As represented and agreed to by the developers, the proposed community park site shall be deeded free of charge to KPLT and developed by KPLT and the O'Connor Corporation using funds from the sale of the ag lots and school site, and the remittance from Pali Moana Company and the Pangolin Corporation. Improvements to be provided shall be determined by the developer and KPLT in consultation with representatives of the Kilauea Community and the Department of Public Works. As represented by the developer, a minimum of \$300,000 shall be provided for community park amenities which shall include soccer fields, softball fields, volleyball courts, and restrooms. Proposed improvements shall be submitted for the review and approval of the Planning Director and County Engineer prior to Final Subdivision approval. The park improvements shall

be bonded or constructed as described in condition #2 above, and shall be completed no later than one year from Final Subdivision approval. The park shall be transferred to the County subject to the acceptance of the County Council.

9. BOTANICAL GARDEN - As represented and agreed to by the developers, the proposed botanical garden shall be deeded free of charge to KPLT. The botanical garden shall be retained by KPLT and open for public use. The future owners of the school site, at their discretion, may assume management and maintenance responsibilities for the botanical garden. KPLT shall assume management of the botanical garden until the school site is developed. If the school declines to assume responsibility for the botanical garden, or fails to adequately maintain the site, KPLT shall assume those responsibilities.

Covenants designating the property as permanent open space, and specifications regarding the use, management and maintenance of the botanical garden shall be incorporated into the deed of the new lot as restrictive covenants. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

10. SCHOOL SITE - As represented and agreed to by the developers, the community school site shall be deeded to KPLT free of charge for sale to an educational entity. The site shall be used only for a school or educational purposes and the lot shall be encumbered by a restrictive covenant limiting it to such uses. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.
11. REMNANT LOT - As represented and agreed to by the developers, the remnant lot located at the intersection of Quarry Road and Lighthouse Road shall be used to benefit the ag lots farming operations, or for some other use that benefits the community or general public. The appropriate use of the site shall be determined prior to Final Subdivision approval and restrictions on the uses shall be incorporated into the lot deed as a restrictive covenant. If considered appropriate the lot may be dedicated to KPLT or in the alternative to the County, subject to acceptance by the County Council.

12. SURPLUS FUNDS - As represented and agreed to by the developers, if the revenues from the sale of the ag lots and school site, and remittance by Pali Moana Company and Pangolin Corporation exceed the costs of irrigation system improvements, community park improvements, KPLT administrative costs, and ag lot infrastructure, surplus funds shall be utilized for additional community amenities such as construction of a bicycle path, minor improvements to the portion of Quarry Road beyond the project area leading to the shoreline, or additional community park improvements.

LEGAL ISSUES, COVENANTS AND RESTRICTIONS

13. AG LOT RESTRICTIONS - As represented and agreed to by the developers, the Ag Commission, in consultation with the KPLT shall develop restrictive covenants, rules, and agreements for the ag lots. Restrictive covenants shall include at a minimum the following: prohibition on the use of ag lots for residential purposes; identification of the types of activities acceptable as agriculture; the types of structures and other improvements that are permitted; improvements that will be required to be provided by the farmers; requirements for maintenance of the property and improvements; establishment of time frames for beginning agricultural activities; restrictions regarding failure to continue agricultural activities; penalties for non compliance with agreements and restrictive covenants; restrictions on resale or subleases; and buyback provisions. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.
14. COUNTY LIABILITY -Although the County Department of Public Works and the Department of Economic Development are co-applicants in the proposal, the County of Kauai shall assume no liability for the development of infrastructure or other improvements associated with the proposed project.
15. OLD DISPENSARY COUNTY LOT - The transfer of the County Park lot located in front of the Old Kilauea Dispensary to the developers of the Kilauea Plantation Center shall be subject to the approval of the County Council. As represented by the developer, should the County Council agree to convey the subject lot, the lot shall be used exclusively for open

space, landscaping, and parking. No structures shall be permitted on the lot, and these requirements shall be incorporated into the property deed as restrictive covenants, draft copies of which shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

The developers understand and acknowledge that nothing herein shall be considered an acceptance by the County of the above described proposed development at the Old Kilauea Dispensary site.

16. MITIGATION OF IMPACTS OF SETBACK LINE AMENDMENTS - All development on the Seacliff Plantation lots located above Makanaano Place on Crater Hill, including any structures, landscaping, storage areas, grading or removal of existing natural vegetation, shall be restricted to the area within the amended building setback area as proposed by the developer. All land outside of the proposed amended setback area shall be kept in its natural state, provided however that the area between the setback lines and property side boundaries shall be utilized as landscape buffers to screen structures located within the setback area. In no case shall landscaping be permitted above the elevation of the setback line on each respective lot.

Structures to be constructed within the amended setback area shall be restricted to a 12 foot limit on uninterrupted wall height, with a 25 foot height limit on dwellings as measured from natural or finished grade, whichever is lower. Exterior colors of all structures, including roofs shall be limited to shades of brown, green, and/or grays. Roofs shall be of non-reflective materials, and exterior lighting shall be reflected downward.

The Planning Department shall review all development plans for the subject lots for consistency with these requirements. In addition, the developer shall obtain comments from the U.S. Fish and Wildlife Service and the Kilauea Neighborhood Association for proposed development on the properties.

These requirements shall be incorporated into the deeds of the affected lots as restrictive covenants, draft copies of which shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

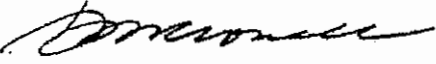
17. PUBLIC ACCESS - Prior to Final Subdivision approval the portion of Quarry Road running from Lighthouse Road to the National Wildlife Refuge property at Kilauea Bay shall either be dedicated to the County for public access purposes, or the developers shall grant or obtain an easement over the property for public access purposes. If an easement is granted it shall be described in metes and bounds and the easement documents shall be subject to the review and approval of the County Attorney's office.
18. ADDITIONAL DWELLING UNITS ON MARKET LOTS - As represented and agreed to by the developers, Additional Dwelling Units shall be prohibited on all market lots. This prohibition shall be incorporated into the deeds of the new subdivision lots as restrictive covenants. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final subdivision approval.
19. KILAUEA VALLEY RIM LOTS - The proposed rim lots located above Kilauea Valley on parcels TMK:5-2-12 units 9 and 30-34 are adjacent to the Open Special Treatment-Resource Zoning District, due to the scenic, ecological and geological sensitivity of the River Valley. To protect these sensitive resources, all development including grading, fencing and other structures shall be set back a minimum of 50 feet from the edge of the rim, unless adjusted at the time of subdivision approval. Greater setbacks for certain types of development may be required. The precise location of the setback line and the specific setbacks for each type of development shall be determined during the subdivision process and shall be resolved prior to Final Subdivision Approval. Setback limitations shall be incorporated into the deeds of the affected lots as restrictive covenants running with the property.
20. DISCLOSURE OF AG ACTIVITY - Provisions shall be incorporated into the deeds of the market lots located adjacent to ag lots informing prospective purchasers that there will be agricultural activity on the adjacent ag lots.

ADDITIONAL REQUIREMENTS

21. CULTURAL RESOURCES - Should archeological or historic resources be discovered during any grading, grubbing or construction, work in the area of the archaeological resources shall cease and the Department of Land and Natural Resources-Historic Preservation Division shall be contacted to determine an appropriate course of action.

The O'Connor Corp., et al.
Pali Moana Co. & Pangolin Corp.
Page 8
November 30, 1994

22. OTHER AGENCY REQUIREMENTS - Requirements of the State Department of Health, the County Department of Public Works, The County Fire Department, and County Department of Water shall be resolved with each respective agency.
23. ADDITIONAL CONDITIONS - The applicant is advised that prior to construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
24. COMPLIANCE WITH CONDITIONS - The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permit through proper procedures should the applicant fail to comply with the conditions of approval.


DEE M. CROWELL
Planning Director

cc: Mr. James R. O'Connor
State Dept. of Health
DLNR-Historic Preservation Division
Dept. of Public Works
Dept. of Water
Office of Economic Development
Kauai Public Land Trust
Fire Dept.
Kilauea Point National Wildlife Refuge
Real Property Div.

RE: Special Management Area Use Permit SMA(U)-94-14
Variance Permit V-94-16
Class IV Zoning Permit Z-IV-94-56
Amendment to Conditions of Approval SMA(U)-82-2

APPLICANTS:

Subdivisions for Agricultural and Other Uses

Developers/ The O'Connor Corporation
Owners: Kilauea Development Associates
Ideal Acres & Farms, Inc.

Coapplicants: County of Kauai Department of Public Works
County of Kauai Department of Economic Development

Non-profit
Trust: Kauai Public Land Trust

Amendment to Setback Line Condition

Pali Moana Company
Pangolin Corporation

As discussed at the previous Planning Commission public hearings, the proposed project resulted primarily from an unmet condition of approval of Special Management Area (SMA) Use Permit SMA(U)-82-2 (Crater Hill subdivision), which required the dedication of a 75 acre parcel to the County for development as an agricultural park. The currently proposed project includes subdivision of three properties located makai of Kilauea town into agricultural farm lots (ag lots), a community park site, a school site, a botanical garden, and residential farm lots (market lots).

The ag lots, the school site and botanical garden are to be dedicated to the Kauai Public Land Trust (KPLT), a non-profit agency. KPLT will sell the ag lots to qualified farmers selected by a committee composed of representatives of various groups and agencies, as outlined on page five of this report. The school site will be sold to an educational entity. The park site is to be offered to the County. The botanical garden is to be retained by KPLT with the future school acting as manager. The market lots will be retained by the property owners. Proceeds from the sale of the ag lots and school site will be used to provide infrastructure and other improvements associated with the development.

ADDITIONAL FINDINGS

ONE TIME SUBDIVISION

The Staff Report presented at the July 28, 1994 Public Hearing stated that a Variance Permit for the proposed project is necessary to allow deviation from the requirements of the Comprehensive Zoning Ordinance (CZO) regarding restrictions on resubdivision of previously subdivided land located within the Agriculture "A" Zoning District. Upon further analysis it has been determined that a Variance from the one time subdivision requirement is not necessary since the restriction does not apply to subdivisions requested by a government agency, and the County Department of Public Works and Department of Economic Development are co-applicants in the proposal.

VARIANCE REQUESTS

A Variance is required to deviate from the requirements of the CZO regarding the maximum number of lots permitted in subdivision of parcels within the Agriculture "A" Zoning District, and from the requirements regarding the minimum size of lots resulting from subdivision of lands within this Zoning District.

When subdivision of a parcel located within the Agriculture (A) Zoning District is permitted, Section 8-7.4 of the CZO identifies the number of parcels that may be created. Parcels larger than 50 acres but not more than 300 acres may be subdivided into no more than 10 parcels none of which may be smaller than five acres. The three parcels proposed for subdivision in this application are between 50 and 300 acres, and therefore are subject to this requirement. A Variance to allow deviation from this standard will be required for the proposed subdivision of each of the parcels as follows:

TMK: 5-2-04:99 - subdivision into 11 lots, six market lots less than five acres (one acre to four acres)

TMK: 5-2-04:102 - subdivision into 15 lots, six market lots under five acres (approximately two acres each)

TMK: 5-2-12:9 & 30-34 (currently one parcel, six CPR units) - subdivision into 13 lots, 10 market lots under five acres (1.6 acres to 3.7 acres)

ADDITIONAL INFORMATION

During the previously held Public Hearings on the proposed project, the Planning Commission requested additional information regarding the projected value of the lots to be retained by the applicants under the current proposal, information regarding the water available from the C. Brewer Inc. Stone Dam irrigation

system, and copies of the signature pages of all applicants involved in the proposed project. These items are attached to the staff report.

Also attached to the this report are letters from Kilauea Agriculture Associates, Inc. dated September 23, 1994 and November 1, 1994, and a letter dated October 3, 1994 from the Kilauea Neighborhood Association.

EVALUATION

VARIANCE PERMIT

Section 8-21 of the Comprehensive Zoning Ordinance (CZO) provides for Variances to deviate from the requirements contained in the CZO. Under the current proposal deviation from the requirements of the CZO regarding densities and lot sizes within the Agriculture "A" Zoning District may be appropriate, given the potential for significant benefits to the community and general public interest.

Careful consideration is required to insure that the benefits to the community and general public interest justify the deviation from the regulatory requirements. Approval of an inequitable proposal could set a precedent for future projects in which the benefits to the developer or property owner outweigh the benefits to the public.

Public and Private Benefits

Each of the three property owners involved in the proposed subdivisions will benefit from the inclusion of the County Department of Public Works and Office of Economic Development as co-applicants in that their participation allows the property owners to avoid the restriction on resubdivision of previously subdivided agricultural lands. A community/public interest benefit will be gained in that the lots makai of Kilauea town along Lighthouse Road will be used for ag lots, a park and a school site, which will result in a relatively open corridor in this area. In addition to these general benefits, the following specific public and private benefits will be derived from the proposed project.

TMK: 5-2-04:99 (O'Connor Corporation) - Under the existing conditions of approval of SMA(U)-82-2 as modified through amendments, this lot is only to be used for 7± agriculture farm lots (ag lots). Provision of the original 75 acres of ag lots was required as part of the mitigation to offset adverse impacts associated with development of the Crater Hill subdivision. The

original applicant, Roberson-Larson Partnership, was to receive \$5,000 per acre or a total of \$375,000 for the ag lots, under the conditions of approval of SMA(U)-82-2.

Under the present proposal the O'Connor Corporation will deed at no charge five ag lots and a botanical garden site for a total of 55.5 acres to the Kauai Public Land Trust (KPLT). The applicant will be permitted five residential farm lots with a total of 19.5 acres for retention by the applicant. Additional Dwelling Units (ADUs) will be prohibited on the market lots by deed restriction, and a maximum of five dwelling units and five guest houses will be allowed, all of which would otherwise have not been permitted under the original developer's (Roberson-Larson Partnership) existing obligation according to the conditions of approval of SMA(U)-82-2.

TMK: 5-2-04:102 (Kilauea Development Associates) - Under existing CZO requirements the applicant would be permitted a maximum of five dwelling units and one guest house which could potentially be converted to five CPR units.

Under the present proposal Kilauea Development Associates will deed to KPLT at no charge three ag lots, a community park site, and a school site for a total of 41.5 acres. Kilauea Development Associates will retain 10 residential farm lots with a deed restriction prohibiting ADUs, for a maximum potential of 16 dwelling units and 10 guest houses. Also included are two internal roadway lots to access the market lots, and a roadway reserve lot for a future bypass road. Therefore, Kilauea Development Associates will be allowed an increase of 11 dwelling units and 9 guest houses beyond what would be permitted under current CZO requirements.

TMK: 5-2-12:9 & 30-34 (Ideal Development Corporation) - This property currently is comprised of six CPR units which qualify for a maximum of five dwelling units and one guest house. No further subdivision or additional dwellings beyond this maximum would be permitted under the requirements of the CZO.

Under the present proposal the Ideal Development Corporation will deed three 10 acre ag lots to KPLT at no charge. Also proposed is an internal roadway lot to serve the market and ag lots. The remaining 24 acres will be subdivided into 10 residential farm lots to be retained by the applicant, with a maximum of one dwelling unit and a guest house on each lot. ADUs will be prohibited, and the applicant will be allowed an increase of five dwelling units and nine guest houses beyond what would be permitted under CZO requirements.

Remnant Lot

Subdivision of TMK: 5-2-04:99 and improvements to Quarry Road will result in a remnant lot approximately one acre in size located at the intersection of Quarry Road and Lighthouse Road. This lot is located in the vicinity of proposed ag lots and the school and park sites. The remnant lot is not associated with the market lots and should be used to benefit the ag lots, or for some other use that benefits the community or general public interest. The appropriate use of the site should be determined prior to Final Subdivision approval. If considered appropriate the lot may be dedicated to KPLT or the County, subject to acceptance by the County Council.

Residential Densities

The three properties proposed for subdivision are located between Kilauea town with its relatively urban residential densities, and large lot developments (five acres minimum) such as the Seacliff Plantation and Kilauea Gardens subdivisions makai of the project site. Therefore, a limited increase in residential densities beyond that permitted under current zoning and conditions of previous permit approval may represent an appropriate transition between Kilauea town and the larger lot subdivisions. Approval of the current proposal will not set a precedent for similar projects on isolated agricultural lands located away from residential development.

FARMER SELECTION AND AG LOT RESTRICTIONS

Kilauea Ag Park Commission (Ag Commission)

The applicants have proposed that a committee called the Kilauea Ag Park Commission be established to select qualified farmers to purchase the ag lots, to impose rules and covenants on the ag lots, and to provide on going oversight of the agricultural operations. The applicants have suggested that the committee be composed of a minimum of seven members, with at least one member from the Kilauea area. It is suggested that the committee be composed of two members of the KPLT Board, one representative of the County, one representative of the State Department of Agriculture, one person from private business, one member from the financial community, and one person with agribusiness expertise.

The concept of a committee to select farmers and oversee the ag lot operations is considered appropriate. The suggested composition of the committee also appears appropriate subject to

finding suitable, qualified individuals to sit on the committee.

Ag Lot Restrictions

Past experience with agricultural subdivisions has shown the strictly enforced restrictions are required to insure that ag lots are productive and used only for agricultural purposes. Restrictive covenants should be placed in the deeds of the ag lots, and agreements with farmers should be executed. It is recommended that the restrictive covenants, rules, and agreements be developed by the Kilauea Ag Park Commission in consultation with KPLT.

Restrictive covenants and agreements should address at a minimum the following: prohibitions on the use of the property for residential purposes; identification of the types of activities acceptable as agriculture; the types of farm related structures and other improvements that will be permitted; improvements that will be required to be provided by the farmers; requirements for maintenance of the property and improvements; establishment of time frames for beginning agricultural activities; restrictions regarding failure to continue agricultural activities; penalties for non compliance with agreements and restrictive covenants; restrictions on resale or subleases; and buyback provisions.

KILAUEA AGRICULTURAL ASSOCIATES (KAA) FARMING ISSUES

Priority for Qualified Farmers Residing in Kilauea

In the attached letter dated September 23, 1994, the KAA express their support for the proposed subdivisions as long as the needs of the farmers are considered. The KAA requests that qualified farmers who reside in Kilauea be given priority to receive the proposed ag lots. The increased residential densities resulting from the proposed subdivisions will burden infrastructure and public services, and impact residents primarily in the Kilauea area. Therefore, it is considered appropriate that qualified farmers residing in the Kilauea area be given priority in the selection process.

Infrastructure Priorities

The KAA has recommended that the first priority for use of funds from the sale of the ag lots be for the provision of infrastructure to serve the ag lots, particularly development of the irrigation system. The current project was proposed primarily as a method of meeting a requirement of the 1982 Crater Hill subdivision that ag lots be dedicated to the County for sale to qualified farmers. Therefore it is considered appropriate

that the primary focus of this project be on establishment of operating viable farms as was the intent of the condition of approval of the original 1982 Crater Hill subdivision.

Dwellings on Ag Lots

The KAA has requested that one single family dwelling unit be permitted on each ag lot so that farmers may live on the land they farm. The original conditions regarding dedication of the ag lots required that the lands be used for agricultural purposes, and dwelling units were not considered appropriate at that time. Construction of dwelling units on smaller ag lots intended for use as farm lands often results in agriculture becoming secondary to the residential use, and may encourage real estate speculation. In addition, residential development on the ag lots will further burden demands on limited infrastructure such as domestic water supply.

If qualified farmers who are residents of the Kilauea area are given priority consideration in the selection process, most farmers should be living near their ag lots. Therefore, it is recommended that dwellings not be permitted on the ag lots. The question of permitting dwelling units may be reexamined at a later date, once the agricultural infrastructure is in place, the ag lots are purchased by farmers, and farming operations are underway.

INFRASTRUCTURE AND IMPROVEMENTS

Funding

The developers have indicated that proceeds from the sale of the ag lots and school site will be used to provide the infrastructure and improvements required for the proposed project. Improvements required for the agricultural farm lots, and the park and botanical garden sites include development of the irrigation delivery system, minor improvements to Quarry Road, construction of two internal farm accesses off of Quarry Road, and community park improvements. Infrastructure and improvements required in connection with residential development on the market lots include improvement of a portion of Quarry Road to County standards, construction of internal roadways, domestic water supply improvements, and provision of electric power and other utilities.

The Department of Public Works had indicated that they do not feel that the revenues from the sale of the ag lots and school site would cover the costs of the infrastructure and other improvements associated with the project. The applicant has since

submitted a revised preliminary cost estimate (attached to this report) that indicates the sources of funds to be used for these purposes, and the estimated costs of the developments.

The current project was proposed as a method of meeting a requirement of the 1982 Crater Hill subdivision that ag lots be dedicated to the County for sale to qualified farmers. Dedication of the school site and community park site have been offered by the applicants to offset impacts associated with increased residential densities and smaller lot sizes than permitted by the CZO.

The developers will gain substantial economic benefits from these deviations from the CZO requirements, and therefore it is recommended that the revenues derived from the sale of the ag lots and school site and the remittance from Pali Moana Company and the Pangolin Corporation be used only for improvements associated with the ag lots, park site, and additional community benefits as described below. Costs associated with improvements required in connection with residential development should be borne by the respective property owners who will benefit from those developments. The breakdown of costs for improvements required for the market lots verses those required for the ag lots, park and additional community benefits should be determined during the subdivision approval process.

If the cost of improvements associated with the ag lots and park site are not met through the sale of the ag lots and school site, the applicants should be responsible for insuring the improvements are completed. If the revenues from the sale of the ag lots and school site exceed the costs of infrastructure and improvements, surplus funds should be utilized for additional community benefits such as construction of a bicycle path, minor improvements to the portion of Quarry Road beyond the project area leading to the shoreline, or additional community park improvements.

Irrigation System

Irrigation water for agricultural purposes is proposed to be supplied via the existing C. Brewer Inc. (Kilauea Irrigation Company) Stone Dam system. The system will be improved using revenues derived from the sale of the ag lots and school site. Water will be sold to farmers, the future school, and market lot owners, and Kilauea Irrigation Company will maintain the system. The developers have provided a study prepared by ITC Water Management which describes the recommended system and improvement cost estimates.

SPECIAL MANAGEMENT AREA RESOURCES

The Special Management Area (SMA) Rules and Regulations require the protection and provision of public access to coastal resources. A portion of Kahili Quarry Road is to be improved in connection with the proposed project, and will serve two of the properties proposed for subdivision. This road, which for the most part is owned by C. Brewer Inc., has been utilized by residents and visitors for many years for public access to Kilauea Stream and the north side of Kilauea Bay. At the July 28, 1994 Public Hearing, the applicant indicated that C. Brewer may be willing to dedicate the road to County. To insure the continued protection of this traditional public accessway, C. Brewer and other owners if applicable, should either dedicate the road to the County, or grant a public pedestrian and vehicular access easement along the roadway.

Only a small portion of the three properties proposed for subdivision are located within the SMA, and none are located near the sea or scenic landmarks and therefore development of the proposed subdivisions is not likely to affect scenic resources. The subject properties have been extensively used for agriculture, and the State Historic Preservation Division has indicated that they expect that the project will have no effect on historic sites. The subject properties are well removed from the National Wildlife Refuge and other sensitive ecosystems, and therefore impacts on biological resources are expected to be minimal.

As discussed below, the properties that are the subject of the request to amend the building setback line are located within the SMA, are adjacent to the scenic landmark of Crater Hill, and are adjacent to the sensitive Kilauea National Wildlife Refuge. Approval of the request to amend the setback line would allow development of structures further up Crater Hill, and increase the impact on the scenic qualities of the landmark. The total area on the properties where structures would be permitted also would be increased, and overall structural mass of development on Crater Hill could increase significantly beyond what is currently permitted.

OTHER PROPOSALS

The developers' proposal includes two additional requests that do not involve the agricultural properties subject to the Variance and subdivision requests.

Seacliff Plantation Building Setback Line

Protection of scenic resources and sensitive coastal ecosystems are required under the County of Kauai Special Management Area Rules and Regulations. To insure compliance with these requirements in connection with approval of SMA(U)-82-2 (Crater Hill subdivision), a building setback line was established on lots located along Crater Hill to limit encroachment of man made features on this scenic landmark, and to protect sensitive species habitat associated with the wildlife refuge located adjacent to the makai boundary of the lots.

The current setback line was established on the ground at the project site by Planning Department staff, the Planning Commission, the engineer for the original applicant (Roberson-Larson), and U. S. Fish and Wildlife staff. In 1984 the Planning Commission denied a request to amend the building setback line condition finding that there was still buildable area on each lot, and the setback line did not deprive the applicant of reasonable use of the property.

The Pali Moana Corporation and the Pangolin Corporation, as part of this application, are again requesting to amend the condition of approval of SMA(U)-82-2 which established the building setback line. Given the public benefits associated with the overall project, including the \$125,000 remittance for infrastructure and improvements, and the Kilauea Neighborhood Association and local residents acceptance of the proposed amendment, the developer's request may be appropriate. However, based on the size and pattern of structures currently being developed within the subdivision, extending the setback line up Crater Hill may result in very large structures occupying the maximum buildable area. Therefore, strict restrictions on building height, design and color will be required to insure that adverse impacts on scenic and ecological resources are minimized.

Former Kilauea Dispensary Property

The developers are proposing that the 0.5 acre County property fronting the old dispensary be transferred to the owners of the old dispensary commercial property in return for provision of the community park on TMK:5-2-04:102 (Kilauea Development Association). The County property fronting the old dispensary is

proposed to be used by the property owner in connection with a planned commercial center, and the property could represent potentially valuable asset that increases the amount of land available for commercial use at the site.

The developers have indicated that the County park lot will be used only for open space, landscaping, and parking in connection with the proposed planned commercial development. Therefore, given this restriction and the fact that a community park is proposed to be located in the vicinity, the developer's proposal is considered appropriate. It should be noted that transfer of County property is not within the jurisdiction of the Planning Department or County agencies, and the transfer will be contingent on the approval of the County Council.

CONCLUSION

Based on the information contained in the Staff Report Findings and Evaluation, it is hereby concluded that the significant benefits to the community and general public interest resulting from the developers' proposals justify granting of the requested Variances, Amendments and proposals, and as conditioned the project is in conformance with the intent of the CZO and General Plan.

It is further concluded that as conditioned, the proposal complies with the policies and guidelines of the Special Management Area Rules and Regulations in that the development will not have any substantial adverse environmental or ecological effect. Any adverse environmental or ecological effect that may result will be minimized to the extent practicable and is clearly outweighed by public health, safety and welfare, and other compelling public interest.

RECOMMENDATION

Based on the foregoing it is recommended that Special Management Area Use Permit SMA(U)-94-14, Variance Permit V-94-16 and Class IV Zoning Permit Z-IV-94-56 be approved, subject to the following conditions:

AG SUBDIVISION AND INFRASTRUCTURE

1. SETBACK LINE MITIGATION - As represented and agreed to by the developers, to offset the impacts on the scenic and ecological resources resulting from modifications to the previously required building setback line on lots located above Makanaano Place on Crater Hill, Pali Moana Company and

Z-IV-94-56
Evaluation
December 1, 1994
Page 11

Pangolin Corporation shall remit \$125,000 to KPLT to be used for infrastructure and improvements as described in condition #2 below. The developers shall remit said fee prior to Final Subdivision approval.

2. REVENUES AND IMPROVEMENTS - As represented and agreed to by the developers, the revenues derived from the sale of the ag lots and school site, and the remittance by Pali Moana Company and the Pangolin Corporation shall be used only for infrastructure and improvements associated with the ag lots, community park and other community benefits including construction of the irrigation system, minor road improvements, community park amenities, and a \$25,000 administration fee for the KPLT. Costs associated with improvements required in connection with residential development of the market lots including domestic water system improvements, on-site roadway construction and the provision of on-site utilities shall be borne by the respective property owners who will benefit from the developments. The breakdown of costs for improvements required for the market lots verses those required for the ag lots, park and additional community benefits shall be determined during the subdivision approval process, and the matter shall be resolved prior to Final Subdivision approval.

If the cost of the irrigation system improvements, community park improvements, KPLT administrative costs, and ag lot infrastructure are not met through the sale of the ag lots and school site, and the remittance by Pali Moana Company and the Pangolin Corporation, the developers shall be responsible for insuring the improvements are completed.

Pursuant to Section 9-3.6 of the County Subdivision Ordinance, prior to Final Subdivision approval the developer shall either construct the above identified infrastructure and other improvements, or file a subdivision agreement and bond or security with the Planning Commission in a form approved by the County Attorney. In addition to infrastructure, improvements constructed or bonded shall include but not be limited to construction of the irrigation system, and community park as described below.

3. IRRIGATION SYSTEM -Prior to Final Subdivision approval, the developer shall obtain and provide for the review and approval of the Planning Director in consultation with the KPLT, a written agreement with Kilauea Irrigation Company (C. Brewer Inc.) for the maintenance of the irrigation system and distribution of agriculture water to service the

agricultural farm lots resulting from the developer's proposal.

4. AG COMMISSION - As represented and agreed to by the developers, there shall be established a committee called the Kilauea Ag Park Commission (Ag Commission) that shall select qualified farmers to purchase ag lots, develop restrictions on the ag lots for inclusion in deeds as restrictive covenants and farmer agreements, and oversee the ag lots and agricultural operations. The Commission shall be established by the KPLT, and as represented by the applicant, shall be composed of approximately seven members including a member from the Kilauea community, a member of the KPLT Board, and representatives of the County, the State Department of Agriculture, private business, the financial community, and agribusiness.
5. QUALIFIED FARMER SELECTION - The Ag Commission shall determine the criteria to be used in selecting qualified farmers to purchase the ag lots. The criteria shall include special preference for qualified farmers who are residents of the Kilauea area.
6. TIMING FOR INFRASTRUCTURE - Qualified farmers shall be selected prior to the design of the ag lot infrastructure improvements in order that the future ag lot owners can provide comments regarding their farming needs and requirements.
7. SALE OF AG AND MARKET LOTS - As represented and agreed to by the developers, no ag lots shall be sold until irrigation water is supplied to those ag lots. No market lots shall be sold until the ag lots are made available for purchase by qualified farmers. The mechanism for implementation of this condition shall be resolved prior to Final Subdivision approval.

COMMUNITY BENEFITS

8. COMMUNITY PARK - As represented and agreed to by the developers, the proposed community park site shall be deeded free of charge to KPLT and developed by KPLT and the O'Connor Corporation using funds from the sale of the ag lots and school site, and the remittance from Pali Moana Company and the Pangolin Corporation. Improvements to be provided shall be determined by the developer and KPLT in consultation with representatives of the Kilauea Community and the Department of Public Works. As represented by the developer, a minimum of \$300,000 shall be provided for

community park amenities which shall include soccer fields, softball fields, volleyball courts, and restrooms.

Proposed improvements shall be submitted for the review and approval of the Planning Director and County Engineer prior to Final Subdivision approval. The park improvements shall be bonded or constructed as described in condition #2 above, and shall be completed no later than one year from Final Subdivision approval. The park shall be transferred to the County subject to the acceptance of the County Council.

9. BOTANICAL GARDEN - As represented and agreed to by the developers, the proposed botanical garden shall be deeded free of charge to KPLT. The botanical garden shall be retained by KPLT and open for public use. The future owners of the school site, at their discretion, may assume management and maintenance responsibilities for the botanical garden. KPLT shall assume management of the botanical garden until the school site is developed. If the school declines to assume responsibility for the botanical garden, or fails to adequately maintain the site, KPLT shall assume those responsibilities.

Covenants designating the property as permanent open space, and specifications regarding the use, management and maintenance of the botanical garden shall be incorporated into the deed of the new lot as restrictive covenants. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

10. SCHOOL SITE - As represented and agreed to by the developers, the community school site shall be deeded to KPLT free of charge for sale to an educational entity. The site shall be used only for a school or educational purposes and the lot shall be encumbered by a restrictive covenant limiting it to such uses. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

11. REMNANT LOT - As represented and agreed to by the developers, the remnant lot located at the intersection of Quarry Road and Lighthouse Road shall be used to benefit the ag lots farming operations, or for some other use that benefits the community or general public. The appropriate use of the site shall be determined prior to Final Subdivision approval and restrictions on the uses shall be incorporated into the lot deed as a restrictive covenant. If considered appropriate the lot may be dedicated to KPLT

or in the alternative to the County, subject to acceptance by the County Council.

12. SURPLUS FUNDS - As represented and agreed to by the developers, if the revenues from the sale of the ag lots and school site, and remittance by Pali Moana Company and Pangolin Corporation exceed the costs of irrigation system improvements, community park improvements, KPLT administrative costs, and ag lot infrastructure, surplus funds shall be utilized for additional community amenities such as construction of a bicycle path, minor improvements to the portion of Quarry Road beyond the project area leading to the shoreline, or additional community park improvements.

LEGAL ISSUES, COVENANTS AND RESTRICTIONS

13. AG LOT RESTRICTIONS - As represented and agreed to by the developers, the Ag Commission, in consultation with the KPLT shall develop restrictive covenants, rules, and agreements for the ag lots. Restrictive covenants shall include at a minimum the following: prohibition on the use of ag lots for residential purposes; identification of the types of activities acceptable as agriculture; the types of structures and other improvements that are permitted; improvements that will be required to be provided by the farmers; requirements for maintenance of the property and improvements; establishment of time frames for beginning agricultural activities; restrictions regarding failure to continue agricultural activities; penalties for non compliance with agreements and restrictive covenants; restrictions on resale or subleases; and buyback provisions. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.
14. COUNTY LIABILITY -Although the County Department of Public Works and the Department of Economic Development are co-applicants in the proposal, the County of Kauai shall assume no liability for the development of infrastructure or other improvements associated with the proposed project.
15. OLD DISPENSARY COUNTY LOT - The transfer of the County Park lot located in front of the Old Kilauea Dispensary to the developers of the Kilauea Plantation Center shall be subject to the approval of the County Council. As represented by the developer, should the County Council agree to convey the subject lot, the lot shall be used exclusively for open space, landscaping, and parking. No structures shall be

permitted on the lot, and these requirements shall be incorporated into the property deed as restrictive covenants, draft copies of which shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

The developers understand and acknowledge that nothing herein shall be considered an acceptance by the County of the above described proposed development at the Old Kilauea Dispensary site.

16. MITIGATION OF IMPACTS OF SETBACK LINE AMENDMENTS - All development on the Seacliff Plantation lots located above Makanaano Place on Crater Hill, including any structures, landscaping, storage areas, grading or removal of existing natural vegetation, shall be restricted to the area within the amended building setback area as proposed by the developer. All land outside of the proposed amended setback area shall be kept in its natural state, provided however that the area between the setback lines and property side boundaries shall be utilized as landscape buffers to screen structures located within the setback area. In no case shall landscaping be permitted above the elevation of the setback line on each respective lot.

Structures to be constructed within the amended setback area shall be restricted to a 12 foot limit on uninterrupted wall height, with a 25 foot height limit on dwellings as measured from natural or finished grade, whichever is lower. Exterior colors of all structures, including roofs shall be limited to shades of brown, green, and/or grays. Roofs shall be of non-reflective materials, and exterior lighting shall be reflected downward.

The Planning Department shall review all development plans for the subject lots for consistency with these requirements. In addition, the developer shall obtain comments from the U.S. Fish and Wildlife Service and the Kilauea Neighborhood Association for proposed development on the properties.

These requirements shall be incorporated into the deeds of the affected lots as restrictive covenants, draft copies of which shall be submitted to the Planning Department for review and approval prior to Final Subdivision approval.

17. PUBLIC ACCESS - Prior to Final Subdivision approval the portion of Quarry Road running from Lighthouse Road to the National Wildlife Refuge property at Kilauea Bay shall

either be dedicated to the County for public access purposes, or the developers shall grant or obtain an easement over the property for public access purposes. If an easement is granted it shall be described in metes and bounds and the easement documents shall be subject to the review and approval of the County Attorney's office.

18. ADDITIONAL DWELLING UNITS ON MARKET LOTS - As represented and agreed to by the developers, Additional Dwelling Units shall be prohibited on all market lots. This prohibition shall be incorporated into the deeds of the new subdivision lots as restrictive covenants. Draft copies of the covenants shall be submitted to the Planning Department for review and approval prior to Final subdivision approval.
19. KILAUEA VALLEY RIM LOTS - The proposed rim lots located above Kilauea Valley on parcels TMK:5-2-12 units 9 and 30-34 are adjacent to the Open Special Treatment-Resource Zoning District, due to the scenic, ecological and geological sensitivity of the River Valley. To protect these sensitive resources, all development including grading, fencing and other structures shall be set back a minimum of 50 feet from the edge of the rim, unless adjusted at the time of subdivision approval. Greater setbacks for certain types of development may be required. The precise location of the setback line and the specific setbacks for each type of development shall be determined during the subdivision process and shall be resolved prior to Final Subdivision Approval. Setback limitations shall be incorporated into the deeds of the affected lots as restrictive covenants running with the property.
20. DISCLOSURE OF AG ACTIVITY - Provisions shall be incorporated into the deeds of the market lots located adjacent to ag lots informing prospective purchasers that there will be agricultural activity on the adjacent ag lots.

ADDITIONAL REQUIREMENTS

21. CULTURAL RESOURCES - Should archeological or historic resources be discovered during any grading, grubbing or construction, work in the area of the archaeological resources shall cease and the Department of Land and Natural Resources-Historic Preservation Division shall be contacted to determine an appropriate course of action.
22. OTHER AGENCY REQUIREMENTS - Requirements of the State Department of Health, the County Department of Public Works,

The County Fire Department, and County Department of Water shall be resolved with each respective agency.

23. ADDITIONAL CONDITIONS - The applicant is advised that prior to construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
24. COMPLIANCE WITH CONDITIONS - The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permit through proper procedures should the applicant fail to comply with the conditions of approval.

By

George Kalisik
George Kalisik, Planner

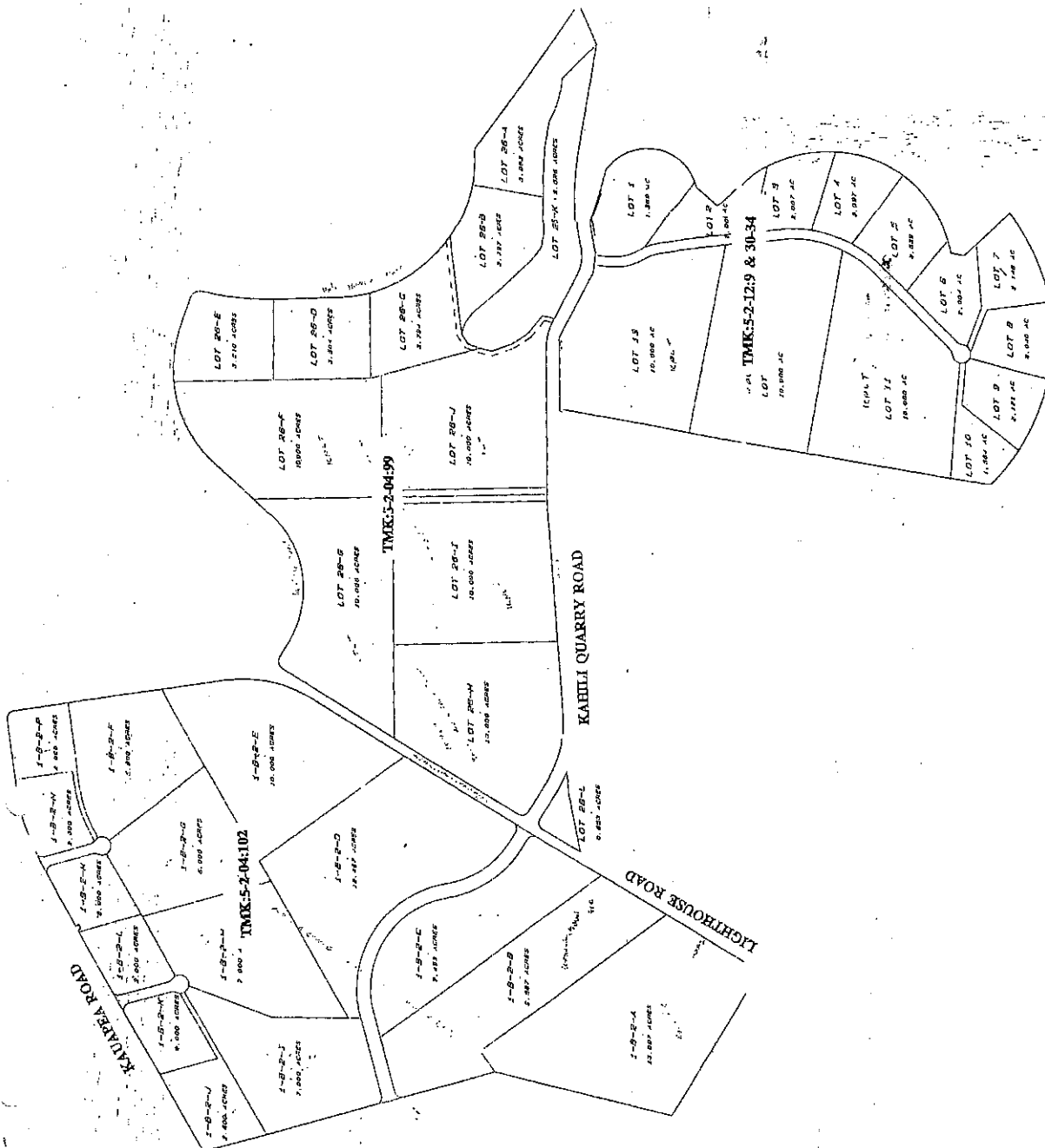
Approved & Recommended to Commission:

Dee M. Crowell

Dee M. Crowell, Planning Director

Date:

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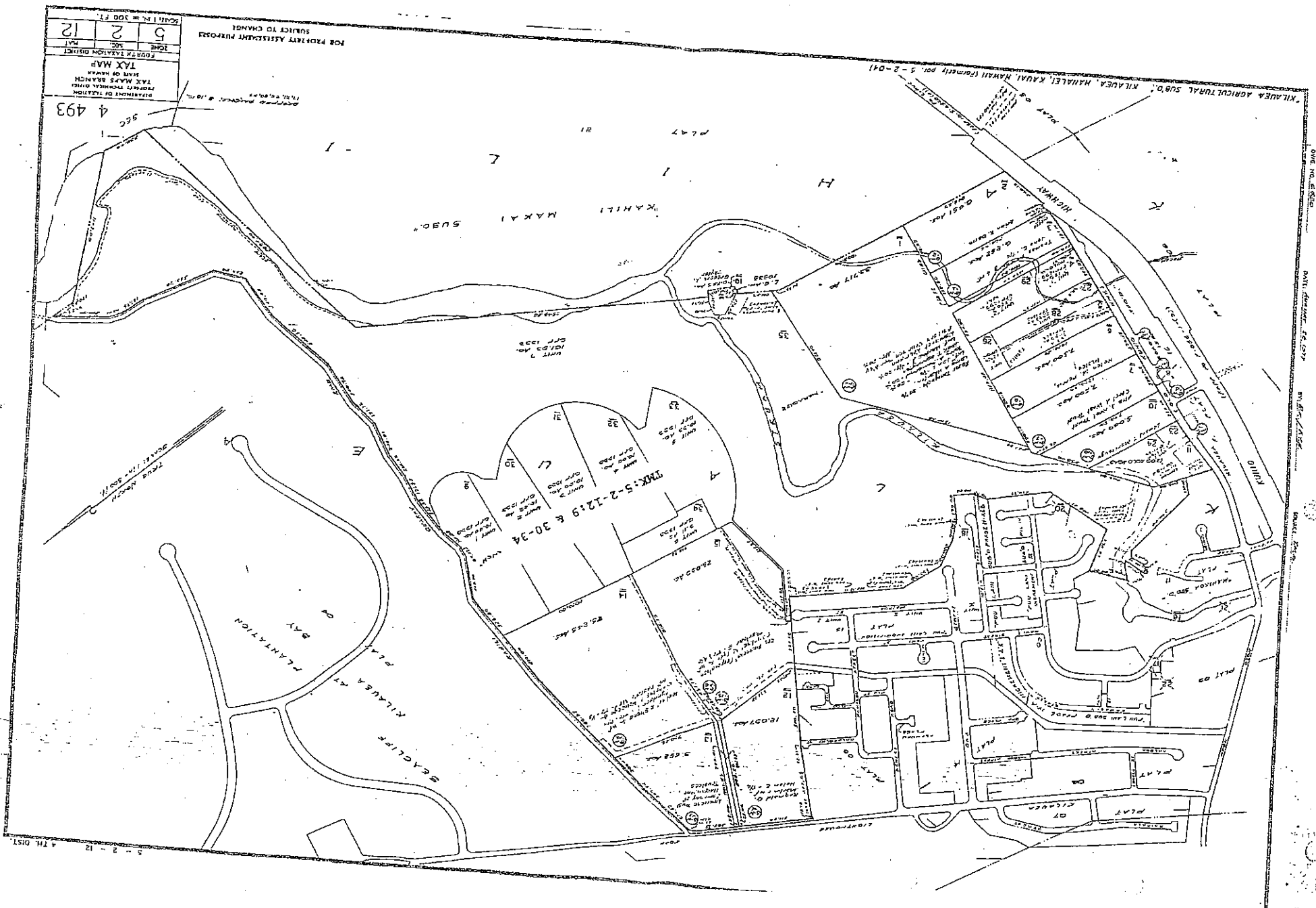
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SUBJECT: CHANGE

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TAX MAP			
FOURTH DIVISION			
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CONTAINING		PARCELS	
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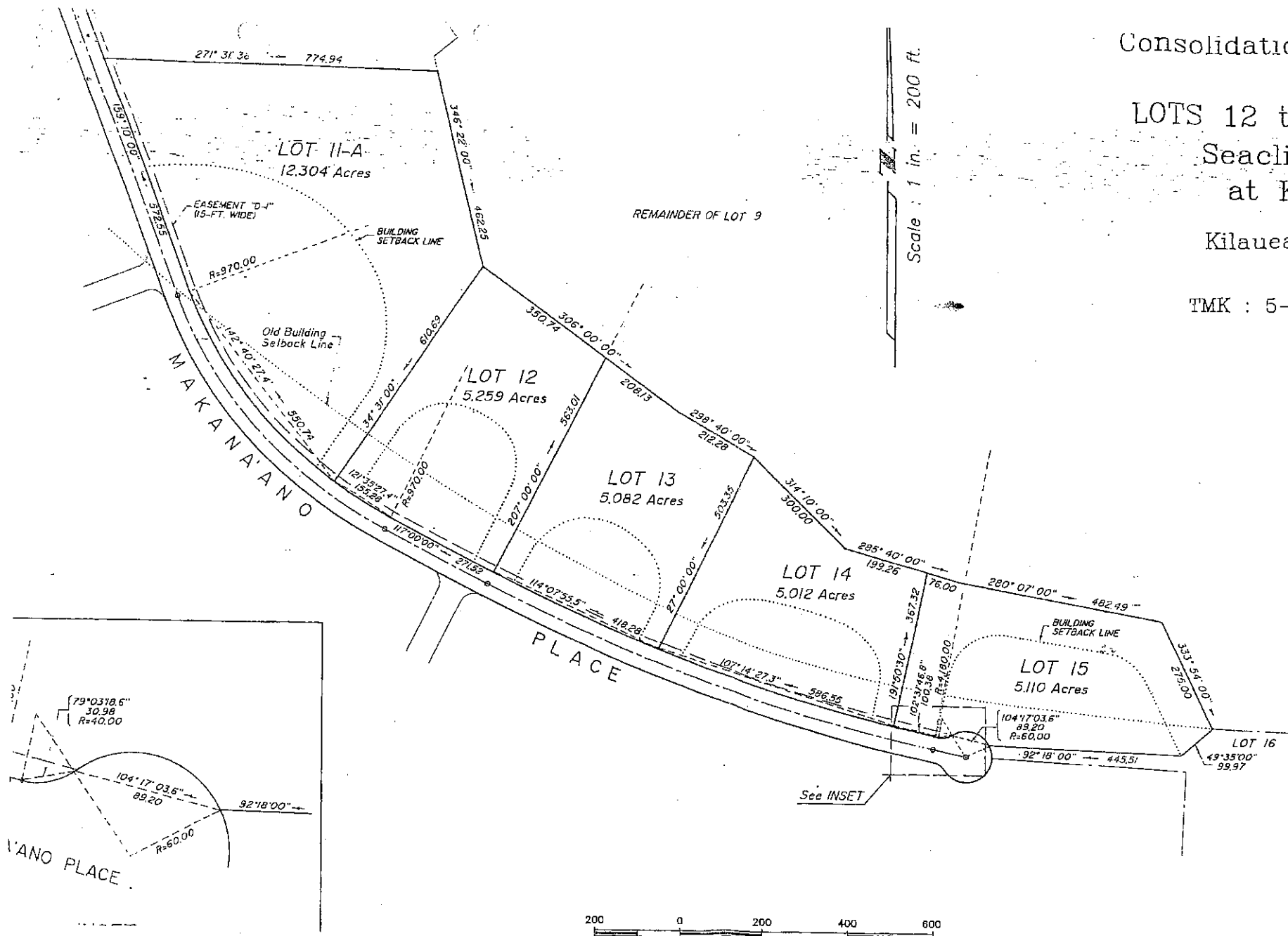


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**COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHUE, KAUAI**

STAFF REPORT

HEARING DATE: August 27, 2002

PROJECT: Class IV Zoning Permit Z-IV- 2003-2
Use Permit U-2003-2

APPLICANT: New Seacliff Estates, LLC

FINDINGS

LOCATION: On the makai side of Makaano Place at its intersection with Pali Moana Place, in the Seacliff Plantation Subdivision in Kilauea

TAX MAP KEY: TMK:5-2-04:85

AREA: 5.239 acres

ZONING: Open/Special Treatment-
Resource (O/ST-R)

SLUD: Agricultural

GEN. PLAN: Agriculture

EXIST. USE: Vacant

I. ACTIONS REQUIRED:

A Use Permit is required for all uses, structures or development in a Special Treatment District except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures or land. A Class IV Zoning Permit is a procedural requirement when applying for a Use Permit within the Open (O) District.

II. PROJECT DESCRIPTION AND USE:

The applicant is proposing construction of a two story, 4,360 square foot single family residence with an 840 square foot garage, pool, and landscaping. The residence will have a maximum height of 25 feet as measured at all points of the building to the top of the roof. According to the application, proposed lot coverage is 6.8%. Access to the site will be from Makaano Place, via a gravel driveway.

The applicant has indicated that the exterior of the structure will be a light sand or beige/tan color, with brown stained cedar shingles for roof material. Landscaping will emphasize native species, with ornamental landscaping restricted to the areas immediately adjacent to the residence.

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III. LEGAL REQUIREMENTS:

The requirements of Section 8-19.6 of the Kauai County Code pertaining to public hearing notification have been satisfied.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Please refer to application.

V. PROJECT SITE AND SURROUNDINGS:

The project site is located on former sugar cane lands, now covered primarily with grasses and scattered small trees and shrubs. The project site is located on the hillside above Makaano Place, and slopes moderately down to the road. The Kilauea Point National Wildlife Refuge is located immediately north of the subject property with the ocean beyond the refuge. Most other properties in the immediate vicinity to the south and east remain vacant, although several other residential developments are distributed throughout the subdivision.

Kilauea Lighthouse is located approximately 3,700 feet to the north, and Kilauea Stream and Bay are situated below the bluffs approximately 4,000 feet to the east. Kilauea town is approximately one mile to the southwest, with Kuhio Highway running generally east/west beyond the town.

AGENCY COMMENTS: (See Attachments)

The State Department of Health provided comments regarding wastewater disposal, construction activities, and use of best management practices.

The Fire Department had no comments.

The Department of Public Works indicated that a grading permit may be required, and requested grading plans with mitigating erosion control measures.

The County Department of Water will require approval of construction drawings for necessary water system facilities.

The State Historic Preservation Division stated that since intensive cultivation has altered the land, no historic properties will be affected.

ADDITIONAL FINDINGS:

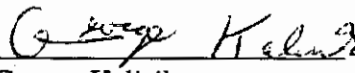
PROJECT SITING

On February 10, 1982, the Planning Commission approved Special Management Area SMA(U)-82-2 for what ultimately became a 25 lot subdivision then known as Crater Hill. The permit was approved subject to several conditions including establishment of a building setback line that resulted in the "1982 SETBACK" identified on the applicant's site plan.

The project application indicates that the proposed structure is to be located within an area identified as the "1994 SETBACK". The 1994 setback line was approved by the Planning Commission on November 4, 1994 as part of a master planned multi property project involving subdivision of three agricultural lots into market lots, ag lots, a community park lot, a school site, and a botanical garden lot, with the development of related infrastructure (see attached approval letter for Special Management Area Use Permit SMA(U)-94-14, Variance Permit V-94-16, Class IV Zoning Permit Z-IV-94-56, Amendment to Conditions of Approval SMA(U)-82-2). However, the conditions of approval of these permits have not been met, and the two year duration of the SMA Permit as indicated in the County of Kauai SMA Rules and Regulations has expired. Therefore the original 1982 setback line remains in effect, and the applicant's structure should be located behind that 1982 line.

If the applicant wishes to utilize the 1994 setback line, potential options include:

1. Reactivate the 1994 permit, which would require resubmitting the application for reevaluation by applicable agencies, and the Planning Commission.
2. Request that establishment of the 1994 setback line be considered as part of this application.
3. Request a modified 2002 setback line that would allow development in locations other than within the 1982 or 1994 lines.


George Kalisik
Planner