



PLANNING COMMISSION

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MEMORANDUM

DATE: April 12, 2021

TO: Planning Commission

FROM: Clerk of the Commission

SUBJECT: 2nd Addition to the Planning Commission 4/13/2021 Agenda

F. HEARINGS AND PUBLIC COMMENT

3. New Agency Hearing

a. County of Kaua'i, Planning Department

1. Letter (4/12/2021) Dave Hutchinson, Vice President of Land Development, Kukui'ula Development Company (Hawai'i), LLC.



April 12, 2021

Planning Commission – County of Kauaʻi
Kaaina Hull, Clerk of Commission

Re: Proposed Amendments Relating Development Standards for Guest Houses

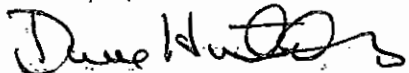
Dear Mr. Hull,

I am submitting testimony on behalf of current owners as well as future ones at Kukui'ula regarding guest house standards. We understand the commission is considering not allowing guest houses to be built over garage structures. It is not clear as to "why" this is being considered but we can assume it may have to do with past illegal use of "guest homes" and "ADU's". The proposed amendment will undoubtedly have an adverse effect for many of owners building within Kukui'ula and we respectfully ask you to take the following points under consideration.

- Most owners building here plan for guest accommodations with a "guest cottage" as part of their home design. Due to County of Kauaʻi regulations on lot coverage, often space for a guest house is over a garage.
- We have recognized the desired entrance for these guest cottages is with private access, from a livability standpoint.
- Under the assumption the County is experiencing issues with illegal rentals, we'd like to point out in the Kukui'ula Community Charter we have clear, concise language prohibiting rental of "guest homes" and ADU's.
 - Exhibit "C", Section 2. Prohibited Conditions.
 - *The following shall be prohibited at Kukui'ula:*
 - (c) *Additional dwelling unit that includes full kitchen facilities ("ADUs") that do not comply with the zoning ordinance's prohibition on ADU's or the further restrictions set forth in the Design Guidelines.*
 - Chapter 7 Use and Conduct
 - 7.1. (b) *Leasing. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased. In addition, any detached structure designed for use as a guest house approved pursuant to Chapter 5 may not be leased separate from the main dwelling.*
 - 7.1. (g) *Transient Vacation Rentals. In addition, any detached structure designed for use as a "guest house" approved pursuant to Chapter 5 may not be rented separately or occupied by a separate tenant from the main dwelling.*

I appreciate the Commission's consideration of these points. Please contact me directly for any questions of follow up commentary.

Thank you,

A handwritten signature in black ink, appearing to read "Dave Hutchinson". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dave Hutchinson, Vice President of Land Development
Kukui'ula Development Company (Hawai'i), LLC

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(x) Carport sales, garage sales, flea markets, and similar activities involving the outdoor display and sale of goods;

(y) Attempting to direct, supervise, or in any manner to assert any control over the employees of the Association;

(z) Vacating or leaving a Unit unoccupied for any extended period unless, prior to the departure of the Unit's occupants, unless:

(i) a responsible firm or individual is designated to care for the Unit and such firm or individual is capable of responding to any notice of any issue concerning the Unit within a 24-hour period; and

(ii) the Association is provided the name of said firm or individual; and

(aa) Construction of a guest house, unless in accordance with the Design Guidelines and procedures set forth in Chapter 5 of the Charter.

2. Prohibited Conditions. The following shall be prohibited at Kukui'ula:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Kukui'ula (including those further restrictions set forth in Section 7.2 of the Charter);

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair

(c) Additional dwelling unit that includes full kitchen facilities ("ADUs") that do not comply with the zoning ordinance's prohibition on ADU's or the further restrictions set forth in the Design Guidelines;

(d) Dog runs and animal pens of any kind, if such structures are visible from an adjacent Unit and not approved by the Design Review Committee;

(e) Temporary structures, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and any prefabricated or relocated structure used as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of the Declarant or any Sub-Developer to use trailers or outbuildings as sales offices, selection center offices, construction offices, or material storage facilities; and

(f) Air-conditioning apparatus on the ground in front of a dwelling and any air-conditioning apparatus or evaporative cooler attached to any front wall or any window of a dwelling.

Use and Conduct

For purposes of this Charter, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity.

(b) Leasing. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased. In addition, any detached structure designed for use as a guest house approved pursuant to Chapter 5 may not be leased separate from the main dwelling. Further, the Owner may not lease the main dwelling and move into the Guest House. Leases shall have a minimum lease term of 30 consecutive days unless a shorter rental period is expressly authorized by any Supplement applicable to the Unit. Minimum lease terms may vary by Neighborhood. The Standards may require that Owners use Board-approved lease forms (or include specific lease terms), require the use of licensed "leasing/management" companies, and may impose a reasonable review and administrative fee in connection with the Declarant's or Board's review of a lease.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed and in no event later than the commencement of the lease period, the Owner of the leased Unit shall notify the Association's managing agent of the lease and provide any additional information the Association's managing agent may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Associa-

tion or the Board may adopt Standards governing leasing and subleasing.

(c) Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Association's managing agent or the Board as it so determines at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Association's managing agent (or the Board, if applicable) receives such notice, notwithstanding the transfer of title.

(d) Subdivision and Combination of Units. No Person other than the Declarant and Sub-Developers whom the Declarant may authorize shall subdivide, combine, or otherwise change the boundary lines of any Unit or Units without the Board's prior written approval and, during the Development and Sale Period, the Declarant's prior written approval, which may be granted or withheld in the Board's and Declarant's discretion, respectively. Any such action that is so approved shall be effective only upon recording of a subdivision map or other legal instrument reflecting the subdivision, combination, or new boundaries of the affected Unit(s) as approved, and written notice to the Association accompanied by a copy of the recorded instrument. The Board may condition its approval on modifications to the proposed Unit boundaries as well as payment to the Association of any assessments and other charges then owed on the affected Unit(s). In addition, if any Owner other than Declarant or a Sub-Developer authorized by Declarant combines two or more Units in accordance with this subsection (d) and thereafter desires to re-subdivide the resulting Unit into two or more Units, the Board may condition its approval of such re-subdivision on payment to the Association of an amount equal to the assess-

Use and Conduct

(g) **Transient Vacation Rentals.** Notwithstanding the prohibition of business activities in Section 7.1(a), the Declarant declares that those Units described in Exhibit "D" attached hereto, and any additional Units designated for transient vacation rental use on a recorded subdivision map for Kukui'ula and/or in a Supplement, are designated as a "**Transient Vacation Rental**" or "**TVR**" for the purpose of creating areas for the potential use as rental homes within Kukui'ula. The Declarant may unilaterally amend Exhibit "D" from time to time to identify additional Units which have been designated as TVR by a recorded subdivision map or Supplement.

Any Units designated as a TVR may be rented for a minimum of a one week period (defined for purposes of this paragraph as any seven-consecutive-day period) and if so rented shall not be subject to the leasing provisions set forth in Section 7.1(b); provided, any TVR that is rented shall be rented only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately rented, and an Owner may not subject his or her Unit into a program as described in Section 7.1(e). Except for Units in The Lodge Program, or as otherwise designated by Declarant in its sole discretion, no TVR may be rented for less than the seven-day minimum as set forth herein. **In addition, any detached structure designed for use as a "guest house" approved pursuant to Chapter 5 may not be rented separately or occupied by a separate tenant from the main dwelling.**

The Board, through the imposition of specific Standards may require that Owners use Board-approved management companies and rental forms (or include specific rental terms) and may impose a reasonable review and administrative fee in connections with the Declarant's or Board's review of a management company's rental agreement or forms. Prior to an Owner entering into a rental management agreement with an approved company, the Owner of the TVR shall notify the Board or the Association's managing

agent of the agreement and provide any additional information the Board may reasonably require.

Neither the Declarant nor the Association shall be responsible or liable for any taxes, or other fees, as well as any local TVR registration requirements (if any are imposed) associated with an Owner's rental of its Unit. All rental agreements shall be in writing and shall disclose that the renters and all occupants of the TVR are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the rental agreement. The Board may also adopt additional Standards regarding the rental and use of a TVR.

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern Kukui'ula. The initial Standards attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting Kukui'ula. Therefore, the Board and the Owners are authorized to change the Standards in accordance with the following procedures, subject to the limitations set forth in Section 7.3. An amendment or alteration of the Standards shall not be considered an amendment to the Charter, and shall not be governed by Chapter 21.

(a) **Board Authority.** Subject to the notice requirements in Section 7.2(c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Standards and modify or rescind existing Standards by majority vote of the Board at any Board meeting.

(b) **Membership Authority.** Subject to the notice requirements in Section 7.2(c), the Owners representing at least 67% of the votes in